FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, ORDERS, AND STIPULATIONS

JANUARY 30, 1928, TO JUNE 11, 1929

PUBLISHED BY THE COMMISSION

VOLUME 12

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MEMBERS OF THE FEDERAL TRADE COMMISSION

AS OF JUNE 11, 1929

EDGAR A. McCULLOCH, *Chairman*.
Took oath of office February 11, 1927.

GARLAND S. FERGUSON, Jr.,
Took oath of office November 14, 1927, and January 9, 1928.[1]

CHARLES W. HUNT.
Took oath of office June 16, 1924, September 23, 1925,[2] and March 16, 1926.[1]

WILLIAM E. HUMPHREY.
Took oath of office February 25, 1925.

CHARLES H. MARCH.
Took oath of office February 1, 1929.

OTIS B. JOHNSON, *Secretary*.
Took oath of office August 7, 1922.

During the period January 30, 1928, to June 11, 1929, there also served as a commissioner—

ABRAM F. MYERS.
Took oath of office August 2, 1926, and June 19, 1928.[2] Resigned January 15, 1929.

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[1] Second term.

[2] Recess appointment.

ACKNOWLEDGMENT

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

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FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS JANUARY 30, 1928, TO JUNE 11, 1929

IN THE MATTER OF

NATIONAL FRUIT FLAVOR CO., INC.

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

Docket 1482. Complaint, Oct. 14, 1927—Decision, Jan. 30, 1928

Where a corporation engaged in the manufacture of a concentrate or compound neither made of nor derived from grape juice or grapes, and in the sale thereof to owners and operators of bottling plants, for manufacture into a beverage likewise neither so made nor derived, though imitating grape juice in color, odor and taste; designated said concentrate and beverage "Grape Squeeze" and "Squeeze", and made such statements upon signs, placards and other advertising matter furnished by it to its aforesaid customers for distribution among and use and display by the vendors and dispensers of beverages to the public, to whom they sold the same, as "That distinctive grape drink Squeeze", "Drink Grape Squeeze", "Drink Squeeze, the distinctive grape flavor"; with the capacity and tendency to mislead and deceive many of the public into believing the aforesaid beverage to have been made of or derived from grape juice or grapes, and to induce many thereof to purchase the same in such belief, and with the effect of placing in the hands of others an instrumentality of committing a fraud upon the public by enabling said vendors and dispensers to sell the same under the name "Grape Squeeze", as made of or derived from grape juice or grapes, and of diverting business from and otherwise injuring and prejudicing competitors not misrepresenting the nature and character of their beverages and compounds, or the ingredients whereof composed: *Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. A. R. Brindley for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Louisiana corporation engaged in the manufacture of a concentrate or compound for use by owners and operators of bottling plants, in making a beverage for sale to vendors and dispensers thereof to the consuming public, and in the sale of such concentrate or compound to the aforesaid owners and operators in various States, and with principal office and place of business at New Orleans, with naming product misleadingly and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about three years preceding the complaint, supplied its vendees, for their use in supplying the vendors and dispensers of the beverage made from its aforesaid concentrate or compound, with signs, placards and other advertising matter containing the name and designation given to its said concentrate or compound and the beverage made therefrom, namely, "Grape Squeeze" and "Squeeze", and such statements as "That distinctive grape drink Squeeze", "Drink Squeeze, the distinctive grape flavor", notwithstanding the fact that the concentrate or compound in question and the beverage derived therefrom were not made of nor derived from grape juice or grapes, though imitating the former in color, odor and taste.

The use of the words "Grape Squeeze", and of the aforesaid statements, has, as alleged, the capacity and tendency to mislead and deceive many of the public into believing the beverage in question to be made of or derived from grape juice or grapes, and to cause them to purchase the same in such belief, and the supplying of the aforesaid advertising matter to the trade results in placing in the hands of others a means and instrumentality of committing a fraud upon the public, by enabling vendors and dispensers of beverages to represent and sell said "Grape Squeeze" as a beverage made of or derived from grape juice or grapes; all to the prejudice of the public and of respondent's competitors, many of whom in nowise misrepresent the nature and character of their beverages and compounds, or the ingredients whereof composed, and from whom business thus tends to be and is diverted.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon National Fruit Flavor Co., Inc., the respondent, charging it with using unfair methods of competition in commerce in violation of the provisions of said act, together with a notice that answer to the complaint should be filed within thirty days after service of the complaint, unless such time be extended by the Commission, and with a copy of the rules of practice of the Commission. The respondent failed to make answer to the complaint within the time required by the rules of practice and in response to an inquiry the respondent forwarded to the Commission the following written statement:

NEW ORLEANS, U. S. A., *December 15, 1927.*

FEDERAL TRADE COMMISSION,
Washington, D. C.

GENTLEMEN: Referring to yours of the 3rd, Docket No. 1482, wish to advise that after careful consideration we find that our interest in the question involved would not warrant us in spending the necessary money to make a contest.

Very truly yours,

NATIONAL FRUIT FLAVOR CO., INC.,
IRA B. HARKEY, *President.*

Thereupon this proceeding came on for decision, and the Federal Trade Commission, having duly considered the record and being fully advised in the premises, makes its report in writing and states its findings as to the facts and its conclusions therefrom pursuant to the rules of practice and procedure, Rule III, subdivisions 2 and 3, and in conformity with the law.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Fruit Flavor Co., Inc., is a corporation organized 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. It is engaged among other things in the manufacture of a certain concentrate or compound named by it "Grape Squeeze" and "Squeeze" and the sale of said commodity to owners and operators of bottling plants located at points in various States of the United States. Said compound is designed and intended to be used and is used by respondent's said vendees in the manufacture of a beverage which is compounded and bottled by said vendees and by them sold to vendors and dispensers of beverages who in turn resell said beverage to the consuming public, all under said names and designations "Grape Squeeze" and "Squeeze". In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations engaged in the business of selling beverages, and concentrates and compounds for use in compounding beverages, in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its said business respondent supplies and causes to be supplied to its said vendees sundry signs, placards, and other advertising matter to be, and which are, supplied by said vendees to said vendors and dispensers of beverages to be used by them in and about the sale of said beverage " Grape Squeeze " to the consuming public. Upon said signs, placards, and other advertising matter respondent causes to be set forth statements containing said names and designations "Grape Squeeze" and " Squeeze ", which statements are calculated to, and do, import and imply that said beverage is made of or derived from grape juice or grapes. Among said statements are: "That distinctive grape drink " Squeeze ", " Drink Grape Squeeze ", " Drink Squeeze, the distinctive grape flavor ", and other like statements. Said vendors and dispensers of beverages use and display aforesaid signs, placards, and other advertising matter in connection with the dispensing of said beverage and to induce the public to purchase same. In truth and in fact said compound and said beverage derived therefrom are not, and neither of them is, made of or derived from grape juice or grapes, but said beverage imitates grape juice in color, odor, and taste.

PAR. 3. The use by respondent of the words "Grape Squeeze" as the name of its compound and of the beverage made therefrom, and the use by respondent of said statements appearing upon its advertising matter, all as before set out, have the capacity and tendency to mislead and deceive many of the public into the erroneous belief that said beverage is made of or derived from grape juice or grapes and to cause many of the public to purchase said beverage in that belief.

PAR. 4. In supplying aforesaid advertising matter to the trade, all as in paragraph 2 hereof set out, respondent places in the hands of others a means and instrumentality of committing a fraud upon the public, by enabling vendors and dispensers of beverages to represent and sell said beverage "Grape Squeeze" as a beverage made of or derived from grape juice or grapes.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof many who in no wise misrepresent the nature and character of their said beverages and compounds or of the ingredients whereof same are composed and respondent's acts and practices as above set out tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. For about three years last past respondent has engaged in the acts and practices under the circumstances and conditions and with the results all hereinbefore set out.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission and the Commission having made its findings as to the facts and its conclusion pursuant to the law that respondent, National Fruit Flavor Co., Inc., has violated and is violating 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 National Fruit Flavor Co., Inc., its officers, agents, representatives, and employees forthwith cease and desist from using or authorizing others to use the names " Grape " or " Grape Squeeze ", or either of such names, on signs, placards, or other advertising matter in connection with the sale or offering for sale in commerce of any concentrate or compound designed and used or intended to be used in the manufacture of beverages to be sold and dispensed to the public when such concentrate or compound is not made or derived from grape juice or grapes, and cease and desist from using or authorizing others to use in connection with the sale or offering for sale in commerce of any such concentrate or compound any other names or statements which are calculated to and do import and imply that such concentrate or compound is made or derived from grape juice or grapes.

It is further ordered, That National Fruit Flavor Co., Inc., within sixty 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 of its compliance with this order.

IN THE MATTER OF

CHARLES KURLAN

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

Docket 1362.—Complaint, Jan. 15, 1926—Decision, Feb. 6, 1928

Where an individual engaged in the sale of cloth or fabrics to manufacturers of and dealers in, men's shirts, named, designated and branded a cloth or fabric so dealt in by him and composed wholly of cotton, though resembling and simulating silk in texture and general appearance, "Tabsylk", and supplied his customers with labels featuring such name and designation, for their use upon the shirts manufactured by them from the aforesaid cloth; with the capacity and tendency to mislead and deceive many of the consuming public into purchasing said shirts so labeled and described as "Tabsylk", and so displayed, represented, advertised and sold by said customer's retail dealer vendees, as and for garments composed in whole or in part of silk, and with the effect of placing in the hands of manufacturers and dealers the instrument and means, in the supplying of the aforesaid labels, of misleading and defrauding the consuming public by enabling them thereby, with or without further representations, to offer and sell the same to said public as and for such garments and of diverting business from and otherwise injuring and prejudicing competitors dealing in cloth composed in whole or in part of silk and rightfully and lawfully so represented, and competitors dealing in cloth composed wholly of cotton without misrepresentation and without furnishing deceptive or misleading labels to their vendees, as above set forth, or in anywise placing in the hands of others the instrument or means of misleading or committing a fraud upon the public with respect to their fabric; all to the prejudice of such competitors, and to the injury of the public:

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

Mr. Henry Miller for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale of cloth and fabrics to shirt manufacturers in the various States, and with place of business in New York City, with naming fabric misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than two years last past named and designated as "Tabsylk" a fabric dealt in by him, as above set forth, and composed wholly of cotton, though resembling silk in texture and in general appearance, and supplied and delivered to his manufacturer vendees labels containing the aforesaid word in large and conspicuous letters, to be by them attached to the shirts which they manufactured and sold to the retailers in the various States, for display and sale, thus labeled, as known to respondent, to the consuming public.

The use of such labels, as alleged, "has the capacity and tendency to mislead and deceive many of the consuming public to purchase said shirts bearing aforesaid labels in the belief that said shirts are made of a fabric composed in whole or in part of silk, and respondent by supplying and delivering said labels to his aforesaid vendees places in the hands of others the instrument and means of committing a fraud upon the consuming public by enabling dealers to offer for sale and sell said shirts to the consuming public as and for shirts made in whole or in part of silk," and the aforesaid acts and practices tend to divert business from and otherwise injure and prejudice competitors of respondent, many of whom deal in and sell fabrics composed wholly or partly of silk and rightfully and lawfully so represented by them, and others of whom deal in fabrics composed wholly of cotton, without in any manner representing the same as composed in whole or in part of silk and without furnishing their vendees deceptive labels, as above set forth, or placing in the hands of others the instrument or means of committing a fraud upon the public; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

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

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

FINDINGS OF FACTS

PARAGRAPH 1. Respondent is an individual with his place of business in the City and State of New York. He is and has been for more than three years last past engaged in the business of selling and distributing cloth or fabrics to manufacturers and dealers of men's shirts located at various points throughout the several States of the United States. In and throughout the course and conduct of said business respondent caused said cloth or fabrics when so sold to be transported from his place of business in the City and State of New York through and into other States of the United States to respective purchasers thereof in such other States; and in so carrying on his business respondent is and at all times throughout the conduct thereof has been in direct active competition with many other individuals, partnerships and corporations similarly engaged in selling and distributing cloth or fabrics to manufacturers and dealers of men's shirts in commerce between and among the various States of the United States.

PAR. 2. Among the cloth or fabrics dealt in by respondent, as set out in paragraph 1 hereof, is a cloth or fabric composed wholly of cotton but resembling and simulating silk in texture and general appearance which respondent markets, and has marketed for more than three years last past, as and under the conditions and circumstances hereinbelow described. Said cloth or fabric has been and is branded, named, and designated by respondent "Tabsylk", under which name, designation, and brand he advertises, offers for sale, sells, and distributes the same to his aforesaid customers or vendees. His annual sales of such so-called "Tabsylk" amount to approximately $300,000. Also in connection with his sale and distribution of said cloth respondent supplies and delivers to his aforesaid customers and vendees certain labels upon which he caused to be set forth in large and conspicuous letters said name and designation "Tabsylk", which labels, in accordance with respondent's purpose and intention, are sewed or otherwise attached by his vendees or customers to the shirts manufactured from said so-called "Tabsylk" cloth sold by respondent. Said shirts with said labels attached thereto are sold and delivered by respondent's coustomers and vendees to retail dealers and the consuming public throughout various States of the United States; and also said retail dealers thereafter offer for sale, display, sell and deliver such shirts with said so-called "Tabsylk" labels attached thereto to the consuming public throughout the United States, all of which is well-known to and in accordance with respondent's purpose and plan of distribution. Further, respondent's aforesaid customers and the trade generally, advertise, represent and describe as "Tabsylk" the shirts manufactured from respondent's so-called "Tabsylk" cloth, all in accordance with respondent's purpose and as the direct result of his use of the word "Tabsylk" in naming, describing and representing his cloth as aforesaid.

PAR. 3. The use by respondent of the word "Tabsylk" in naming, designating, describing and representing said cloth composed of cotton, as hereinabove set forth in paragraph 2 hereof, is false and misleading, and has and had the capacity and tendency to mislead and deceive many of the consuming public into purchasing said shirts, bearing aforesaid labels containing the word "Tabsylk", and said shirts advertised and described as "Tabsylk" shirts, as aforesaid, in the erroneous belief that the fabric or cloth of which said shirts are made is composed in whole or in part of silk. And further, respondent by supplying and delivering said labels to his aforesaid customers and vendees thereby placed in the hands of manufacturers and dealers the instrument and means of misleading and committing a fraud upon the consuming public by enabling said manufacturers and dealers by the use of said labels and the term "Tabsylk", with or without further representations, to offer for sale and sell said shirts made from respondent's so-called "Tabsylk" cloth to the consuming public as and for shirts made in whole or in part of silk.

PAR. 4. There are among the competitors of respondent referred to in paragraph 1 hereof many who deal in and sell cloth composed in whole or in part of silk and who rightfully and lawfully represent said fabrics to be so composed. There are also many of said competitors who deal in and sell cloth composed wholly of cotton and who in no wise represent said fabrics to be composed in whole or in part of silk. Further, said last-named competitors do not by furnishing to their said vendees deceptive or misleading labels in like manner as respondent, or in any other manner whatsoever, place in the hands of others the instrument or means of misleading or committing a fraud upon the public with respect to their fabrics. Respondent's acts and practices hereinbefore set out tend to divert business from and otherwise injure and prejudice aforesaid competitors, and are to the injury of the public.

CONCLUSION

The acts and things done by the respondent in the use of the word "Tabsylk" as and under the conditions and circumstances set forth in the foregoing findings as to the facts are to the injury and prejudice of the public and respondent's competitors, 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 stipulation as to the facts in lieu of testimony executed and filed by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Charles Kurlan, his agents, representatives, servants, and employees, cease and desist, in connection with the sale and distribution of cloth or fabric in interstate commerce, from directly or indirectly representing, describing, advertising, branding, or labeling with the word "Tabsylk" or word or words of similar import any such cloth or fabric which is not composed wholly of silk, a product of the cocoon of the silk worm.

It is further ordered, That respondent, Charles Kurlan, shall, within sixty 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 hereinabove set forth.

Syllabus

IN THE MATTER OF

NATHANIEL L. BLAUSTON, AN INDIVIDUAL, DOING BUSINESS UNDER THE NAMES AND STYLES OF MARIE ANTOINETTE PERLE COMPANY AND BRISTOL GIFT HOUSE

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

Docket 1479. Complaint, Oct. 8, 1927—Decision, Feb. 6, 1928

Where an individual engaged in the sale of jewelry, silverware, plateware, leather goods and novelty merchandise of various kinds at wholesale to retail dealers and dealers conducting mail order businesses; in advertising the same in his catalogues,

(*a*) Represented certain sets of table ware as "fine nickel silver plated silverware" and certain candlesticks, wine sets, motor clocks, cigarette cases, and cigarette and match case sets as composed of "nickel silver", notwithstanding the fact that said articles were not composed either in whole or in part of silver or nickel, and illustrated the set first named with a pictorial representation of another set of better grade and higher selling price;

(*b*) Represented cases of certain watches as composed of "rolled gold plate", "fourteen karat white or green rolled gold plate", and in other ways as gold plated, notwithstanding the fact that said cases had a gold plating of less than three one-thousandths of an inch in thickness, on the outside, and less than one-thousandth of an inch in thickness on the inside, the specified standard of thickness for the manufacture of watchcases represented and described as "gold plated", and misleadingly and deceptively represented certain watch cases as "life guaranteed";

(*c*) Represented certain watches and clocks as having "silver finishing", "silver brush finished" and "silvered" dials, pen and pencil sets as having a "white gold finish" and a "gold finish", respectively, and ladies' wrist watches as having "platinoid finish" cases and "platinum effect" dials, notwithstanding the fact that none of the aforesaid articles contained any silver or gold or platinum materials;

(*d*) Represented certain brooches and bar pins as having a "platinum top", certain bracelets as having a "gold top", and certain necklaces as composed of "amber", "crystal", "jade", "jet", "amethysts" and "garnets", notwithstanding the fact that the articles first mentioned were only thinly plated with the aforesaid materials, and the latter articles were not made of genuine amber, crystal, etc., but of materials simulating the appearance thereof;

(*e*) Represented certain finger rings as "gold filled" and composed of "seamless gold shell", certain elk charms as "solid gold filled", and certain hair brushes, combs, mirrors, manicure sets, and similar toilet articles as composed in part of ivory, notwithstanding the fact that the aforesaid rings and charms did not contain a layer or shell of gold of substantial thickness on the outside and that the aforesaid descriptions were not preceded by a designation of the alloy of gold used in the shell, and a fraction representing the correct proportion of the weight of the shell to the weight of the entire ring, and that said brushes, etc., contained no ivory, but only a material simulating the appearance and finish thereof; and

(f) Represented certain merchandise containing no ivory, rubber, amber or leather as "ivoroid", "rubberoid", "amberoid", and "leatherette", respectively, with the capacity and tendency to mislead and deceive purchasers in respect of the composition thereof, and a certain case containing a traveling folding clock, not composed of leather, but of a material imitating the same in appearance, as made of "high-grade leather";

With the effect of misleading and deceiving purchasers into believing said articles to be composed in whole or in part of materials as represented and depicted in said catalogues, and of causing many of the consuming public to purchase said articles in such belief, and with the effect of diverting business from and otherwise injuring and prejudicing competitors who in nowise misrepresent the composition, nature and character of the merchandise dealt in by them:

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

Mr. William A. Sweet for the Commission.
Mr. Richard M. Cantor, of New York City, for respondent.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the sale of jewelry, silverware, flatware, leather goods and novelty merchandise, at wholesale, to retailers and to mail order dealers at various places throughout the several States, and with principal place of business in New York City, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in the catalogues issued and sold by him to his customers or prospective customers for their use in purchasing the articles therein represented, and reselling the same to the consuming public, sets forth false and misleading statements and representations concerning the materials of which said articles are composed and the nature and character thereof, including, among others, the following:

Sets of table silverware, candlesticks, wine sets, motor clocks, cigarette and match cases as composed in whole or in part of "nickel silver" and as "nickel silver plated", the fact being that they are not so composed either in whole or in part, and in purporting to illustrate a certain set of table silverware, in fact illustrated another and more expensive set;

Watches with a plating of gold less than three one-thousandths of an inch in thickness, on the outside, as composed of "fourteen karat white or green rolled gold plate", "white rolled gold plate", "rolled gold plate", "white gold rolled plate", "white gold plate", and as "gold-filled", and "yellow gold plated";

Watches and clocks and pen and pencil sets, containing no silver or gold metal, as "silver brush finished dials", "gold metal" and "silver dials", and as "white gold finish" and "gold finish", respectively;

Bead necklaces not composed of genuine amber, or crystal, etc., as amber, crystal, jade, jet, amethysts or garnets;

Rings, of which one-tenth by weight is not 14 karat gold, as "fine rolled gold plate" and "seamless gold shell" and "gold-filled" and "solid gold filled";

Hair brushes, combs, mirrors, manicure sets and similar toilet articles, not made in any part from genuine "ivory", but of a material simulating the same in appearance and finish, as "ivory"; and

Certain articles containing no ivory, rubber, amber or leather as "ivoroid", "rubberoid", "amberite" and "leatherette", with the capacity and tendency thereby to mislead and deceive purchasers into believing the same to be made in whole or in part of ivory, etc.

Such acts and practices, as alleged, have the capacity and tendency to and do cause retailers and many of the consuming public to purchase the articles in question in the belief that the same are composed as represented and depicted in said catalogues, in which respondent places in the hands of others the means of deceiving the consuming public, whom respondent's customer purchasers solicit through the pictorial and other representations and descriptions contained in the aforesaid catalogues sold and supplied to them by respondent, as above set forth, and tend to and do divert business from and otherwise injure and prejudice competitors, many of whom in nowise misrepresent the composition, nature and character of the merchandise sold by them; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent, Nathaniel L. Blauston, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act, together with a notice that, within thirty days from the service of the complaint, unless such time be extended by order of the Commission, an answer to the complaint should be filed with the Commission, and with a copy of Rule III of the rules of practice adopted by the Commission, June 30, 1927, with respect to answers and failure to answer.

Thereafter, Nathaniel L. Blauston, the respondent, appeared herein and filed an answer to the complaint in which he alleges that he refrains from contesting this proceeding. No other answer or return has been filed by said respondent.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual having his principal place of business in the City of New York, State of New York. He is engaged in the business of selling jewelry, silverware, flatware, leather goods, and novelty merchandise of various kinds at wholesale to retail dealers and to dealers who conduct mail-order businesses located at various places throughout the several States of the United States. He causes said articles of merchandise when so sold to be transported from his said place of business in said City of New York into and through other States of the United States to the purchasers thereof located in such States. He is in competition with other individuals, partnerships and corporations engaged in the sale and transportation of like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. Respondent obtains orders for and makes sales of his said articles of merchandise through and by means of certain catalogues issued by him in which they are severally described and pictorially represented and the prices thereof set forth. He sells said catalogues, in commerce, to his said customers or prospective customers to be used by them in ordering and purchasing the articles of merchandise therein represented and described and in reselling the same to the consuming public and said catalogues are so used by them.

PAR. 3. In the said catalogues referred to in paragraph 2 hereof respondent has caused for more than two years prior to the date hereof and still causes to be set forth false and misleading statements and representations and pictorial representations concerning the materials of which the articles of merchandise offered for sale and sold by him, in commerce as aforesaid, are composed and the nature and character thereof. Said statements and representations are as follows:

(*a*) That certain sets of tableware, each consisting of knives, forks, spoons, butter spreaders and sugar shell, are "fine nickel silver-plated silverware"; and that certain candlesticks, wine sets, motor clocks, cigarette cases and sets consisting of cigarette and match cases, are composed of "nickel silver", when in truth and in fact said articles are not composed in whole or in part of the metals known as silver and nickel. The pictorial representation in respondent's catalogues of the set of table silverware above referred to and designated in said catalogues as "No. 433" is not an illustration of the particular set actually offered for sale and sold by respondent, but of another set of better grade and greater selling price than the said set.

(*b*) That the cases of certain watches are composed, respectively, of "rolled gold plate", "fourteen karat white or green rolled gold plate", "white rolled gold plate", "white gold rolled plate", "rolled white gold plate", and are "yellow gold plated", when in truth and in fact said watchcases have a plating of gold less than three one-thousandths of an inch in thickness, on the outside, and less than one one-thousandth of an inch in thickness on the inside, which is the specified standard of thickness of gold for the manufacture of watchcases represented and described as gold plated; and that certain of said watchcases are "life guaranteed", which representation is misleading and deceptive to the purchasing public.

(*c*) That certain articles of merchandise consisting of watches and clocks have "silver finished", "silver brush finished" and "silvered" dials, respectively; that certain other articles of merchandise, among which are pen and pencil sets, have a "white gold finish" and a "gold finish", respectively; that certain other articles of merchandise among which are ladies' wrist watches have "platinoid finish" cases and "platinum effect" dials, respectively, when in truth and in fact none of the said articles so described contain any silver or gold or platinum metal; and that certain brooches and bar pins each has a "platinum top" and that certain bracelets each has a "gold top", when in truth and in fact said articles are only thinly plated with platinum or gold, respectively.

(*d*) That certain articles of merchandise consisting of bead necklaces are composed, respectively, of "amber", "crystal", "jade", "jet", "amethysts" and "garnets", respectively, when in truth and in fact said necklaces so described are not made of genuine amber, crystal, jade jet, amethysts or garnets, but are composed of materials which simulate them in appearance.

(*e*) That certain articles of merchandise consisting of finger rings are "gold filled" and are composed of "seamless gold shell" and that certain elk charms are "solid gold filled", respectively, when in truth and in fact said articles do not contain a layer or shell of gold of substantial thickness on the outside and when such words are not preceded by the designation of the alloy of gold used in the shell, which is preceded by a fraction designating the correct proportion of the weight of the shell to the weight of the entire ring.

(*f*) That certain articles of merchandise consisting of hair brushes, combs, mirrors, manicure sets and similar toilet articles are composed in part of "ivory", when in truth and in fact said articles are not in any part made from ivory, but are made of a material which simllates ivory in appearance and finish.

(*g*) Certain other articles of merchandise are represented and described as "ivoroid", "rubberoid", "amberite" and "leatherette", respectively, when in truth and in fact said articles contain no ivory, rubber, amber or leather, respectively. The use of these words to advertise and describe said articles has the capacity and tendency to mislead and deceive purchasers into the belief that said articles are manufactured in whole or in part of genuine ivory, rubber, amber or leather, respectively, as the case may be.

(*h*) That a certain case containing a traveling folding clock is composed of "high-grade leather", when in truth and in fact said case is not composed of leather but of a material made to imitate genuine leather in appearance.

PAR. 4. Respondent's said customers purchase, and offer for sale and sell the articles of merchandise referred to in paragraph 3 hereof to the consuming public pursuant to the pictorial representations and the descriptions and representations of said articles contained in the catalogues sold and supplied to them by respondent as set forth in paragraph 2 hereof.

PAR. 5. The statements and representations as above set forth are false and misleading, and have the capacity and tendency to and do mislead and deceive purchasers into the belief that said articles are composed in whole or in part of the materials as represented and depicted in said catalogues and to cause many of the consuming public to purchase respondent's said articles of merchandise in that belief.

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof many who in nowise misrepresent the composition, nature and character of the merchandise which they sell, and respondent's acts and practices as hereinbefore set forth tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 7. The above acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint of the Commission and the answer of respondent, filed pursuant to Rule III of the rules of practice of the Commission, in which answer it is set forth that respondent refrains from contesting the proceeding instituted by the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is ordered, That respondent, Nathaniel L. Blauston, his agents, employees and successors cease and desist from:

(*a*) Using the words "nickel silver", or either of them, to advertise or describe articles of merchandise which are not composed in whole or in part of the metals known as silver and nickel.

(*b*) Using the words "gold plate" or "gold plated", or either of them, to advertise or describe watch cases which have a plating of gold less than three one-thousandths of an inch in thickness on the outside, and one one-thousandth of an inch in thickness on the inside; and using the words "life guaranteed" to indicate the length of time such watch cases will last or wear.

(*c*) Using the words "silver finished" or "silvered", or either of them, to advertise or describe watch or clock dials which contain no silver metal; or the words "gold finish", to advertise or describe pen and pencil sets which contain no gold metal; or the words "platinoid finish" or "platinum effect" or either of them to advertise or describe articles of merchandise which contain no platinum or the words "platinum top" or gold top", respectively, to advertise or describe brooches or bar pins or similar articles of jewelry which have only a thin plating of platinum or gold, as the case may be.

(*d*) Using the words "amber", "crystal", "jade", "jet", "amethyst" or "garnets", or either of them, respectively, to advertise or describe necklaces which are not composed of genuine amber, crystal, jade, jet, amethyst or garnet, as the case may be.

(*e*) Using the words "gold filled" or "gold shell" or either of them to advertise or describe finger rings and charms unless such articles contain a layer or shell of gold of substantial thickness on the outside, and unless said words are preceded by the designation of the alloy of gold used in the shell, which is preceded by a fraction designating the correct proportion of the weight of the layer or shell of gold to the weight of the entire ring or charm.

(*f*) Using the word "ivory" as a noun to advertise or describe articles of merchandise which are not composed in any part of genuine ivory, but are composed of a material made to simulate ivory in appearance and finish.

(*g*) Using the words "ivoroid" or "rubberoid" or "amberite" or either of them respectively to advertise or describe articles of merchandise which do not contain in any part genuine ivory, rubber or amber respectively; and from using the word "leather" either alone or in combination with any other word or words, letter or letters, to advertise or describe articles of merchandise which are not made in any part of the prepared skins of animals.

(*h*) Using in catalogues or other advertising matter pictorial representations of any article of merchandise which is not an illustration of the particular article of merchandise actually offered for sale.

(*i*) Making any other untrue advertisement or description of any article offered for sale by him.

It is further ordered, That the respondent, Nathaniel L. Blauston, shall within sixty 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.

Syllabus

IN THE MATTER OF

BAYUK CIGARS, INC.

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

Docket 1391. Complaint, June 6, 1926—Decision, Feb. 8, 1928

Where the Island of Cuba had come to be recognized and considered by the cigar trade and consuming public of the United States as a country famous for its production of tobacco and cigars of superior quality and excellence, and the tobacco there grown had come to be known, designated and described to and by said cigar trade and purchasing public as Havana tobacco or Cuban tobacco, and to be in great demand in the United States, and cigars manufactured therefrom in whole or in part had come to be considered as more desirable and superior in quality to cigars composed wholly of tobacco grown elsewhere and to cigars containing a smaller proportion of such Cuban or Havana tobacco; and thereafter a domestic corporation engaged in the manufacture of cigars, with factories in the States of New York, New Jersey, and Pennsylvania, and in the sale and distribution thereof to wholesale and retail dealers, and the consuming public.

(*a*) Designated, described, banded, labeled, and sold, a 5-cent cigar, containing no Havana or Cuban tobacco, as above set forth, "Havana Ribbon", featuring the aforesaid words upon the bands and containers thereof, and extensively so advertised the same under such name and designation in magazines and daily newspapers of general circulation among the cigar trade and consuming public throughout the United States and various sections thereof, and in widely distributed signs, placards, posters, and similar advertising media; and

(*b*) Designated, described, banded, labeled and sold a 10 and 15 cent cigar, containing the aforesaid Havana or Cuban tobacco only in a minor proportion, "Mapacuba", featuring the aforesaid word upon the brand thereof, together with the shield or coat of arms of the Republic of Cuba, and also upon the labels of the containers thereof, together with a map of Cuba, a picture of the city and harbor of Havana, the aforesaid shield or coat of arms, and the words "Havana Cigars", together with pictures of the fortress of Morro Castle at Havana, the Cuban flag, tobacco fields such as are common in Cuba, and the legend, in Spanish, "Guarantee—This package is eminently distinguished because it comes from a superior crop of Vuelta Abajo", a Cuban district noted for its fine tobacco, and extensively so advertised said cigars, as above set forth, under the designation, description and representation "Mapacuba", together with depictions of the map of Cuba, of the cigars in question with the aforesaid band, and of a box thereof, with labels as above described;

With the capacity and tendency to mislead and deceive and with the effect of misleading and deceiving many of the purchasing public into believing the aforesaid cigars to be composed in whole or in part of Havana tobacco as above described, in the case of that first named, and to be wholly or principally so composed in the case of that last named, and to induce the purchase of such cigars in such erroneous belief, and with the capacity and tendency to and with the effect of unfairly diverting trade from and otherwise injuring and prejudicing the business of competitors who rightfully and truthfully sell and distribute cigars composed in whole, and cigars composed in part only, of Havana or Cuban tobacco, and competitors who sell and distribute cigars composed of tobacco grown elsewhere than on the Island of Cuba without in anywise representing their cigars as containing Cuban or Havana tobacco:

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

Mr. Henry Miller for the Commission.

Mr. C. Andrade, jr., of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Maryland corporation, engaged in the manufacture of cigars and sale thereof to retail dealers in various States, and with principal office and place of business in Philadelphia, with naming products misleadingly, misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about five years preceding the complaint, designated as "Havana Ribbon," a cigar made by it and composed entirely of tobacco grown elsewhere than on the Island of Cuba, featured said name upon the containers of said cigars in which it shipped and delivered the same to its retail dealer vendees for display and sale by them to the consuming public, and upon the individual cigar bands or labels, and conspicuously so advertised the same in magazines, periodicals and other publications of general circulation throughout the United States and in certain sections thereof.

Such use of said name and designation in the packing, banding, labeling and advertising of said cigars, as alleged, had the capacity and tendency to and did mislead and deceive many among the cigar tobacco trade and the cigar trade, and the consuming public into believing said cigars to be composed of "Havana," tobacco i. e., tobacco grown on the Island of Cuba, and into purchasing the same in such belief[1] and tended to divert business from and otherwise injure and prejudice competitors, many of whom sell cigars composed of "Havana" tobacco, as above set forth, and rightfully and lawfully so represent the same and others of whom sell cigars neither so composed nor in anywise so represented; all to the prejudice of the public and of the respondent's competitors.

Respondent further, as charged, for about five years preceding the complaint designated as "Mapacuba" a cigar made by it and composed of a mixture of tobaccos containing a small amount and proportion of "Cuban" tobacco, i. e., tobacco grown on the Island of Cuba, featured said name upon the containers of said cigars, together with conspicuous depictions of the Cuban flag, coat of arms, map, and a Spanish legend and statement, and upon the individual cigar bands or labels, and conspicuously so advertised said cigars in magazines, periodicals and other publications of general circulation throughout the United States and in certain sections thereof.

The use of the aforesaid name and designation in the packing, banding, labeling and advertising of said last named cigars, as alleged, had the capacity and tendency to and did mislead and deceive many among the cigar tobacco trade and cigar trade and the consuming public into believing said cigars to be composed of Cuban tobacco, as above set forth, or of such tobacco as the principal and predominant element, and into purchasing the same in such belief,[2] and tended to divert business from and otherwise injure and prejudice competitors, many of whom sell cigars composed of Cuban tobacco as hereinabove set forth and rightfully and lawfully so represent the same, and others of whom sell cigars of which said Cuban tobacco is not the principal and predominating element and ingredient, without in anywise misrepresenting such Cuban tobacco as such principal and predominating element and ingredient; all to the prejudice of the public and respondent's competitors.

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[1] The complaint contains the following allegations relative to the use of the term "Havana" tobacco and the preference for such tobacco:

"For many years prior to the date hereof, tobacco has been a commercial export product of the Island of Cuba, and the term "Havana" tobacco, has for many years meant and still means tobacco of Cuban growth to the cigar tobacco trade, the cigar trade and the consuming public, many of whom have for many years considered and still consider said "Havana" tobacco superior in quality, for the manufacture of cigars, to tobacco grown elsewhere than on the Island of Cuba. Many among said trades and many of the consuming public have for many years considered and still consider that cigars made of said "Havana" tobacco are superior in quality to cigars made of tobacco grown elsewhere than on the Island of Cuba."

[2] The complaint contains allegations as to the term "Cuban" tobacco and as to the preference for such tobacco similar to those set forth in the preceding footnote relating to "Havana" tobacco.

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

Respondent having entered its appearance herein and filed its answer to said complaint, hearings were had at which testimony was taken and evidence introduced by counsel for the Commission in support of the allegations of the complaint and by respondent in opposition thereto before an examiner of the Commission theretofore duly appointed. Said evidence, including a transcript of the testimony taken, was filed of record in the office of the Commission, and thereafter briefs and oral argument were submitted by counsel for the Commission and for the respondent. Thereupon this proceeding came on regularly for decision; and the Federal Trade Commission, having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Bayuk Cigars, Inc., is a corporation organized in the year 1920, and existing under and by virtue of the laws of the State of Maryland, with its principal office and place of business in the City of Philadelphia, State of Pennsylvania. It is, and since the date of its organization has been, engaged in the business of manufacturing cigars and the sale and distribution thereof to wholesale and retail cigar dealers and to the consuming public throughout the several States of the United States and the District of Columbia. It maintains and operates eleven cigar factories situated in the States of New York, New Jersey, and Pennsylvania, and six branch jobbing houses located in the cities of New York, N. Y.; Philadelphia, Pa.; Detroit, Mich.; Flint, Mich.; Grand Rapids, Mich.; and Indianapolis, Ind. During the past five years its average annual production and sales have been in excess of 200,000,000 cigars. In distributing said cigars sold by it, respondent causes same to be transported and delivered from its aforesaid places of business or factories through and into the various other States of the United States and the District of Columbia to the respective purchasers thereof in such other States and in said District; and in so carrying on said business respondent is, and since the date of its organization has been, continuously engaged in interstate commerce and in direct active competition with many individuals, partnerships, and other corporations engaged in the sale and transportation of cigars in commerce between and among the several States of the United States and the District of Columbia.

PAR. 2. Among the cigars manufactured and sold by respondent in interstate commerce, as set forth in paragraph 1 hereof, are two different types of cigars, the one designated, described, branded, labeled and sold by respondent as " Havana Ribbon "; and the other designated, described, branded, labeled and sold by it as " Mapacuba ", which brands of cigars are and have been produced and continuously marketed by respondent among the trade and consuming public throughout the United States since the aforesaid date of its organization. The generally advertised retail prices of the so-called " Havana Ribbon " cigars are 5 cents each and, in a larger size, 8 cents each or two for 15 cents; and respondent's annual sales of same are in excess of 77,000,000. The generally advertised retail prices of the so-called " Mapacuba " cigars are 10 cents each, two for 25 cents, and 15 cents each, depending upon sizes or shapes; and respondent's annual sales of this brand exceed 15,000,000 cigars.

PAR. 3. In preparing its so-called " Havana Ribbon " cigars for sale and distribution respondent caused, and still causes, to be placed upon each of said cigars a paper band bearing conspicuously the words " Havana Ribbon "; and said cigars containing said band were and still are packed by respondent in the customary cigar containers of the respective capacities of 25 and 50 cigars, to which containers respondent also caused, and still causes, to be affixed in sundry places labels and brands bearing in large and conspicuous letters the words " Havana Ribbon ". Said cigars so banded, packed, labeled, and branded were and still are displayed, offered for sale, sold and distributed by respondent to wholesale and retail dealers and to the consuming public; and in the regular course of business and in accordance with respondent's purpose and plan of distribution, said cigars still so banded, packed, branded and labeled were and are displayed, offered for sale, sold and distributed by dealers among themselves and to the consuming public. To further and promote the sale of said cigars respondent also caused, and still causes, extensive advertisements thereof to be published and displayed (a) in magazines and daily newspapers of general circulation among the cigar trade and consuming public throughout the United States and in various sections thereof; and (b) in widely distributed signs, placards, posters and similar advertising media, in all of which advertisements respondent designated, described and represented said cigars as "Havana Ribbon" cigars; and through which advertisements it caused and still causes to be sold to the trade and consuming public large quantities of said so-called "Havana Ribbon" cigars.

PAR. 4. Each of said so-called "Mapacuba" cigars as and when marketed by respondent contained and still contains a paper band, placed thereon by respondent, displaying conspicuously the word "Mapacuba" together with a device consisting of a star and stripes simulating in general appearance the shield, emblem, insignia or coat of arms of the Republic of Cuba. When marketed by respondent said so-called "Mapacuba" cigars, containing aforesaid paper band, were and still are packed, displayed, sold and distributed by it in the customary cigar containers of the respective capacities of 25 and 50 cigars, to which containers respondent caused to be attached labels and brands prominently and conspicuously displaying the word "Mapacuba" in sundry places; and a map of Cuba; picture of the city and harbor of Havana, Cuba; also said device of a star and stripes simulating the shield, insignia, emblem or coat of arms of the Republic of Cuba. In addition to the foregoing, respondent caused to be displayed upon said containers in which it packed and marketed the so-called "Mapacuba" cigars up to and including the spring of 1924 certain labels displaying the words "Havana Cigars" in sundry places, pictures of the fortress of Morro Castle at Havana, Cuba, with the Cuban flag; also pictures of tobacco fields such as are common in Cuba, and an inscription in the Spanish language, a free translation of which is as follows:

GUARANTEE.—This package is eminently distinguished because it comes from a superior crop of Vuelta Abajo.

(Vuelta Abajo is the name of a district in Cuba noted for its production of fine tobacco). Throughout the course of respondent's business and in accordance with its purpose and plan of distribution said so-called "Mapacuba" cigars have been displayed and marketed in and by the cigar trade and to the consuming public under the name, designation and description of "Mapacuba" and as banded, packed, branded and labeled by respondent as hereinabove set forth. To promote and further the sale and distribution of said so-called "Mapacuba" cigars, respondent has caused for more than two years last past extensive advertisements thereof to be published (a) in magazines and newspapers of general circulation among the trade and consuming public throughout the United States and in various sections thereof; and also (b) in widely distributed display signs, placards, posters, and similar advertising media, in all of which advertising matter such cigars were and are designated, described and represented as "Mapacuba" cigars; and in many of said advertisements respondent caused to be pictured a map of Cuba, one or more of said cigars containing aforesaid paper band, and also a box of said cigars showing the above mentioned labels which depict said device simulating the shield, insignia, emblem or coat of arms of the Republic of Cuba and the city and harbor of Havana, Cuba.

PAR. 5. At all times since the date of respondent's organization and for many years prior thereto, tobacco has been extensively grown on the Island of Cuba and exported therefrom to the United States and other countries both in the form of leaf tobacco and in cigars; and said Island is recognized and considered by the cigar trade and consuming public of the United States as a country famous for its production of tobacco and cigars of superior quality and excellence. The tobacco grown in Cuba is, and since time immemorial has been, known, designated and described to and by the cigar trade and purchasing public throughout the United States as "Havana tobacco" or "Cuban tobacco," which terms are synonymous in meaning and are used interchangeably. Said Havana tobacco or Cuban tobacco is in great demand in the United States and during all the times herein mentioned the same has been and still is extensively marketed and consumed in the form of cigars. Many of the cigar trade and consuming public of the United States have for years considered and still consider that cigars made in whole or in part of said Havana or Cuban tobacco are more desirable and are superior in quality to cigars composed wholly of tobacco grown elsewhere than on the Island of Cuba and to cigars containing a smaller proportion of said Cuban or Havana tobacco. None of said so-called "Havana Ribbon" cigars which have been manufactured and sold by respondent, as set forth above, contained any Havana or Cuban tobacco, but were composed or manufactured wholly of tobacco grown elsewhere than on the Island of Cuba. Said so-called "Mapacuba" cigars manufactured, advertised and sold by respondent as above set forth contained Havana or Cuban tobacco only in minor proportion, which proportion of Havana or Cuban tobacco varied from about 20 per cent to not exceed approximately 50 per cent; all other parts, constituting the greater or principal portion of said cigar, were manufactured of tobacco grown elsewhere than on the Island of Cuba.

PAR. 6. The use by respondent of the word "Havana" in the branding, labeling, advertising, and describing of its said so-called "Havana Ribbon" cigars containing no Havana or Cuban tobacco, all as hereinbefore set forth, is false and misleading and has and had the capacity and tendency to, and did, (a) mislead and deceive many of the purchasing and consuming public into the erroneous belief that said so-called "Havana Ribbon" cigars were manufactured and are composed in whole or in part of Havana tobacco or tobacco grown on the Island of Cuba; and (b) thereby cause purchasers to buy said cigars in such erroneous belief.

PAR. 7. Respondent's use, in connection with its cigars containing Havana tobacco in part only, of the word "Mapacuba" and of the simulation or depiction of the flag, shield, emblem, insignia or coat of arms of the Republic of Cuba, the map of Cuba, Cuban scenes and of said Spanish inscription, all as hereinbefore set forth, is false and misleading, has and had the capacity and tendency to, and did, (a) mislead and deceive many of the purchasing and consuming public into the erroneous belief that said so-called "Mapacuba" cigars were manufactured wholly or principally and mostly of Cuban tobacco, and (b) cause purchasers to buy said cigars in such erroneous belief.

PAR. 8. There are among the competitors of respondent mentioned in paragraph 1 hereof many who rightfully and truthfully sell and distribute in competition with respondent cigars composed in whole, and also cigars composed in part only, of Havana or Cuban tobacco. There are also many of said competitors who sell and distribute in competition with respondent cigars composed wholly of tobacco grown elsewhere than on the Island of Cuba and who in no wise represent that their cigars contain any Cuban or Havana tobacco. Respondent's acts and practices in branding, labeling and advertising its cigars with the words "Havana" and "Mapacuba" and with said likenesses and simulations of the flag, shield, emblem and insignia of the Republic of Cuba; map of Cuba; said scenes of the city and harbor of Havana, Cuba; said Spanish inscription and scenes of Cuban tobacco fields, all as hereinbefore set forth, had the capacity and tendency to and do unfairly divert trade from and otherwise injure and prejudice the business of said competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That respondent Bayuk Cigars, Inc., its officers, directors, agents, representatives, servants, and employees cease and desist, in connection with the sale and distribution of cigars in interstate commerce—

(1) From using the word "Havana", or other word or words of similar import, alone or in conjunction with the word "Ribbon," or other word or words, as or in a brand name for or as descriptive of any such cigars which are not composed entirely of tobacco grown on the Island of Cuba;

(2) From using the word "Mapacuba," or other word or words of similar import, as or in a brand name for or as descriptive of any such cigars which are not composed in whole or in part of tobacco grown on the Island of Cuba;

(3) From using the word "Mapacuba," or other word or words of similar import, as or in a brand name for or as descriptive of any such cigars which are composed in part only of tobacco grown on the Island of Cuba, unless said word be immediately followed and accompanied by a word or words in letters equal or greater in size, visibility and conspicuousness, clearly and unequivocally indicating or stating that such cigars are not composed wholly, but in part only, of tobacco grown on the Island of Cuba;

(4) From using a depiction simulating the flag, emblem, insignia or coat-of-arms of the Republic of Cuba, map of Cuba, Cuban tobacco fields, city or harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding, or labeling of any such cigars which are not composed in whole or in part of tobacco grown on the Island of Cuba;

(5) From using a depiction simulating the flag, emblem, insignia or coat of arms of the Republic of Cuba, map of Cuba, Cuban tobacco fields, city or harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding or labeling of any such cigars which are composed in part only of tobacco grown on the Island of Cuba, unless such depiction be accompanied by a word or

words of equal or greater visibility and conspicuousness, clearly and unequivocally indicating or stating that such cigars are not composed wholly, but in part only, of tobacco grown on the Island of Cuba;

(6) From representing in any other manner whatsoever that any of said cigars contain or are composed in whole or in part of tobacco grown on the Island of Cuba, when such is not true in fact.

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

Syllabus

IN THE MATTER OF

AMERICAN PHOTO-ENGRAVERS' ASSOCIATION, ET AL. AND THE INTERNATIONAL PHOTO-ENGRAVERS' UNION OF NORTH AMERICA ET AL.

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

Dockets 82 and 928. Complaint,[1] Oct. 20, 1925—Decision, Feb. 10, 1928

Where a trade association which included in its membership concerns producing from 75 per cent to 90 per cent of the output of photo-engravings in the United States, with annual sales for the industry amounting to over forty million dollars, and which (*a*) included among its objects (1) the thorough organization of the photo-engravers of America, (2) the elimination of the evils of ignorant and ruinous competition, (3) the spread of the knowledge of the elements of costs and what constitutes a "proper" remuneration for services rendered, and (4) the universal use of its so-called "standard scale" as the basis for pricing plates, and which (*b*) included in its code of ethics (violated by price cutting) such a friendly attitude among competitors as would enable them to meet and discuss frankly the means whereby "wily and unscrupulous" buyers might be effectively discouraged, and which (*c*) admitted to membership only those who were also members of their respective local associations, when the latter required its members to belong to the general organization; and said trade association's officers and members; in pursuance of a combination or conspiracy for the purpose of lessening, hindering, regulating or suppressing competition in price in the sale of photo-engraving products or of enhancing the prices therefor, and, in order to consummate said purpose, to coerce, intimidate or prevent manufacturers of said products from individually and freely making such prices for their products as the free exercise of their individual judgment directed, and from competing in price among themselves or with others,

(*a*) Promulgated its so-called "standard scale," consisting of a schedule of uniform minimum base prices (based on high cost, rather than representative, jobs, and providing and intended to provide a profit), as the official basis of charges, for the purpose, among others, of facilitating measures for the regulation and lessening of price competition in photo-engraving products, and of enhancing the prices thereof, mailed every manufacturing photo-engraver in the United States a copy thereof, and directed a special committee to cooperate with its executive committee in introducing such scale into general use by all photo-engravers;

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[1] Second amended.

(*b*) Prepared uniform estimating blanks, inaugurated estimating exercises, and conducted a national estimating class in its monthly periodical and encouraged its local clubs to hold such classes in order to foster and develop uniform interpretation and application of the scale in arriving at base prices, and of the explanatory side notes, and "suggested supplementary notes" pertaining thereto and covering the application thereof and charges for time work, special processes, etc., and to guard against unwitting price cuts by the omission of chargeable items from estimates;

(*c*) Urged the local and sectional clubs and associations to adopt supplementary notes representing interpretations of the scale, as nearly uniform and standard as conditions would permit, and undertook a campaign of organization, standardization, and education, financed by weekly contributions from members, in order to standardize prices and the mutual understanding of every factor in the business, and to overcome the condition of difference in prices;

(*d*) Encouraged and aided engravers specializing in color work and work for school annuals, in combining in establishing agreed uniform rates of maximum discount;

(*e*) Declared its purpose to have local clubs formed in every city throughout the United States, and banded into sectional bodies in order that it might afford protection against price cutting by having outside engravers quote the terms of the standard scale, recognizing discounts in vogue in each territory and receiving reciprocal treatment at home, enlisted the cooperation of the union involved to this end, and undertook to afford and at great cost in time and money did afford such protection to local engravers, thereby directly and substantially retarding actual shipments of products involved from state to state, due to advantages of the local engravers through nearness and personal contact, over more distant competitors;

(*f*) Endorsed the so-called "Chicago Plan" or "Clause 10," whereby one of the clubs, as a means of inducing and compelling concerns to respect prices and to restrict and regulate competition entered into an agreement with the local of the union involved, (which included among its members 90 per cent of the workmen in the industry in the United States), providing, among other things, that the members of the local should work only for member clubs, and exhorted photo-engravers elsewhere to follow the example of said club, and carried on extensive propaganda in favor thereof, held many meetings, and an organization conference arranging for the further spread of said plan, and together with the president and the general and local officers of the union concerned frequently addressed meetings held by members of the industry relative to the use of such device as a means of enforcing the standard scale and restricting or eliminating price competition;

(*g*) Engaged, through their official periodical or bulletin, in propaganda in favor of the elimination, in so far as possible, of price competition, giving publicity to obdurate offenders invading other territory at cut prices, praising those declining business from outside territory, advocating the employment of Clause 10 and the enhancement of prices, suggesting the refusal on the part of the men to work for photo-engravers who fail to maintain required price standards, (defining a price cutter as one who uses the scale to determine the proper price, but quotes a greater discount therefrom than that prevailing in his territory), and reciting resolutions by and certain provisions of the general law of the union involved, relating to the withdrawal of men from shops offering price competition; with the result that there was a general knowledge throughout the industry that the union and the employers' bodies would place their full united strength in support of the price program determined upon; and

(*h*) Approved establishment of "prevailing rates" of maximum discount from scale prices for different clubs, and encouraged gentlemen's agreements and working understandings between clubs not to solicit business in each other's territory at cut prices, if at all, and took action directly in the case of disturbing factors in the price situation through invasion by a concern at cut prices of the territory of others, through securing assurances and pledges and in other ways; and

Where the local and sectional member clubs, (member concerns of which were in the case of many of the locals likewise members of the general association), formed for the purpose, among others, of supplying the means for local understandings as to price, and the officers and members thereof; in pursuance of the aforesaid purposes,

(*i*) Adopted and used said standard scale, as revised in a generally upward direction from time to time, as a common basis for making prices, to the practical exclusion of the old method, passed motions and resolutions fixing local minimum prices for photo-engraving products, submitted bids for club approval before submission to the prospect, resisted price cutting through propaganda and otherwise, held estimating classes for the sake of bringing about price uniformity, and arrived at understandings between one another that they should respect the prices and conditions established by other clubs when making sales in their territories;

(*j*) Passed laws making members subject to suspension and expulsion from the respective clubs for violation of motions or resolutions of the club, asserted the power to inspect the books of members and appointed auditors, accountants and vigilance committees, adopted clause 10 in all but 4 or 5 of the 25 largest cities in the United States, warned members they would be held strictly accountable for violation of price policies, suspended, and through reprimand, fine, threat of labor troubles, and otherwise disciplined and coerced members and concerns who violated price agreements and policies, and notified locals of the union, which adopted and followed the policy that price cutting was good cause for suspension of a concern by its club and that it must withdraw men from the shops of price cutting employers and those where the proprietors failed to join or to maintain their membership in the club (except for such a cause as excessive initiation fees, or grounds considered by it arbitrary or unreasonable), and thereby and through notice that it would not tolerate "unwarranted" competition and otherwise, cooperated in the accomplishment of the aforesaid purposes; with the result that concerns were forced against their will to join various local clubs, and others to maintain membership therein and adhere to local price understandings; and

(*k*) Cooperated directly with the general association, in the case of those engravers specializing in color work and work for school annuals, in standardizing a form of contract to be used by their solicitors, containing provisions as to the rates of discount from the scale, and in the use of the scale with agreed discounts therefrom, and special charges;

With the result of (1) largely localizing the business involved, (2) encouraging the use of the scale by individual concerns, by reason of its availability in place of the adoption of cost systems, as advocated by the association, and by the local clubs to assure the securing by the engraver of the "fair profit" called for by the code of ethics, (3) enhancing and stabilizing the prices of the products concerned through the country as a whole and curtailing, restricting, regulating and destroying price competition, as to a large proportion of the trade, including to a lesser extent that of plants not belonging to the various clubs, and (4) compelling unwilling adherence of certain competitors of manufacturer members; and

With the further result, by reason of said enhanced prices and lessened price competition of (1) bringing into the industry, many new plants, largely managed by men ill equipped by experience and capital, thereby increasing the industry's capacity to produce photo-engraving products far beyond the demand therefor and thereby loss due to idle labor, time and increased costs of production, and (2) influencing buyers of the products, including publishers, to go into the business themselves, and with a tendency on the part of the associations and clubs, and their members so to enhance prices as to permit the ill equipped and inexperienced to remain in business:

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

Mr. Eugene W. Burr, *Mr. Randall Larson*, *Mr. Robt. N. McMillen* and *Miss Anna Boyle* for the Commission.

Mr. John Walsh and *Mr. L. A. Spiess*, of Washington, D. C., for the American Photo-Engravers' Association, the local Photo-Engraving Associations, their officers and members.

Phillips, Leibell & Fielding, of New York City, for the International Photo-Engravers' Union, its officers and members and various local unions.

SYNOPSIS OF COMPLAINT [2]

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent American Photo-Engravers' Association, its officers and members, the various local photo-engravers' associations, and their officers and members,[3] the International Photo-Engravers' Union of North America, with principal office in Chicago,[4] its officers, execu-

[2] Second amended complaint.

[3] In the case of both local associations, and general associations, composed of individuals, partnerships and corporations engaged in the manufacture and sale of photo-engraving products, and, with few exceptions, engaged in such sale in interstate commerce, and comprising also a substantial majority of all the concerns engaged in the manufacture and sale of the aforesaid products, in competition with others similarly engaged in various cities and sections of the United States.

[4] With 75 local union organizations in various cities and sections of the United States, some of said locals being the New York Photo-Engravers' Union, No. 1, Chicago Photo-Engravers' Union No. 5, St. Louis Photo-Engravers' Union No. 10, and other similar local union groups, composed of persons employed in photo-engraving establishments in their respective cities, and located in all the principal cities of the United States and Canada, with a total membership for the International and the various locals, of approximately 5,000, constituting a substantial majority of all the persons employed as above set forth, throughout the United States.

tive board and members, and its various local photo-engraving unions and their officers, executive boards and members, with conspiring, combining, confederating and agreeing together among themselves to regulate, control and suppress competition among manufacturers of the products in question and to establish and maintain enhanced prices therefor throughout the United States, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.[5]

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[5] This complaint, the second amended complaint, sets forth the previous issuance of a complaint against the Chicago Photo-Engravers' Association, the granting of a petition for leave to intervene in behalf of the International Photo-Engravers' Union of North America and the Chicago Photo-Engravers' Union No. 5, the issuance of a subsequent complaint against the Photo-Engravers' Board of Trade of New York, Inc., and the New York Photo-Engravers' Union No. 1, the issuance of an amended complaint against all the respondents named herein and the taking of evidence in support thereof but not in support of the answers filed, preceding the issuance of this, the second amended complaint.

Said second amended complaint sets forth the associations, etc., joined as respondents, as follows:

American Photo-Engravers' Association, its officers and members;
Baltimore-Washington Engravers' Association, its officers and members;
Boston Association of Photo-Engravers, its officers and members;
Buffalo Photo-Engravers' Association, its officers and members;
Central States Association of Photo-Engravers, its officers and members;
Central-Eastern Photo-Engravers' Association, its officers and members;
Chicago Photo-Engravers' Association, its officers and members;
Cincinnati Photo-Engravers' Association, its officers and members;
Cleveland Photo-Engravers' Club, its officers and members;
Denver Photo-Engravers' Club, its officers and members;
Detroit Photo-Engravers' Club, its officers and members;
Houston Photo-Engravers' Club, its officers and members;
Iowa Manufacturing Photo-Engravers' Association, its officers and members;
Kansas City Photo-Engravers' Club, its officers and members;
Manufacturing Photo-Engravers' Association of Philadelphia, its officers and members;
Manufacturing Photo-Engravers' Association of New Jersey, its officers and members;
Michigan Photo-Engravers' Club, its officers and members;
Minnesota Photo-Engravers' Association, its officers and members;
Mountain States Photo-Engravers' Association, its officers and members;
New England Photo-Engravers' Association, its officers and members;
Northern California Photo-Engravers' Association, its officers and members;
Northwestern Photo-Engravers' Association, its officers and members;
Omaha Photo-Engravers' Club, its officers and members;
Photo-Engravers' Association of Southern California, its officers and members;
Photo-Engravers' Board of Trade of New York, Inc., its officers and members;
Photo-Engravers' Club of Wisconsin, its officers and members;
Pittsburgh Photo-Engravers' Club, its officers and members;
Portland Photo-Engravers' Association, its officers and members;
Rochester Photo-Engravers' Club, its officers and members;
Seattle Photo-Engravers' Club, its officers and members;
Southeastern Photo-Engravers' Association, its officers and members;
Texas Photo-Engravers' Association, its officers and members;
St. Louis Photo-Engravers' Club, its officers and members;
Virginia State Photo-Engravers' Association, its officers and members;
International Photo-Engravers' Union of North America, its officers, executive board and members, and its various local photo-engraving unions, their officers, executive boards and members.

Names of respondent officers of respondent American Photo-Engravers' Association, and of the local associations, in so far as known to the Commission, and representative numbers of individual members, of the various associations are set forth in the complaint, According to the complaint, "In the acts hereinafter set out said respondents, American Photo-Engravers' Association, and the local photo-engravers' associations, acted for and in behalf of all individuals, partnerships and corporations who were members of said associations, both those engaged exclusively in intrastate commerce and those engaged in part in interstate commerce, and said acts as hereinafter set out have substantially affected interstate commerce in photo-engraving products throughout the United States," and said officers of said respondent, International Photo-Engravers' Union of North America, and the officers of all of said local union organizations and the delegates representing said local union organizations at meetings and conventions of or on committees of the International Photo-Engravers' Union of North America, have acted as the representatives, and in the common interest, of all the members of said union organizations.

The complaint, following the preliminary recital of respondents, etc., as above summarized and suggested, concludes as follows:

PARAGRAPH 5. In or about July, 1915, said respondent, American Photo-Engravers' Association, its officers and members, conspired, combined, confederated and agreed together among themselves and with the said respondent, International Photo-Engravers' Union of North America, its officers and members, to regulate, control, and suppress competition among manufacturers of photo-engraving products and to establish and maintain enhanced prices for photo-engraving products throughout the United States.

PAR. 6. In furtherance of said conspiracy, combination, confederation, and agreement the said respondent, American Photo-Engravers' Association, through its officers and on behalf of its members, compiled and adopted a schedule of uniform minimum prices for all photo-engraving products hereinafter called standard scale. The said standard scale was submitted by said American Photo-Engravers' Association to the various respondent local photo-engravers' associations throughout the United States, and the said American Photo-Engravers' Association secured the adoption, maintenance and use of the said standard scale by many of said respondent local photo-engravers' associations and their members, as a uniform schedule of minimum prices for the sale of photo-engraving products, a sub-

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and all officers and member individuals, partnerships, and corporations are made respondents without being specifically named, as constituting a class too numerous to be brought before the Commission in the proceeding "without manifest inconvenience and delay," and the officers of the International Photo-Engravers' Union of North America are likewise set forth, and said officers and the officers of the various local union organizations, the delegates, and their members, are made respondents without being specifically named, as constituting a class too numerous to be brought before the Commission, as hereinabove set forth.

stantial portion of which products was intended for sale and actually sold in interstate commerce. Others of the respondent local photo-engravers' associations and their members adopted as their schedule of uniform minimum prices, the said standard scale but with a uniform discount therefrom agreed upon by the members of each such local association. Others of respondent local associations and their members adopted, as their schedule of uniform minimum prices, said standard scale but made agreed discounts therefrom in favor of a certain class or certain classes of preferred buyers of photo-engravings, to wit, advertising agencies, publishers and printers or one or more of said classes of buyers, all other customers being required to pay not less than the charges shown upon said standard scale without discount therefrom. Respondent local associations, with the concurrence, advice and insistence of respondent American Photo-Engraving Association joined in an understanding and agreement that in all cases where a local association should establish a variation from said uniform schedule as in this paragraph above described, the members of any other local association, when doing business in the territory wherein such variation should be in effect, should observe said variation and not sell at prices less than those established by said variation.

PAR. 7. In furtherance of said conspiracy, combination, confederation, and agreement it was understood and agreed by and between the American Photo-Engravers' Association and the International Photo-Engravers' Union of North America that the members of said respondent associations would employ only members of said unions, and that members of said unions would work only for members of said associations; that in pursuance of said agreement the American Photo-Engravers' Association recommended to its members and to the various local photo-engravers' associations and the International Photo-Engravers' Union of North America recommended to the various local unions, the following form of agreement for adoption and use by and between the photo-engravers' association and the union in each city or locality within the United States.

In order that the union may secure the adoption and carrying out by all photo-engraving concerns in Chicago of the scale of wages and working conditions herein specified, and have the responsibility of said club for their observance and performance, the union hereby requests and the club hereby agrees, that the club will admit to its membership all reputable photo-engraving concerns in Chicago; and in consideration hereof and of the assumption of the responsibility by the club for any and all violations of said scale of wages and working conditions by every member of the club, the union agrees that its members will work only for such photo-engraving concerns as are members of the club, provided that the club shall not arbitrarily, or for any but good cause, refuse admission to or deny retention of membership in the club.

In a number of cities and sections of the United States this agreement, or a similar agreement, was adopted by the local photo-engravers' association and the local union organization, together with an agreement providing for the employment of union men exclusively by members of the local photo-engravers' association.

PAR. 8. Aforesaid agreement set out in paragraph 7 hereof was intended to force and resulted in forcing all individuals, partnerships and corporations engaged in manufacturing, by means of the employment and services in whole or in part of members of respondent unions, and in selling photo-engraving products in various cities and localities, to join and become members of the local photo-engravers' association operating in each such city or locality and to adopt and maintain as their respective uniform minimum prices the said standard scale prices or aforesaid locally agreed upon variations from said standard scale, as described in paragraph six hereof, for all photo-engraving products manufactured and sold by such manufacturers, including a substantial volume of such products sold and transported, by them in the regular course of business, to customers located in States other than the respective States wherein the said products were manufactured.

PAR. 9. In pursuance of said conspiracy, combination, confederation, agreement and understanding the International Photo-Engravers' Union of North America and its officers and some of the respondent local unions have from time to time declared that all individuals, partnerships and corporations manufacturing and selling photo-engraving products and having their places of business in localities wherein, at such respective times, prices were being made, by one or more of such manufacturers, for photo-engraving products, lower than the aforesaid agreed prices, would have to adopt and maintain as their minimum prices, said uniform scale of prices for photo-engraving products, or such said variation therefrom as might be in force in a given territory, as in paragraph 6 hereof described, and have at various times threatened to call strikes or withdraw union employees from photo-engraving establishments that failed to maintain said uniform scale of prices, and have at various times threatened to ruin such photo-engraving establishments, and have withdrawn their members from employment in such establishments unless and until such establishments promised to adopt and maintain said uniform minimum prices for the sale of their said products. Respondent unions have adopted other devices intended to compel and resulting in the adoption and maintenance by photo-engraving establishments of a uniform minimum scale of prices for photo-engraving products, in pursuance of said conspiracy hereinbefore set out.

PAR. 10. The said scale of uniform prices for photo-engraving products has been changed from time to time by said respondent, American Photo-Engravers' Association and the various local photo-engraving associations, and various devices and means have been used by said respondent associations to induce or compel the adoption and maintainance of minimum prices of photo-engraving products agreed upon as aforesaid and to prevent competition in price between photo-engraving manufacturers in their interstate commerce in said products.

PAR. 11. These alleged acts of respondent, American Photo-Engravers' Association, and the various local photo-engravers' associations, and the International Photo-Engravers' Union of North America, and the various local union organizations, considered together, have a dangerous tendency unduly to hinder free competition in commerce in photo-engraving products by fixing and maintaining uniform prices therefor, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission, on the 14th day of April, 1923, issued and served a complaint upon the American Photo-Engravers' Association, its officers and members, 33 local associations of photo-engravers, including the 31 described in section 2 thereof, their officers and members, and the International Photo-Engravers' Union of North America, its executive board and members and its various local photo-engraving unions and their officers, executive boards and members, charging them with the use of unfair methods of competition, in violation of the provisions of section 5 of said act.

The complaint against these respondents was in part a consolidation of two complaints, under which no testimony was taken; the one being Docket 928, dated November 8, 1922, against the New York City club of employing photo-engravers and the local union of workmen, and the other Docket 82, dated March 13, 1918, against the Chicago club of employing photo-engravers, in which the Commission had, on the 15th day of June, 1921, granted a petition to intervene, filed in 1918 by the International Photo-Engravers' Union of North America and Chicago Photo-Engraver's Union No. 5; and the said pleading was designated an amended complaint.

Respondents having entered their appearances and filed their answers, hearings were had from time to time, from May, 1923, to September 1925, before an examiner of the Federal Trade Commission theretofore duly appointed, at which hearings evidence was introduced in support of the allegations of the complaint.

The amended complaint was thereupon, on the 20th day of October, 1925, amended to conform to the proof, and the respondents filed new answers, and further hearings were had in June and July, 1926, at which evidence was introduced on behalf of the respondents and the Commission.

All of the evidence was recorded, duly certified and transmitted to the Commission. Thereupon this proceeding came on for decision on the record, briefs and oral argument, and the Commission being fully advised in the premises, makes its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

I

1. Respondent American Photo-Engravers' Association, hereinafter called "American," is a continuation of an unincorporated trade association organized in 1897 by individuals, partnerships, and corporations of manufacturing or commercial photo-engravers, and later known as the International Association of Manufacturing Photo-Engravers until 1918, when the word "Manufacturing" was eliminated and the present name adopted. Its principal office is in Chicago. Among its expressed objects are to establish local and sectional associations and to effect the thorough organization of the photo-engravers of America; to encourage and foster a feeling of friendship and spirit of cooperation for the elimination of the "evils of ignorant and ruinous competition"; to spread the knowledge of the elements of cost and what constitutes a "proper" remuneration for services rendered, so that competition may be "honorable, just and reasonable"; and to standardize a code of ethics and trade customs for the guidance of its members. It has an executive committee, a vigilance committee for enforcing its code of ethics and committees on publicity, membership, research and cost.

2. Parts of its code of ethics promulgated in 1920 declare for:

(a) Universal use of the standard scale as the basis for pricing plates.

(b) "Fair" prices, profits and competitive conditions and uniform trade customs.

(c) The use of quality and service rather than lower prices as selling arguments.

(d) The free exchange of ideas and experiences.

(e) Such a friendly attitude among competitors as will enable them to meet and discuss frankly the means whereby "wily and unscrupulous" buyers may be effectively discouraged. Cutting prices constituted one form of violation of the code of ethics of the American.

3. It maintains a cost accounting department which analyzes and prepares data for the use of its members and other photo-engravers throughout the United States. It has, through its membership or organization committee, through its monthly bulletins and otherwise, done much work in forming and fostering the strong local and sectional associations described in section II below; for which purpose it has divided the country into districts, with boundaries fixed by the executive committee; it admits to its membership no one who is not a member of his local association if, as is true of about half the clubs including the larger organizations, the local association involved requires all of its members to be members also of the American. Its expenses during the year ending May 31, 1922, aside from its monthly bulletin, which is more than self-sustaining, were a little over $36,000, nearly equally divided between headquarters expenses and others, including over $13,500 for organizing, conferences, arbitration and conciliation.

4. Respondent officers and executive committee of the American at the close of the testimony herein who are charged with and engaged in the management and direction of its affairs, and in this behalf represent all of its members, were: Louis Flader, commissioner, who edits its monthly official organ, the Photo-Engravers' Bulletin, with a circulation of over 1,000, travels extensively and conducts, and since 1912 has conducted its business under the direction of its president and executive committee; respondents E. W. Houser, Chicago, president; V. W. Hurst, Rochester, first vice president; H. C. Campbell, Seattle, second vice president; Oscar F. Kwett, Canton, Ohio, secretary-treasurer; Adolph Schuetz, New York; C. W. Beck, jr.; and C. A. Stinson, Philadelphia; R. W. Hichert, Cleveland; and B. J. Gray, St. Louis.

5. Respondent members of the American are somewhat less than two-thirds of the nearly 700 "Commercial" photo-engravers (as distinguished from 125 "newspaper" plants, operated by newspapers for the primary purpose of making their own engravings though in most cases also doing some commercial work) in the District of Columbia and various States of the United States, and produce from 75 to 90 per cent of the output of photo-engravings in the United States.

6. The industry employs about 7,500 workmen, has an invested capital of about $14,000,000, and annual sales of over $40,000,000. The average net profit for the four years 1922–1925 is over 5 per cent on sales. For the year 1925, 143 companies, with sales of $16,-700,000 and an investment of nearly $7,000,000, reported an average net profit of 12½ per cent on investment. Of 141 of these, 30 earned over 30 per cent on investment, 24 others over 20 per cent, 28 others over 10 per cent, 31 others 10 per cent or less, while 28 showed losses. Some of the work is made and delivered within a few hours, and practically half of it within three days after orders are received; but color work often takes from two to four weeks for completion. The time from delivery required for collections averages somewhat over two months.

7. Respondent members, in common with other commercial photo-engravers, are engaged in making the copper and zinc relief printing plates known as half tones, and line plates which, alone or in combination, in black-and-white, in tints or in colors, are used in producing nearly all illustrations used in typographic printing of placards, posters, catalogues, newspapers, magazines, and books. Zinc etchings and square-finish half tones in black-and-white form the most important part of the output of most plants so far as the number of plates is concerned, and are the ones covered by the price figures in the body of the standard scale described below; half tones, tints and Ben Day plates are intermediate in price between zinc etchings and color process plates, which, in 1924, in sets of two, three, or four, were respectively, 7, 10½, and 14 times the price of square-finish half tones in black-and-white. Not one plant in six, however, is equipped to do color-process work.

8. Plate making is the art of photographically printing an acid resist on a metal plate, and then etching the unprotected parts. Making the photograph and getting it on the plate is an elaborate process; the etching, unless electrolitic, is done by nitric acid for zinc, and by bichloride of iron for copper, applied to the metal by baths in tub or tray, or by various types of paddling or blast machines, by which the work is done more speedily than by the tub method. The plates then go through many processes, by machine and by hand, which may include further etching, engraving, finishing, routing, tooling, burnishing, beveling, blocking, mortising and proofing, and require over 100 materials and chemicals, 34 formulas, a great variety of machinery, and workmen of the greatest skill, dexterity, judgment and experience. Outlays for labor and materials, respectively, in 1925, constituted about 70 per cent and 18

per cent of factory costs, or about 46 per cent and 12 per cent of the selling price of the plates. Quality and prompt service are the foremost requirements on the part of most customers, but price is a serious consideration and often determines sales.

9. Many plants, in addition to making plates, maintain art departments for creating drawings, paintings, sketches or other "copy" to be reproduced by the plates for such customers as do not furnish their own copy. In such cases this work is billed separately from the plates, as "art work." Occasionally "direct" work is done, the physical object to be reproduced being itself used as copy. This class of work is a specialty.

10. The process as a whole is a photo-mechanical one, enhanced by skill and artistry, but its highest excellence is the faithful or exact reproduction of copy. The purpose of photo-engraving is not to create fine or high art but to produce photo-mechanical etched relief plates that will print on paper, reproduction of pictures, designs, photographs or other graphic forms or objects. Respondent members of the American ordinarily carry no plates in stock, but make them up on orders, in strict compliance and accordance with the requirements and directions of their customers for their particular, peculiar, and exclusive use, with special features which they require, and which render the plates of value to them, but useful and salable to others only as scrap metal.

II

1. Respondents:

Baltimore-Washington Engravers' Association, Baltimore, Md.;
Boston Association of Photo-Engravers, Boston, Mass.;
Buffalo Photo-Engravers' Association, Buffalo, N. Y.;
Central States Association of Photo-Engravers, Cleveland, Ohio;
Central-Eastern Photo-Engravers' Association, Syracuse, N. Y.;
Chicago Photo-Engravers' Association, Chicago, Ill.;
Cincinnati Photo-Engravers' Association, Cincinnati, Ohio;
Cleveland Photo-Engravers' Club, Cleveland, Ohio;
Denver Photo-Engravers' Club, Denver, Colo.;
Detroit Photo-Engravers' Club, Detroit, Mich.;
Houston Photo-Engravers' Club, Houston, Tex.;
Kansas City Photo-Engravers' Club, Kansas City, Mo.;
Manufacturing Photo-Engravers' Association of Philadelphia, Philadelphia, Pa.;
Manufacturing Photo-Engravers' Association of New Jersey, Newark, N. J.;
Michigan Photo-Engravers' Club, Detroit, Mich.;
Minnesota Photo-Engravers' Association, St. Paul, Minn.;
Mountain States Photo-Engravers' Association, Denver, Colo.;
New England Photo-Engravers' Association, Providence, R. I.;
Northern California Photo-Engravers' Association, San Francisco, Calif.;

Northwestern Photo-Engravers' Association, Portland, Oreg.;
Omaha, Photo-Engravers' Club, Omaha, Nebr.;
Photo-Engravers' Association of Southern California, Los Angeles, Calif.;
Photo-Engravers' Board of Trade of New York, Inc., New York, N. Y.;
Photo-Engravers' Club of Wisconsin, Milwaukee, Wis.;
Pittsburgh Photo-Engravers' Club, Pittsburgh, Pa.;
Portland Photo-Engravers' Association, Portland, Oreg.;
Rochester Photo-Engravers' Club, Rochester, N. Y.;
Seattle Photo-Engravers' Club, Seattle, Wash.;
Southeastern Photo-Engravers' Association, Chattanooga, Tenn.;
Texas Photo-Engravers' Association, Fort Worth, Tex.; and
St. Louis Photo-Engravers' Club, St. Louis, Mo.,

hereinafter called "clubs," are voluntary unincorporated associations or corporations organized by individuals, partnerships, and corporations of commercial photo-engravers, to promote the interests of their members by fostering trade acquaintance and friendship, spreading knowledge of the elements of cost-finding, to the end that competition may be "reasonable," and in other ways. Their members are in many places—including New York, Philadelphia, Chicago, St. Louis, San Francisco, Portland, and Seattle—identically the same concerns that make up the membership of the American in their territory.

2. Club revenues come from initiation fees ranging from $10 to $250, and from monthly dues, in some instances of over $100 for plants employing 10 journeymen. The fees and dues of the Chicago and St. Louis clubs, and possibly others, include those for the American; these and the other five clubs listed above collect dues for the American. Paid secretaries are employed by the New York, Chicago, Philadelphia, St. Louis, Cleveland, Milwaukee, Los Angeles, San Francisco, and New England clubs, and were formerly employed by those at Grand Rapids, Detroit, Minneapolis and by the one at Baltimore and Washington. The clubs and the American maintain close relations with each other, and the industry is one of the best organized in America.

III

1. Respondent, International Photo-Engravers Union of North America, hereinafter called the international, is an unincorporated association of workmen engaged as journeymen in the preparation of photo-engravings, having its principal office at Chicago, with which over 90 per cent of the workmen in the industry in the United States, are affiliated. These workmen are organized into 75 unions, hereinafter called "locals," subordinate to the international, but having self-government within territories determined by the international, provided their acts do not conflict with its laws. They are now allowed to call strikes without sanction from the international.

2. The international's business is under the general supervision of an executive council, of which its president and secretary-treasurer are members. Matthew Woll for more than 15 years has been president of the international, and also editor of its monthly official journal, the American Photo-Engraver, which is subscribed for by member and nonmember workmen and most of their employers, and practically covers the entire industry.

IV

1. Employing respondent concerns, as well as other photo-engravers in the course of their business, make plates for customers in States other than that of manufacture, and in cities where other photo-engravers are located, and at the direction of the customer and at his expense, ship the plates so made by parcel post or express to the customer or his printer or advertising agent located in another State. In addition, deliveries for out-of-State customers, are, when so requested, made to advertising agents and printers in the State of production, and in some cases the photo-engraver himself does the printing for the customer.

2. Many respondent members and other photo-engravers in Boston, New York, Philadelphia, Baltimore, Washington, Chicago, Milwaukee, Minneapolis, St. Louis, Grand Rapids, and other cities, make plates for, and ship them to, out-of-State customers in widely separated parts of the United States and in Canada, Mexico, and Porto Rico. Some of them advertise extensively and send traveling salesmen into, or maintain selling offices or branch plants in other States, and ship into other States, plates representing from one-fifth to over one-third of their output. A St. Louis member selling in 26 States, together with one other company, in 1921 was supplying 80 per cent of the country's demand for shoe illustrations; another in Terre Haute sells over one-third of his $48,000 output in 30 foreign jurisdictions, from Arizona to New Hampshire; and a nonmember at Alton, Ill., sells about 40 per cent of his output to customers in other States. Sixteen members, 4 each in Philadelphia and St. Louis, 5 in Kansas City, 2 in Denver and 1 in Baltimore, ship over $340,000 worth of plates per year, or nearly 16 per cent of their output, into other States, of which one-third is shipped by a single respondent in Philadelphia who so ships about 21 per cent of his output. The ratios of out-of-State shipments to total output of these companies, for the different cities, are: 35 per cent in Baltimore; 17 per cent in Philadelphia; 14 per cent in Kansas City; 11.1 per cent in Denver and a little under 10 per cent in St. Louis. New England photo-

engravers ship 11 per cent to 12 per cent of their products out of the State of production. Four members in San Francisco ship $7,500 worth of plates (under 3 per cent of output), and four in Portland, Oreg., $4,800 worth (about 2 per cent of output) per year into other States. In New York and Chicago there are members selling and shipping varying minor portions of their output to out-of-State customers. Respondent members, as a whole, ship less than 10 per cent of their output outside of the State of production. This percentage is less than it was ten years ago. This decrease is due to the activities of the American and the local clubs hereinbelow described.

3. These respondents, in selling plates as aforesaid, are severally in competition with other members and nonmembers in their own and other States, likewise so engaged; and also, in lesser degree, with companies producing planographic and intaglio illustrations, such as are used in offset printing and rotogravure respectively, and to a still less extent with makers of electrotypes, photo-engraving being the leading graphic art.

4. In addition to the actual shipment of photo-engravings from one State to another in the course of trade, there is potential competition between manufacturers of diverse States, which, if unhampered, would cause shipment of this class of product, in larger quantities than those above stated, by manufacturing respondents and other photo-engravers, from the State of manufacture to other States. The sectional and local clubs have been formed with the purpose of supplying the means for local understanding as to price, sometimes embodied in resolutions at club meetings and sometimes not, supported by mutual understanding that outside engravers would respect local prices when entering each respective territory for business. As early as 1916 it was officially declared for the American that it purposed to have photo-engravers' clubs formed in every city throughout the United States and these clubs banded into sectional bodies in order to have protection from the American against price cutting, to the end that outside engravers quote the terms of the standard scale, recognizing discounts in vogue in each territory, and receive reciprocal treatment at home. The American undertook to afford, and at great cost in time and money has afforded protection to local engravers to the end sales made by outside photo-engravers shall not be made at prices below the concerted price in the locality into which the photo-engraving products are to be shipped, and this lessens and curtails the said shipments from State to State. Since the local engraver has advantages through nearness and personal contact, over his distant competitor, the elimination of price competition has di-

rectly and substantially retarded and lessened actual shipments of these products from State to State.

5. Among numerous localities and sections which received protection of this kind from the price competition of other districts are Chicago, Milwaukee, Minnesota, Michigan, Wisconsin, Nebraska, Ohio, Missouri, Minneapolis, St. Paul, Denver, Omaha, Texas, Virginia, ten States south of Virginia and the Ohio River, New York, Philadelphia, and Atlantic coast cities as far south as Savannah, California, Oregon, Washington, and British Columbia.

6. There are many lines of competition between the States remaining, though lessened, and to a large degree thwarted, by the said nation-wide price understanding. These include, among many others, competition between New York, Philadelphia, and Chicago, and intervening points; and by manufacturing photo-engravers in these points with St. Louis and Kansas City; engravers between Omaha and Denver compete for business in Missouri and surrounding territory; Cincinnati and Indianapolis meet Louisville; Cincinnati competes with Knoxville and Chicago; St. Louis and Kansas City with Dallas and other Texas plants; Denver competes with New York and eastern houses, Chicago, Omaha, Missouri, Kansas, Boise, Salt Lake, California, and Portland, Oreg.; there is substantial, actual, and greater potential competition by Chicago with engravers in localities all over the United States.

7. The engraving business has thus gradually become localized, a great percentage of the work in any locality is local, and the out-of-town business, which once was used as a competitive price condition no longer exists to its former extent, and price competition among rival manufacturers of diverse States has been materially diminished. The American's definition of a price cutter includes one who uses the standard scale herein below described, in determining a proper price to quote, but quotes a discount from that scale greater than the prevailing discount in his territory.

V

1. The American at its annual convention at Chicago in June, 1915, following investigation into average cost of production and following earlier attempts to correlate costs and prices by a general price increase and a special increase on small plates comprising the great bulk of the output, approved as the official basis of charges a schedule of uniform minimum base prices, since known as the standard scale. This action was taken in part to relieve its members from increased costs, with falling prices, and to secure dis-

continuance of the unscientific method then prevailing of selling plates by the square inch without differentiation on account of size other than the making of a charge for a minimum number of inches. But there was a further purpose in the adoption of the standard scale, namely, to facilitate measures for the regulation and lessening of price competition in photo-engraving products, and to enhance the prices thereof.

2. The American caused notice of this action, with copy of the scale, to be mailed to every manufacturing photo-engraver in the United States. A number of respondent members at once signed an agreement pledging their firms to adopt and use this schedule at a date to be set by the executive committee. The American directed a special committee to cooperate with its executive committee to introduce the scale into general use by all photo-engravers.

3. The scale thus adopted was substantially the same one that the American had previously approved, and that the Chicago club had attempted to put into use by its members at the outset of 1914. On September 1 of that year, in the midst of a period of depressed prices and of more than usual price competition in the photo-engraving industry, price cutting was declared to be endangering both profits and wages and many employers admitted that the American was unable to cope with the problem because of its inability to force compliance with conclusions and decisions agreed to. During the year 1914 to 1915, 50 new plants went into the photo-engraving trade while several concerns were reorganized as the result of ill success; making, however, considerable net increase in the number of photo-engraving plants in the country.

4. Respondent Flader, secretary of the Chicago club as well as commissioner of the American, then, with the aim to stabilize conditions and bring more money into the industry, appealed to the international as the one force capable of controlling and keeping within reasonable bounds competition of the type flourishing, to give effect to the agitation of the past two years for cooperation between the unions and respondent associations, and help raise the prices of photo-engraving. Commissioner Flader and the president of the international agreed that proper cooperation would accomplish more than the most perfect cost-keeping system, and the latter promised all aid consistent with the expressed wishes and laws of his organization. Accordingly the "Chicago plan," or "clause 10," was inserted in the Chicago wage agreement effective April 19, 1915, as follows:

CLAUSE 10.—In order that the Union may secure the adoption and carrying out by all photo-engraving concerns in Chicago of the scale of wages and working conditions herein specified, and have the responsibility of said club for their observance and performance, the union hereby requests, and the club hereby agrees, that the club will admit to its membership all reputable photo-engraving concerns in Chicago and in consideration thereof and of the assumption of the responsibility by the club for any and all violations of said scale of wages and working conditions by every member of the club, the union agrees that its members will work only for such photo-engraving concerns as are members of the club, provided that the club shall not arbitrarily or for any but good cause, refuse admission to or deny retention of membership in the club.

5. Clause 10 was described to the 1915 convention of the American by the president, during its consideration of the price question, as the unions' agreement to cooperate with employers to bring about conditions that would permit the latter to make good their promises to increase wages and grant other concessions, and copies of it were distributed among those present.

6. The Chicago club became the leader of the movement for 100 per cent organization of the employers, clause 10, and the standard scale as the only basis for charging and billing everywhere. The American exhorted photo-engravers in other cities to follow Chicago's example and go into the plan as units and not as individuals, and appealed for money to send organizers into the various cities. An extensive propaganda was carried on by the American and many meetings were held, one center of production after another, as a result, adopting the plan in its entirety. An organization conference was held at Chicago and the further spread of the plan was there arranged.

7. Letters were sent to the American from all parts of the country, seeking information on clause 10 and the standard scale and this Chicago conference, described by some attendants as the greatest meeting in the history of the industry, was followed within a month by others in many sections; and every city which took up the question of the scale asked aid from the American; and its commissioner and other officers, together with the president and other international and local union officers, frequently addressed their meetings. For five years from June, 1915, clause 10, the standard scale, and the steps taken for their enforcement were the most discussed and advocated topics in photo-engraving circles and literature.

8. The American publicly praised the work of respondent Woll, as chiefly responsible for the evolution and successful application of the Chicago plan, and congratulated the international on having leaders capable of safeguarding its members. The president of the New York City local, shortly before the clause was there adopted, said it would be a great step in the right direction if the union by recognizing the employers' organization, could stop the prevalent indis-

criminate price cutting. He described the employers' request for clause 10 as an appeal to the union to help them to secure collective bargaining in selling and to keep "the straggling and shirking element in line" by lending its assistance to those only who as members of the employers' organization had pledged themselves to a fair and equitable selling price, for the product of the workers' toil, based on cost of production, and by refusing to aid such employers as would sell at a price to discourage those willing to pay for value received. The president of the international is reported by the official journal as describing clause 10 in an address at Boston in March, 1917, as the one means to protect the business from the evil of price cutting, organizing both employers and employees to maintain prices, a fair profit to the employer, a fair wage to the employee. Commissioner Flader's experience led him to express the view that the adoption of clause 10 was the wisest move the Chicago club ever made, he credited it with stabilizing both prices and profits, and in 1920 he felt that through clause 10 the American had been able to improve selling conditions and get a "very splendid return" for wages paid.

VI

1. The standard scale was adopted and has been continued in use by all respondent clubs named in section II above. It rapidly gained, and in its revised forms has continued to hold, almost universal recognition and use by engravers, to the practical exclusion of the old square inch method of pricing. Over 30,000 copies of its 1925 edition were sold by the American within two months after its issue.

2. The scale of 1915 embodied a fixed charge of $1.50 plus 10 cents an inch for halftones containing from a 5-inch minimum to 30 square inches, and a flat rate of 15 cents an inch for larger plates, with one-half of this price for zinc etchings, and multiples of 6, 9, and 12 of it, and minimum charges of $20, $40, and $50, respectively, for two, three, and four color process plates. It was so printed on 12-inch by 15-inch sheets that when any ordinary size square-finish plate is properly placed on the sheet, its price, computed to the nearest one-sixteenth of a square inch, is readily found under the upper right-hand corner of the plate.

3. Notes printed on the margin of the various editions of the scale describe how it is to be used and how prices for extras and other than square-finish black-and-white plates are to be figured, as for example, the minimum price on outlined and vignetted half tones is 50 per cent and on oval half tones is 25 per cent above the scale price for square-finish half tones of like size, and all manipulations are charged additional on the basis of time consumed. The notes to

all scales, prior to the 1925 revision, provided that charges for time work should be net, and the 1916 edition provided that the net rate for certain kinds of time work should be $1.50 per hour. Provision as to how time work is to be charged is not included in the side notes of the 1925 edition, but "suggested supplementary notes," issued and distributed as a separate folder, state that time and hand-work charges represent money actually paid out, and should not be discounted, and it is the usual practice in the trade not to allow discounts on time work charges.

4. The American estimates the average costs per chargeable hour, including all expense, for the year ending April 30, 1926, at $3.52, and "suggests" that time work be charged at $4 per hour. This is the rate used in computing prices given in the side notes to the scale, and customarily charged net by engravers for most time work. Provision for other net prices has also been embodied in supplementary notes.

5. The changes of price brought into effect by successive advances in the standard scale, apart from side notes and supplementary notes, are indicated by the following square-finish half-tone price formulas on which the principal editions of the scale were based:

1915	$1.50 plus 10 cents per square inch up to 30 inches
1917	$2.00 plus 10 cents per square inch up to 40 inches
1918	$2.50 plus 10 cents per square inch up to 50 inches
1920	$3.00 plus 15 cents per square inch up to 100 inches

Larger sizes were priced at a flat rate of 15 cents an inch in the first three editions, and at 18 cents an inch in the 1920 scale.

The resulting square-inch price for half tones of designated sizes, in comparison with the prescale rate of 10 cents an inch with a minimum of 10 square inches, is as follows:

Size of plate in square inches	Price in cents per square inch				
	Prescale	1915	1917	1918	1920
5	20	40	50	60	75
10	10	25	30	35	45
20	10	17½	20	22½	30
30	10	15	16⅔	18⅓	25
45	10	15	15	16¼	22½
50	10	15	15	15	21
100	10	15	15	15	18

Prices on zinc etchings were one-half of the like size half-tone prices in the first two editions and two-thirds of like size half-tone prices in the 1918 and 1920 editions. Prices on plates for color work prior to February 1, 1925, were covered in side notes to the scale.

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Two, three, and four color plates were priced respectively at 6, 9, and 12 times the half-tone price in the first two, and at 7, 10½, and 14 times the half-tone price in the last two editions of the scale. The minimum charge for two-color plates was $20 in 1915, $25 in 1917 and 1918, and $32.50 in 1920; for three colors it was $40 in the first three editions and $52.50 in 1920, and for four-color process plates it was $50 in earlier editions and $65 in 1920. The prescale minimum was $25 to $30 for four-color plates, $20 for three-color and apparently only $6 or $7 for two-color plates.

6. The total increase over prescale prices in the case of a 10-inch zinc etching has been 650 per cent. The additional income from the 1920 increase alone, provided that the new scale was introduced by all engravers, was $6,000,000 a year and for all increases the American claims exclusive credit. Yet it finds fault with middlemen and conditions of overinvestment in the industry and it and the clubs have taken steps to make it more difficult to establish new plants. The described increases in photo-engraving prices and the lessening of price competition effected by respondents have resulted in bringing into the industry many new plants of which a large proportion are managed by men ill equipped by experience and capital. Hence, so many shops have entered the trade that the capacity to produce photo-engraving products much exceeds the demand, thus increasing the loss due to idle labor time and increasing the costs of production. High prices have also influenced buyers of these products, including publishers, to go into the photo-engraving business. There is also a tendency on the part of respondents so to enhance prices as to permit ill-equipped and inexperienced men to remain in business.

7. Early in 1925, the American, in the further interest of "standardization and harmony in the industry and fair dealing with the public and a reasonable return for services rendered," and at a cost of thousands of dollars, again revised the said notes to the black-and-white scale of 1920 in a generally upward direction, eliminating the provisions for color plates, and issued an entirely separate scale for color work, providing minimum base prices of $45, $72 and $90, respectively, for two, three, and four color plates, and prices over 50 per cent higher than those of 1920 on some of the smaller size color plates; but on 100-inch plates, the new prices are only slightly above, and on still larger plates are below the 1920 prices. A further substantial increase in prices in the body of the black-and-white scale for the smaller sizes of plates, amounting to $1.15 on the minimum half tone of 5 square inches was at this time also recommended by the cost committee but was not approved.

8. Respondent American eliminated the word "prices" from the caption of the then new scale, in 1917, and has since described it as a schedule of "values based upon," or of "basic values founded upon" the ascertained cost of production, and though a member of the Chicago club in 1919 considered some of its provisions, as interpreted by the secretary as almost "rank robbery," some members think that the scale is merely a compilation of costs without provision for profit. The said scale actually does provide a profit and was intended so to do, the costs which it embodies are not costs on truly representative jobs but rather on high cost jobs. They come from a comparatively small number of engravers, and are not as accurate as they can be made and do not cover the entire output of even this small number since it is the American's aim to include figures on only such jobs as are made to fill orders for single plates, and also since the individual photo-engraver who returns cost-data reports only a very small percentage of his business and deems himself and the trade benefited by the use of data from jobs showing higher than average cost of manufacture. Costs in 1924 had increased according to the cost committee, more than 20 per cent since 1920 when the current black-and-white scale was adopted. Discounts from scale prices are frequently granted and in some cases in New York City run as high as 33⅓ per cent to 55 per cent or 60 per cent. Yet figures already given indicate that the average engraver, in 1925, made a net profit of about 12½ per cent on investment, and in 1922 and 1924, engravers granting a 10 per cent discount made an average net profit of over 5 per cent on sales; and in 1924 the American did not adopt the recommendation of its cost-accounting and statistical department to add one-ninth to cost figures in order that a trade discount of 10 per cent might furnish scale rates equal to average cost conditions.

9. The American has long advocated the keeping of cost systems, but has not succeeded in getting over 30 engravers to make yearly reports on costs. The availability of the standard scale lessens the incentive to install cost systems and in the absence of a cost system, recourse is had to the scale by the individual concern to throw some light on its costs and by respondent clubs to determine whether or not an engraver is violating the code of ethics by failure to get the "fair profit" required by section 20 of that document.

10. Commissioner Flader upon occasion told members of local clubs with agreed discounts that it would be wrong for them to act individually in fixing their rate of discounts and after a meeting of all New England engravers in Boston, in November, 1924, attended by the American's commissioner, president, vice president and cost

accountant, who had visited practically all engraving plants in the territory and compiled figures to show the large amounts local engravers were losing by giving generous discounts, the New England club announced that henceforth its slogan would be, "Get a fair profit—give less discount." But the enforcement of adherence to, or not exceeding the rate of, discount prevailing in any locality by engravers in that locality was left by the American largely to the local clubs, which developed machinery peculiarly fitted for this purpose, such as a right to examine books to ascertain price violations, and by way of punishment for price and other violations, passed by-laws calling for reprimand, fine, suspension and expulsion. They received union cooperation to the same end under clause 10. The president of the international, in reporting a local strike when clause 10 became effective there in 1916, declared that the locals operating under clause 10 had no alternative but to withdraw their men from the shops of such operators as refused to join the club after being requested to do so, unless in cases where initiation fees were excessive; and in cases where the clubs suspended or expelled members, clause 10 required the local to withdraw its men from the shop in question unless it considered the suspension or expulsion arbitrary or not for good cause. Moreover, the policy of the international, as declared by its resolutions and the precepts of its officers, was that price cutting constituted good cause for suspension by the club.

11. The American, to define terms and further standardize certain operations, to foster and develop uniform interpretations and application of the scale in arriving at base prices, and of the notes, and to guard against unwitting price cuts by the omission of chargeable items from estimates, prepared a uniform estimating blank, inaugurated estimating exercises and conducted a national estimating class in its monthly bulletin and at conventions, and encouraged respondent clubs to hold, and they have held and do hold, estimating classes. It also urges them to adopt supplementary notes as nearly uniform and standard, as conditions will permit, since such notes represent interpretations of the scale itself; and, in order to standardize prices and the mutual understanding of every factor in the business, and to overcome the condition of great differences in prices, the American, in 1917, undertook a campaign of organization, standardization and education, financed for about a year by the "Johnny B. Good" fund for which each member was to prepare a pay envelope and contribute $2 a week.

12. Respondent American encouraged and aided the comparatively small number of engravers specializing in color work and

work for school annuals, whose trade has not been localized to nearly the same extent as that of black-and-white engravers, each in his own line of work, to combine in establishing agreed uniform rates of maximum discount. Accordingly, the color-plate makers' section of the American, at a meeting in March, 1916, provided for printing a color scale by following the notes on the standard scale and formulated a schedule of discounts from scale prices ranging from 20 per cent to 20 per cent plus 20 per cent, according to size or quantity, as the maximum that could be granted with safety, and gave it as their firm belief, "based on knowledge of costs," that greater discounts would result in loss. This schedule of discounts was later lowered, and in 1922 ranged from zero on plates under 140 inches, to 20 per cent on plates of over 300 inches.

13. The American's executive committee, in February, 1918, voted that the maximum discount from the color scale, on and after April 1, should be 10 per cent, and that in the interim, no contracts extending beyond that date should be made at lower rates and the American, at the time of the adoption of the 1920 scale, advised members that the best information available indicated that a discount of 10 per cent from the black-and-white scale prices was about the limit In March, 1921, the prevailing rate everywhere on three and four color process plates was scale, net, save for the quantity discounts provided in notes to the color scale. The American, at its 1921 convention, adopted the report of the special color-plate committee specifying the time in which various types of work should be completed and naming a uniform increase of 2½ per cent in price for jobs required in less than the allotted time.

14. Engravers specializing in school and college annual work granted discounts which the American deemed in excess of those that could possibly be granted in any other class of work, and the prevailing prices for this work and the method pursued in selling it were denounced by the American, whose ultimate goal in 1917 was to get them on exactly the same basis as other engravers. They took action early in that year to standardize a form of contract to be used by their solicitors. With the aid of the American such a contract form, containing provisions as to the rates of discount from the scale and a copy of the scale printed on its back was adopted, and, after the issuance of the 1920 scale, revised by these engravers and sometimes distributed by the American. In 1918, all except three of the concerns in this line were said to have given assurance of cooperation. In 1920 respondent Flader said that the improvement in the price situation among them was due to his agitation and publicity and would have been impossible without the organization machinery and support of the American.

15. The tendency among respondent clubs had long been to supplant the 20 per cent discount originally suggested, by smaller discounts, and while some of them charged scale and scale plus prices, the maximum discount rate of 10 per cent is the most common given in reports to the American and set out in the agreements cited above. In numerous sections the discounts are to advertising agencies, printers, and publishers. The American advises doing away with trade discounts of this character.

VII

1. Clause 10 was adopted by employer and employe respondents in 32 large cities by the summer of 1917. The international directed its officers to do everything in their power to have it made a part of every employers' organization agreement with its members and in many cases the extension of clause 10 was simultaneous with that of the scale. Thirty-four unions in the United States and Canada never adopted it, and it was not included in agreements with newspaper plants, but it became effective at one time or another in commercial shops in all but 4 or 5 of the 25 largest cities in the United States—Detroit, Cleveland, Boston, Washington, and possibly Jersey City. All told, it was adopted by respondents covering about 50 cities, as follows: New York, Chicago, Philadelphia, St. Louis, Baltimore, Pittsburgh, Los Angeles, Buffalo, San Francisco, Milwaukee, Newark, Cincinnati, New Orleans, Minneapolis, Kansas City, Seattle, Indianapolis, Rochester, Portland, Oreg., Denver, St. Paul, Oakland, Atlanta, Birmingham, Syracuse, Richmond, Va., San Antonio, Dallas, Houston, Des Moines, Nashville, Spokane, Knoxville, Utica, Duluth, Tacoma, Fort Worth, Galveston, Austin, Muskogee, Tulsa, Oklahoma City, Cedar Rapids, Waterloo, Sioux City, St. Joseph, Fresno, San Jose, Sacramento, and Stockton. There are plants in approximately 200 cities.

2. Cooperation by respondents under clause 10 resulted in forcing certain concerns against their will to join the respective local clubs, and others to maintain their membership therein and to adhere to the local price understanding by the use of the following methods:

(*a*) Each respective club, under clause 10, contracted to admit to its membership all reputable photo-engravers in each respective city.

(*b*) The clubs passed motions and resolutions fixing local minimum prices for photo-engraving products.

(*c*) The clubs passed laws whereby members were subject to suspension and expulsion from the club for violation of motions or resolutions passed by the club.

(*d*) The clubs asserted the power to inspect the books of their members, having thus the means for detecting price violations.

(*e*) The local unions contracted under clause 10 that their members would work only for such photo-engravers as were members of the club with the proviso that the club would not arbitrarily or for any but good cause refuse admission to or deny membership.

(*f*) The international adopted the policy that cutting prices on the part of employing photo-engravers was good cause for the withdrawal of men from the shops of such employers.

(*g*) The clubs suspended members who broke the price agreements, and notified the local unions of the action taken.

(*h*) The unions called out the men from shops where proprietors failed to join or to maintain membership in the club.

3. There have been instances of strike pressure brought to bear by local clubs and unions in cooperation under clause 10 by way of requiring photo-engravers to join the local employers' club with its obligation to adhere to minimum price understandings, or requiring them to make good such membership with the said obligation. In some instances a threat of withdrawal sufficed, in others the men were withdrawn. These instances include five photo-engraving shops in Chicago, three in St. Louis, three in New York, one each in Dallas, Seattle, Milwaukee, and Terre Haute.

4. The official bulletin of the American engaged in a propaganda in favor of the elimination, in so far as possible, of price competition, advocating the employment of clause 10, and the enhancement of prices, and suggesting the refusal on the part of the men to work for photo-engravers who failed to maintain the required price standards. This publication recited the resolutions by, and certain provisions of the general laws of, the international union relating to the withdrawal of men from shops offering price competition. The result was a general knowledge throughout the industry that the unions and the employers' bodies would place their full united strength in support of the price program above described.

5. The American came to the view that the prosperity resulting from the use of clause 10 gave the unions an exaggerated idea of their importance in connection therewith, led them to demand too big a price for continuing it, and at the same time rendered its use less necessary. Prices had already been raised to cover wage increases, and as the legality of clause 10 had been called into question under State and Federal laws, that provision was tentatively dropped from the Chicago agreement in 1921, and certain other localities dropped it in the same year. Cooperative relations were further disturbed by a labor dispute involving two-thirds of the industry at

the outset of 1922, and from that time to May, 1925, clause 10 has been gradually abandoned throughout the country, with the possible exception of Philadelphia.

VIII

1. By 1915 and 1916 it had been learned by respondents that individual localities could not unaided successfully maintain prices, but that outside price competition broke local understandings. Hence the American, obtaining the cooperation of the international, took steps to prevent outside photo-engravers from competing with local employers of each given district at prices below those locally agreed upon.

2. Respondent American, apart from color and school annual work, though it ridiculed the price cutter, did not attempt to prescribe a standard uniform rate of discount from scale figures for all territory. The means for eliminating price competition were local control of prices and an understanding between the clubs that each should respect prices and conditions established by other clubs when making sales in the respective territories of the latter. It has been the general understanding among engravers in soliciting outside business to conform to prices prevailing in the territory solicited in order to "deal fairly" with local competitors. At the outset, the American cautioned engravers not to forget that "20 per cent from scale prices is dangerously close to cost," nor to think there was too much profit in plates at full scale prices. "Prevailing rates" of maximum discount from scale prices for different respondent clubs, though respondent Flader rather favored "understandings" and at times advised against too definite and explicit agreements fixing discounts and restricting territory, were established with the American's hearty approval. This was done sometimes by resolution, and sometimes by mutual understanding, but rarely, if ever, exceeded the limit suggested by the American. Among centers wherein such resolutions and mutual understandings were effected, are these important centers and sections among others: New York, Philadelphia, Baltimore, ten Southern States, Indiana, Michigan, Chicago, Minnesota, St. Louis, Milwaukee, Denver, San Francisco, Pacific Northwest.

3. The American encouraged gentlemen's agreements and working understandings between clubs not to solicit business in each other's territory at cut prices, if, indeed, they should even accept outside orders; and such arrangements were entered into. Its officers, at photo-engravers' sectional conventions, openly favored the fixation of maximum agreed discounts from the scale, but insisted that no express resolution should show the actual intendment as to inter-

sectional price understandings, but on the contrary should make reference to "common sense, ethics and business practice." Commissioner Flader has also done much letter writing, sometimes in cooperation with club secretaries and with individual engravers, to induce members and nonmembers to refrain from seeking orders in outside territory except at the discounts there prevailing. He has thus secured assurances and pledges of protection and he has not always refrained from giving publicity in his magazine to obdurate offenders.

4. The only plant in Terre Haute is of about the size the American considers most efficient, unaffiliated with any respondent club, and hence with no agreed rate of discount, without traveling salesmen, and with an inadequate local market. It solicits business by circular in many States, at prices lower than those prevailing in the invaded territory. Texas engravers publicly appealed to its manager through the columns of the American's official organ in 1917, to realize that in so doing he was tearing down the very thing the American was trying to build up, and it quit seeking business on price only. This photo-engraver signed an agreement containing clause 10, after being threatened with a strike, and in 1918, when he was issuing cut-price circulars, announcing the opening of a since discontinued office in Chicago, the Commissioner was appealed to and, in the summer of 1920, said that though this manufacturer had been a "bad competitor," it was better for all concerned to be friendly with him than to continue to fight him, and "at the present time we have made a pretty good sort of chap out of him." But before the end of the year, upon receipt of a number of complaints from several parts of the country, Commissioner Flader at least twice protested to him against excessive discounts, and warned him that he was inviting retaliation. He joined the American, and complaints from engravers against his prices resulted in his adopting the policy of not soliciting in territory where there were engraving shops, of avoidance of getting into any trouble with any organization and of staying in territory where "no one bothers." But his discount of 40 per cent from scale in 1924 was drawing considerable unsolicited business from St. Louis.

5. To get members of the American to accept business from outside territory in some cases "it pretty nearly has to be pushed on them." The American fostered the disposition to refuse or discourage such business by publishing in its magazines with laudatory comment letters from engravers turning down outside business as "evidence of existing cooperation" and in other ways, and failure to exhibit such disposition was resented by respondent clubs.

IX

1. Respondent clubs engaged in price fixing activities of a local or sectional character under the above described arrangement and understanding forbidding price competition by photo-engravers of diverse localities or sections, as set forth in ensuing paragraphs:

2. CHICAGO.—(*a*) Respondent club in Chicago was the first to adopt the standard scale and has continued to use it. This club, with assurances from respondent, local and respondent international that they were determined to enforce a strict adherence to the agreement and did not propose to permit their members to cooperate with any employer who persisted in selling at prices dangerous to himself and the members of the labor committee, kept clause 10 in Chicago for nearly six years from April 19, 1915, but omitted it from their 1921 and later wage agreements. Its ways and means committee, ten days after the 1915 convention of the American, and after consulting counsel, unanimously recommended that "a discount of 20 per cent be granted from the standard scale, and an additional discount of 10 per cent where the nature of the business warrants it."

(*b*) No formal adoption of this discount rate by the club itself is shown. A one-time chairman of the club, told the secretary that a guardian should be appointed for letter writers who announced that as a fixed discount, and President Houser suggested censoring members' letters announcing the adoption of the scale or its revisions. This, however, was the rate announced in October, 1915, by a member who had recently been forced to join the club and a discount of 20 per cent was later regarded as the maximum rate in Chicago On May 1, 1919, this was formally changed to 10 per cent. Propaganda against price cutting suggested "to be shot at sunrise" as the proper fate for the man who failed to "stand tight" and the chairman of the club in 1920, on receipt of many reports of price cutting, threatened to resign unless the practice, so far as it existed, was stopped. The club at the start was to base prices on the scale except in out-of-town cases where adherence to it would embarrass members, adding subsequently to its territory all cities that had officially notified it of putting the scale into effect, and directed its secretary to furnish members a list of such cities.

(*c*) This club made provision for discipline of members violating its by-laws or motions and resolutions adopted by it or its board of directors, and likewise for inspecting the books of members or otherwise securing data necessary in adjusting complaints. The secretary was empowered and authorized by club vote in December, 1915, to inspect the books of all members. Discipline, under the Chicago club's by-laws, which have been used in other sections as a model, consisted of reprimand, fine, suspension or expulsion, in the discretion of its board of directors, and its constitution warns members that they shall be held fully responsible and subject to discipline for all acts of employees and representatives in violation of the club's constitution, by-laws, rules and regulations. The secretary characterized it as being remiss in duty for even a nonmember engraver to fail to report instances of price cutting as soon as they were brought to his attention.

(*d*) The club's board of directors, on October 7, 1915, considered several complaints referring to trade matters and abuses and reprimanded the perpetrators. One employing photo-engraver after a severe reprimand, was told that repetition would not be tolerated, and he promised faithfully to conduct himself properly in the future. The minutes of a board meeting on December 30, 1915, recite that eight members appeared in answer to summonses, and where violation of the constitution and by-laws were under consideration, each one agreed thereafter to adhere strictly to the letter. Members of the club are still called before its board of directors from time to time to explain their reasons for quoting below the standard scale or at less than the prices which the club considers fair, and nonmember engravers have also been asked for similar explanations. Color-plate makers, in 1917, authorized the club's board of directors to investigate all existing contracts for color plates, to determine if any of them violated existing agreements with respondent local. The club needed no outside aid so far as its own members were concerned, and in 1915, and for some time thereafter, it secured the cooperation of the two largest nonunion plants which, as a matter of form, resigned from the club because they did not wish to embarrass it nor themselves in dealing with the union. A leading member of this club, in his 1919 report as president of the American, claimed that the unethical engraver was then a rarity, for, by organized effort, they had been able to reform him, and that " our employes are working with us and not for us, and are, in reality, our business partners; and woe betide the pirate who preys unfairly on us; for he will now find a united front arrayed against him." They exerted strike pressure for price maintenance with aid of the local union.

(*e*) There is a nonunion shop of considerable size in Chicago, which the American has regarded as " a bone of contention and a sore spot " since 1918, although it cooperated with the club up to that time, and the club had had to contend with other price cutting. Even in times of business depression the club was able to prevent price cutting.

(*f*) The club received the cooperation of the local union, in April, 1923, upon the entry of new shops into the field, through a resolution of the union for distribution to every engraving concern in the city, serving notice on them of its intent to put a stop to unfair competition of whatever kind even to the extent of enforcing that section of the general laws of the international which it cited as authorizing the executive council, if necessary, to withdraw union men from plants engaged in "unfair, unjustified, or unwarranted competition for trade and in selling engravings, and which may react to the detriment" of the craft.

3. ST. LOUIS.—(*a*) Respondent club in St. Louis, in December, 1915, unanimously adopted and has since used the scale, and at the same time, in conjunction with respondent local, put clause 10 into operation, and did not abandon clause 10 until the middle of 1922. The club's membership has, at times, embraced all St. Louis engravers, and in April, 1924, included 14, which was most of them; they received support as to prices from outside photo-engravers, and upon partial failure of such cooperation appealed to respondent American for help.

(*b*) Only partial records of the meetings of the club were available and the prevailing rates of discount from scale are not in evidence until 1919, when the club had cut off all discounts, except 10 per cent for out-of-town trade to meet Chicago and other competition. In 1917, club membership carried with it the obligation to sell on the standard scale. Specific net rates per hour to be charged for all time work, and scale plus 25 per cent as a temporary selling basis for scale plates were recommended at a club meeting in January, 1920, where it was also suggested that all members mark their invoices "Net cash, no discount." The club's notes supplementary to the scale for use beginning with the 1920 scale also make provision for certain net prices. Estimating classes, which are still continued by respondent club, have been conducted in a painstaking manner. Members were, at the time of the hearings herein, in the main adhering to the practice of giving a discount of 10 per cent from scale to printers, publishers and advertising agencies, and charging all other buyers scale price without discount. Certain members, however, sometimes grant confidential discounts or secret rebates. The customer in some cases deducts these from his remittance, although they are not shown on his invoices, and in others they are handed to him in cash.

(*c*) The club's constitution provides that members failing to furnish its secretary-treasurer such statistics as may be required to compile records for use in his office shall be subject to fine; its provisions for discipline are otherwise substantially the same as those of the Chicago club. The club has called upon members for explanations of price cutting, and attempted to go over their books.

(*d*) The club brought to the attention of the local union any cases of suspension of the members for failure to adhere to price understandings, as well as for other reasons, and had the benefit of union support of its price understandings by strike pressure.

4. NEW YORK.—The course in the city of New York of operation under the standard scale and clause 10 varied somewhat from that followed elsewhere.

(*a*) Respondent club, on April 3, 1916, began and has since continued the use of the standard scale, and on the same day began to operate under clause 10, which was continued in force until May 17, 1921, when it was removed at the request of the club. Both were adopted nearly unanimously, in December, 1915. The club adopted the standard scale with a fixed discount of 10 per cent and appointed a "commissioner" and placed at his disposal the services of three certified public accountants. About this time or later, the club made provision for an emergency fund not to exceed $100,000. It also appealed to such engravers in other cities as might be induced to enter its market, to respect established local conditions, and promised reciprocity.

(b) The club was handicapped for about two years by investigation and indictment under the State Donnelly antitrust act. Respondent club, in 1916 during the early progress of said investigation by the State district attorney, claimed that it had not violated the Donnelly act, but promised for the future to follow it in letter and spirit, to insure open and free competition, and to withdraw the scale immediately. Despite those assurances and attempts by the American to adjust the situation the New York business publishers convinced the district attorney that the engravers were not abiding by their agreement, and in June an indictment followed. The club, in June, 1917, in an amendment to its by-laws, reaffirmed the scale as the basis of charges, but provided that discounts, depending on the nature of the work, the services rendered, the volume of the order and the cost of production were to be fixed in each case by the buyer and seller. A demurrer to the indictment was finally sustained in February, 1918, in the court of general sessions of the peace in and for the county of New York upon grounds of statutory construction.

(*c*) The local club had, at the outset of operation under clause 10, the cooperation of the local union, under clause 10 in bringing strike pressure to bear upon the three shops of the largest photo-engraving concern in the city, in order to enforce the price understanding.

The price fixing activities of the club were, however, dwarfed by the subsequent action of the local union, which, after expressing dissatisfaction with the efforts of the club in the obtaining of enhanced prices, invoked provisions of the general laws of the international union and assumed complete control of minimum prices of photo-engraving products made by New York concerns, and enforced the same by calling strikes, over the period from November, 1918, to April, 1922. The great majority of the members of the New York club, and photo-engravers shipping from other States into New York, cooperated with the New York union in its aims and efforts as to prices. The State legislature, however, in 1921, so amended the Donnelly act as to include articles or products "used in the conduct of trade, commerce, or manufacture," as well as articles or commodities of common use, and in a test case under this act, officers of respondent local were enjoined, in 1922, from conspiring, by any scheme or device, to fix prices, and the local union thereupon, in 1922, abandoned its schedule of prices and subsequently price competition in the sale of engravings in New York City has increased. Respondent Director Schuetz, however, who was one of the parties named in the said indictment, while he was president of the American in 1922, in urging the respondent employers in California, to agree not to cut prices in the territory of other clubs, said: "You can imagine the feeling if Philadelphia came to New York and tried to take our business away," or vice versa; and in exhorting them back to the days when they sold on the scale less a certain discount, and made "barrels of money," said: "We in New York today are getting very close together—very close. Everybody there sees the error of their ways, and we are going right back to where we were."

5. NORTHERN CALIFORNIA.—(*a*) The sectional association for California (except the southwestern part of the State) has 26 members in San Francisco, Oakland, Fresno, Sacramento, Stockton, and San Jose. The scale and clause 10 were put into operation in San Francisco in 1916, and by the entire membership on May 1, 1917, with permissive maximum discount of 10 per cent from the scale for black-and-white plates and 20 per cent on color process plates; but while the use of the scale has continued uninterruptedly, clause 10 was dropped at the end of 1921. Said respondent later agreed upon extra charges of 50 per cent and 100 per cent for rush work, and secured the aid of respondent local in maintaining them. Although there were occasional rumors of price cutting and rebating, its scale was in 1922 very well adhered to on the whole. The club, in June, 1923, acting on the suggestion that salesmen who made a practice of

granting competitive prices should be discharged, directed its executive committee to ask all members fully to instruct their salesmen on the club's ethics. The club, in January, 1919, amended its constitution, already containing the typical provisions for discipline, to authorize its board of directors to retain the services of a competent auditor to "expert" the relevant portions of books of firms suspected of violating the basic selling price, in cases where the board should be convinced by evidence presented by a member or members, that such violations existed. A refusal to permit such audit was to be taken as an admission of guilt, and in such case the directors were to recommend a penalty.

(*b*) In 1921, as a further means of maintaining the standard scale, it created a grievance committee to hear, investigate and determine all differences arising in the club. It had earlier provided that members should submit their contracts to the club for record, and that all bids for school work must be submitted to the club or its directors before being tendered to the prospect, and required the withdrawal of bids not in conformity with its rulings.

(*c*) It reprimanded, fined, suspended, and expelled members for breach of its rules by "violating the terms of the standard scale," or in other ways. The club reported to the local union on the discipline it administered to members and reported engravers who refused to join the club; it received the cooperation of the union in persuading and demanding that engravers join the club. The club unanimously voted to grant the local union a desired wage increase in 1919, with a proviso that the union should agree in return to assist in enforcing said charges for rush work and pay half of the necessary charges for an auditor when his services were deemed necessary by a joint committee of the club and that the local union should "enforce the scale of prices adopted" by the club.

6. Pacific Northwest.—(*a*) Respondent Northwestern is a sectional association of clubs. It had three members in Vancouver, B. C., five in Seattle and Tacoma, and five in Portland, in 1919; eighteen members in 1922; and in 1923 its membership included all engravers in this territory except one small shop in Portland. It adopted the scale, or some modification of it, in July, 1915, and has since continued its use, although its adoption of revisions has not always coincided with that of the American. At the same meeting it unanimously favored the universal adoption of clause 10, and Seattle, Tacoma, and Portland, in cooperation with respondent local union, began the use of clause 10 in 1916 and continued it until May, 1924. After over a year's trial the Northwestern declared it the only means to correct the many evils that had confronted it,

and pledged its support for the installation of clause 10 in every city in the Northwest.

(*b*) The Northwestern passed resolutions favoring, recommending and proposing to the various clubs for adoption, and itself adopting specified rates of discount from its scale of base prices, and specific prices for extras; its recommendations were promptly adopted by the Portland, Seattle, and Tacoma clubs.

(*c*) The Portland club, under its provisions for discipline which also were adopted by the Seattle club in 1915, investigated apparent instances of price-cutting whenever they occurred and laid such stress upon them that the practice was immediately stopped. Upon various complaints of price cutting in 1919 it voted to audit the books of each member for a period of fifteen days, and to retain an accountant to investigate disputed accounts and alleged violations of its code of ethics at the cost of the offender or, if the charges were not sustained, at cost of the accuser. Members submitted for the club's approval bids for certain kinds of work before tendering them to the prospect, and the club directed members to withdraw cut-rate quotations and to refrain from giving a quotation on an order placed with another engraver. It suspended a member in May, 1918, for failure to protect a fellow member on prices quoted "in accordance with the usual custom," and directed that the local union be notified thereof.

(*d*) In 1922 the Northwestern's construction as to who were entitled to its prevailing rate of discount of 10 per cent to printers, publishers and advertising agencies only, and the members' adherence to this construction, were excellent. Such members as charged less than scale were doing so with the knowledge and consent of the clubs, or so concealed and covered up the transactions that "no one could ever prove them." The Northwestern's success in 1922 was due largely to a gentlemen's agreement of long standing and strictly adhered to, not to solicit business in one another's territory.

7. In numerous localities and sections other than the foregoing as to which findings are made above, similar means and activities, including the standard scale and clause 10, were employed by respondents, with the aim and result of lessening and restricting price competition in photo-engraving products, including Buffalo, Philadelphia, Baltimore, Cincinnati, Louisville, Kansas City, and Denver; also Indiana, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Oklahoma, Texas, ten Southern States, and the Mountain States.

The combined activities of the respondent employers' organizations and their officers and members hereinabove set forth were intended greatly to enhance prices in photo-engraving products, to curtail, lessen, hinder and regulate price competition therein, including products transported from one State to another as well as those not so transported, and to lessen the amount and number of such products transported from one State to another. The effect, except latterly in New York City, has been to enhance and stabilize the prices of such products and to curtail, restrict and regulate price competition. The combination has not availed to destroy all price competition, nor has the effect been uniform throughout the country nor throughout the period covered by the pleadings. It has, however, been effective as regards a large proportion of the trade, including to a lesser degree that of plants not belonging to respondent clubs, from 1915 to the close of the present case, and, to the extent and for the time that it has been effective, it has destroyed competition in price and has compelled unwilling adherence of certain competitors of manufacturing respondents.

CONCLUSION

That the practices of the respondent clubs and of the respondent American Photo-Engravers' Association, as set forth in the foregoing findings as to the facts, in the circumstances therein set forth, constituted a conspiracy and combination to further unfair methods of competition in interstate commerce in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been submitted to the Federal Trade Commission upon the second amended complaint of the Commission, the answers of all respondents and evidence received by trial examiners for the Commission, and counsel for the Commission and for respondents having submitted written and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent manufacturing photo-engravers and the respondent organizations thereof 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 hereby ordered* as follows:

I

That all and several of the local and sectional clubs of the associations of employing photo-engravers, and respondent American Photo-Engravers' Association, and the officers, agents, representatives and members of each of the said clubs and associations, do cease and desist from combining, conspiring, confederating, cooperating or agreeing together or with others, for the purpose or with the result of limiting, lessening, hindering, regulating or suppressing competition in price in the sale of photo-engraving products in interstate commerce, or of enhancing the prices of photo-engraving products sold in such commerce; and for such purposes, or any of them, from coercing, intimidating or preventing manufacturers of such products whether respondents herein or not, from individually and freely making such prices for their products as the free exercise of their individual judgment shall direct, and from preventing such manufacturers from competing in price among themselves or with others engaged in the same business.

II

That for the purpose of rendering section 1 of this order effective the said described respondents shall cease and desist from the following described methods of competition and practices in interstate commerce, and each of them to wit:

1. Respondents American Photo-Engravers' Association and the local and sectional clubs and associations, their officers, agents, representatives and members shall cease and desist from the following acts:

(*a*) From using, directly, or indirectly, the so-called standard scale, either that for black-and-white work or that for color-process work, or any modified form thereof or any substitute therefor, as a means for hindering, lessening, or curtailing competition in the prices of any photo-engraving product or products; and from having an understanding or agreement that the figures of the said standard scale or said figures as modified by an understood or agreed discount or deduction, addition or premium shall constitute the prices or the minimum prices of any photo-engraving product or products.

(*b*) From using, directly or indirectly, either separately or in combination in the making or soliciting of sales, any memoranda or notes wherein have been fixed by agreement or understanding between two or more of respondent manufacturing photo-engravers or by one or more organizations thereof, the prices or time rates or minimum prices or time rates to be made for any special or hand work, service or operation in connection with the manufacture and pricing for photo-engraving products, and from continuing the use of the fixations of prices or minimum prices contained in the so-called side notes of the Standard Scale, for either black-and-white or color-process work, of the American Photo-Engravers' Association or contained in the so-called supplemental notes of any respondent local club or association, and from agreeing upon, or having a mutual understanding as to a rate or minimum rate of charge to be made for special or hand work or any branch, part or process of photo-engraving, as a part of the price of any finished photo-engraved products.

2. The respondent local and sectional clubs and associations, their officers, agents, representatives and members shall cease and desist from the following acts:

(*a*) From seeking, urging, advocating, making or maintaining, directly or indirectly, an agreement or understanding, express or implied, between two or more respondent local clubs or associations or between individual photo-engravers, that members of a club or association, or individual photo-engravers of one locality or section shall not sell their products at prices lower than the prevailing, customary, agreed or understood prices in any territory where sales are to be made, or into which the photo-engraving products in question are to be transported; also from advocating and declaring that it is unethical or unbusinesslike, or remiss or negligent as regards due and proper cooperation in the industry, or otherwise to the same end, for a photo-engraver located in one locality or section to compete in price or otherwise, with one or more photo-engravers in another section or locality.

(*b*) From the use, in contracts with local photo-engravers' unions, of that certain contract provision known in the photo-engraving trade as "clause 10," as an obligation to, or as a means or occasion for, inducing, persuading or compelling any photo-engraving concern or concerns to adhere to, or agree to adhere to, any certain prices or minimum prices for photo-engraving products, or any of them, or to cease to offer competition in price in such products, or to lessen or restrict such competition with such photo-engravers, and from the use of any other device, contract, provision, mutual understanding or other means for accomplishing the same purpose through the cooperation of any union or agent, representative or committee thereof.

(*c*) From notifying any union or any agent, representative, committee, employee or member of any union of price cutting or competition in price by any photo-engraver, with the purpose or result of obtaining cooperation on the part of any union or any agent or representative thereof in pursuance of a combination or conspiracy within the terms of Section I of this order; also from stating or threatening, directly or indirectly, that if any manufacturing photo-engraver shall compete in price or shall not abide by so-called fair, equitable or reasonable prices or minimum prices, such photo-engraver may not or will not be able to retain or secure workmen; and from otherwise exerting pressure against one or more individual manufacturing photo-engravers to the end that they shall not freely compete in price with others.

(*d*) From advocating, maintaining, adopting or using any resolution, agreement or understanding as to the price or minimum price of any photo-engraving product or of any process, operation or time element in the manufacture thereof or of any extras or accessories connected therewith; or any resolution, agreement or understanding for the purpose of lessening price competition therein; and from using any schedule or scale of figures for the purpose of reaching or maintaining an agreement or understanding upon prices or minimum prices, either with or without the addition or subtraction of any percentage, discount or sum derived by mutual understanding or agreement, or by any other means or device whatsoever.

(*e*) From reprimanding, fining, suspending or expelling from the said respective employers' organizations any member for failing to abide by any agreement or mutual understanding, express or implied, as to the price or minimum price of photo-engraving products, or of any process, specialty, operation, extra or accessory, or the time element therein.

(*f*) From asserting or using the right, power or privilege to inspect any books, records, papers or accounts of any photo-engraver, whether respondent herein or not, for the purpose or with the result of detecting any violation of any agreement or mutual understanding as to price or minimum price; and from using or invoking any previously passed motion, resolution, rule, regulation or law of any said club or association, purporting to confer such right or privilege upon any respective club or association, or any representative or agent thereof, for the said purpose or with the said result.

(*g*) From holding estimating classes for the purpose of securing or approximating common prices among members, or other photo engravers, for any photo-engraving product or any process, specialty, operation, extra or accessary thereof or thereto, or time element therein.

3. The respondent, American Photo-Engravers' Association, its officers, agents, representatives and members shall cease and desist from the following acts:

(*a*) From using its official organ the Photo-Engravers' Bulletin, or circulars, or written or oral communications of its officers or other representatives, or adopting resolutions for the purposes or with the results named in section I of this order; and for the purpose or with the result of promoting, urging, or aiding the use by said respondent local or sectional clubs or associations of any of the methods or the practices named herein in section II, subdivision 2 (*a*) to (*g*), inclusive.

(*b*) From aiding or fostering an understanding whether through "clause 10" or otherwise on the part of any manufacturing photo-engraver or photo-engravers, or any organization thereof, with any union whereby said union might or could bring pressure by strike or the withdrawal of men, or by direct or indirect threat thereof, to induce any photo-engraver or photo-engravers to stop, lessen or prevent competition in price, as aforesaid, in the photo-engraving trade.

And it is further ordered, That the respondent local and sectional photo-engravers' clubs and associations, and the respondent American Photo-Engravers' Association and their respective officers, agents, representatives and members shall, within 60 days after the service upon them of a copy of this order file with the Commission their report in writing stating the manner in which they have complied with and conformed to this order.

And it is further ordered, That the charges in the second amended complaint herein, as against the respondents, the International Photo-Engravers' Union, the local photo-engravers' unions affiliated therewith, and the officers, executive boards, and members of all of the said respective unions, be and the same are hereby dismissed.

By the Commission, Commissioner Ferguson not voting, not having been a member of the Commission when the latter was argued; and Commissioner Humphrey dissenting as to the dismissal of the union labor respondents.

IN THE MATTER OF

PUBLIC SERVICE CUP COMPANY

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

Docket 1373. Complaint, Mar. 29, 1926—Decision, Feb. 20, 1928

Where a corporation engaged in the manufacture of paper drinking cups and dishes, together with containers, folders, trays, etc., and in the sale thereof through jobbers exclusively; in pursuance of a policy directed to the maintenance of the prices fixed by it for the resale of its products to retailers,

(*a*) Requested and secured promises from new customers for the resale of said products at such prices;

(*b*) Advised customers by letter and through salesmen that it expected and required rigid adherence thereto and that it would discontinue sales to price cutters;

(*c*) Refused to sell its products to price cutters, or to resume dealing therewith unless or until they gave satisfactory assurances that they would thereafter respect its prices;

(*d*) Requested customers, by letter and through salesmen, to cooperate in the maintenance of its said prices and to notify it of price cutting, and advised customers that it would require price cutters to respect its prices thereafter under penalty of being refused further sales of its products, and wrote customers complaining of price cutting, whether voluntarily or at its request, that it would investigate the matter and require the offender to stop the practice, and thereafter notified the customer of its action in the premises; and

(*e*) Instructed salesmen to report price cutting to it, and investigated the same whether thus brought to its attention or through customers, and threatened offenders with discontinuance of further sales, and did discontinue sales to those failing to give satisfactory assurances as to their future conduct, and advised customer competitors concerned of its action;

With the effect of requiring all customers uniformly to sell its product to the public at the prices named by it, and with the tendency and capacity to hinder and restrict competition between them, and with the tendency to and with the effect of unduly hindering and obstructing competition in the sale and distribution of its products:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. T. B. Dixon and *Mr. G. Ed. Rowland* for the Commission.

Briesen & Schrenk and *Battle, Miller, Levy and Van Tine* of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture of paper drinking cups, dishes and like products and in the sale thereof to wholesale and retail dealers in various States, and with principal office and place of business in New York City, with maintaining resale prices in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than three years last past, in the course and conduct of its aforesaid business, "has enforced, and still enforces, a merchandising system adopted by it of establishing and maintaining certain specified uniform prices at which its said products shall be resold by dealers handling same, and respondent enlists and secures the support and cooperation of said dealers and of respondent's officers, agents and employees in enforcing said system. In order to carry out said system, respondent during said time has employed and still employs the following, among other means, whereby respondent and those cooperating with it have undertaken to prevent and have prevented dealers handling respondent's said products from reselling same at prices less than aforesaid resale prices established by respondent":

(*a*) Establishing uniform minimum prices for the resale of its products by dealers handling the same and issuing to said dealers price lists setting forth the aforesaid prices;

(*b*) Making it generally known to the trade by letters, telegrams, interviews with its agents and by other means that it expects and requires such dealers to maintain and enforce said prices;

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

(*d*) Seeking and securing from such dealers reports of information concerning and evidence of price cutting by other dealers;

(*e*) Employing its salesmen and other agents and employees to ascertain, investigate and secure information concerning price cutting, together with proofs thereof, and to report to it;

(*f*) Using information secured as above set forth, and otherwise, to induce and coerce price cutting dealers to observe and maintain prices in the future by exacting promises and assurances from them to that effect and threatening them, in the event of their failure so to do, with refusal of further supplies;

(*g*) Exacting promises and assurances from dealers, to maintain its said resale prices, as a condition of opening new accounts with them or of continuing their supply of its said products;

(*h*) Refusing, in many instances, to further supply said products to price cutting dealers; and

(*i*) Using other equivalent, cooperative and individual means and methods for the enforcement of its said system of resale prices;

The result of the aforesaid acts and practices has been, as alleged, that its said resale prices have been and now are generally maintained, and, furthermore, as charged, a direct effect and result thereof "has been and now is to suppress competition in the distribution and sale of respondent's said products; to constrain said dealers to sell said products at aforesaid prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of those advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodities under conditions of free competition." Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and the respondent before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and having argued the case before the Commission, 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, Public Service Cup Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the city of New York, in said State. Its capital stock is $200,000. Respondent is engaged in the business of manufacturing and selling paper drinking cups and paper dishes under the trade name "Lily" cups and "Lily" dishes, together with containers, holders, trays, etc.

PAR. 2. Respondent sells its products to jobbers in various States of the United States and the District of Columbia, and causes such products, when sold, to be transported to the respective purchasers thereof from New York, N. Y., through and into various other States of the United States and the District of Columbia, where the purchaser resides. In the conduct of its said business respondent has been and is now in competition with other persons, partnerships, and corporations, engaged in the manufacture and sale of paper drinking cups, paper dishes, containers, holders, trays, etc., in commerce between and among the various States of the United States, and the District of Columbia.

PAR. 3. Respondent distributes its entire output through jobbers, which jobbers resell the articles to retail dealers and various users thereof throughout the United States. It has about 1,000 accounts to which it sells. It employs traveling representatives who call on the jobbers to which it sells and who solicits orders for its products. The paper cups and dishes manufactured and sold by respondent are used by soda fountains, soft-drink stands, and also in offices and other places for the convenience of the public, in place of china dishes or glassware. They are made in various sizes, such as 5-ounce, 7-ounce, 8-ounce, 10-ounce, and 12-ounce, and are sold under the trade name "Lily" cups and "Lily" dishes.

PAR. 4. In connection with the distribution and sale of its products as aforesaid respondent has adopted and enforces a system of uniform resale prices at which its customers shall resell said products. Respondent publishes and distributes among its customers two price lists, one setting forth the prices which the customer pays for respondent's products, and the other setting forth the prices at which the customer shall resell to the retailer. Upon receiving an order from a new customer respondent writes a letter to the customer acknowledging the order and enclosing copies of the two price lists, and requests the customer to give his assurance that he will adhere strictly to the resale prices. Many customers of respondent in reply have given such assurances. In 1923, and for some time prior thereto, respondent sent to its customers in addition to the letter above mentioned, a printed card to be signed by the customer and returned, which card contained the following:

This will acknowledge receipt of your schedule of prices dated ——— and revised resale prices dated ——— by which we will be guided.

Said cards were signed and returned by some, but not all, of respondent's customers. The use of these cards has been abandoned by respondent.

Par. 5. Respondent requests its customers to report to it any instances of price cutting on its products which come to their attention. Many of respondent's customers in response to these requests have sent in complaints of competitors selling respondent's products at prices less than those named by respondent. In some instances such complaints from customers are voluntary on the part of the customer. In every instance, whether at its request or voluntary, respondent writes the customer making such complaints assuring him that it will investigate the case, and require the offending customer to stop such price cutting. Respondent always investigates such instances, either through salesmen or by letter to the offending customer, and requests said customer to give assurances that it will not sell in the future below the prices named by respondent. If the customer agrees to abide by its resale prices in the future respondent continues to sell him, but if he does not give satisfactory assurances as to his future conduct, respondent refuses to fill any further orders received from him.

Par. 6. Respondent instructs its salesmen to report to it any instances of price cutting on its products which come to their attention in their territories. It also requires its salesmen to investigate and report to it on dealers suspected of not maintaining its resale prices. Respondent's salesmen request its customers to call to their attention any instances of price cutting on respondent's products by their competitors, and assure said customers that respondent will require such price-cutting competitors to sell at the resale prices named by respondent, or it will refuse to sell them any more of its products. When customers are reported to respondent for failure to maintain the resale prices named by it, salesmen are directed to call on the offending customers and endeavor to secure their promise to maintain the resale prices in the future. The salesmen threaten the offending customers that if they do not restore such resale prices and promise to observe them in the future, they will be refused further orders of respondent's products.

Par. 7. Respondent enforces its resale price plan by refusing to sell its products to customers who sell Lily cups and Lily dishes for less than the resale prices established by respondent. When respondent is advised that a customer is selling its products below the resale prices named by it, and the customer will not, after being warned by respondent or its salesmen restore the prices to those established by respondent, no more orders from the customer for its products will be filled by respondent. Respondent advises its customers by letter and through its salesmen that it expects and requires a rigid adherence to the resale prices set by it, and that if said prices are not maintained, it will discontinue selling its products to the customer who fails to maintain them. Respondent has refused to sell its products to many customers who have failed to maintain the resale prices named by it.

PAR. 8. Respondent, by letters and through its salesmen and representatives, requests the cooperation of its customers in maintaining its resale prices, and when it refuses to sell a customer for failure to maintain its prices, it notifies its other customers, who are competitors of the customer who has been cut off, of the fact. When a customer has been refused further supplies of respondent's products for failure to observe the resale prices named by it, said customer can not again buy its products from respondent until he has given satisfactory assurances that he will follow the resale prices established by respondent in the future.

PAR. 9. The resale price policy and practices of respondent, as applied to its products, as hereinbefore set forth, have the tendency and capacity to and do require all customers handling respondent's products uniformly to sell the aforesaid products to the public at the prices named by respondent, and further to hinder and restrict competition between customers handling respondent's said products. Respondent's said practices tend to and do unduly hinder and obstruct competition in the sale and distribution of its products in the course of interstate commerce.

CONCLUSION

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

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 briefs and oral argument by counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, Public Service Cup Co., its officers, directors, agents, servants, and employees, cease and desist from, directly or indirectly, carrying into effect, or attempting to carry into effect, by cooperative methods a system of uniform resale prices at which the articles manufactured by it shall be resold by its customers and distributors, and more particularly by any or all of the following means:

(1) Seeking and securing contracts, agreements or understandings with customers or prospective customers that they will maintain the resale prices named by it.

(2) Requesting dealers, either directly or through its salesmen, to report competitors who do not maintain the resale prices suggested by respondent, or acting on reports so obtained by refusing or threatening to refuse sales to customers so reported.

(3) Utilizing its salesmen for the purpose of enforcing cooperation in its resale price maintenance system, to report customers who do not observe its suggested resale prices, or acting on reports so obtained by refusing or threatening to refuse sales to customers so reported.

(4) Requiring from customers previously cut off because of price cutting, promises or assurances of the maintenance of respondent's resale prices as a condition precedent to reinstatement.

(5) Requiring from customers charged with price cutting, promises or assurances of the maintenance of respondent's resale prices as a condition precedent to future sales to said dealers.

(6) Utilizing any other equivalent cooperative means of accomplishing the maintenance of uniform resale prices named by respondent for its products.

It is further ordered, That respondent, Public Service Cup Co., within 60 days after 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.

IN THE MATTER OF

SAMUEL DACH, DOING BUSINESS UNDER THE TRADE NAME AND STYLE COLUMBIA NOVELTY COMPANY

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

Docket 1439. Complaint, Feb. 19, 1927—Decision, Feb. 20, 1928

Where an individual engaged in the sale of liquid perfume and miscellaneous novelties or premiums therewith, directly to the consuming public; advertised certain articles offered as premiums for the purchase of a certain number of bottles of the perfume, for subsequent resale by the vendees thereof (mostly children), in circulars, magazines and newspapers of general circulation, as a "ring watch", studded with 14 brilliant sparkling reproduction diamonds, or, in some cases, with "blue-white raysola diamonds," and a penknife (offered as part of a "school box and outfit"), as a "gold fountain pen and gold knife", the fact being that the so-called ring watch contained neither watch, nor diamonds of any kind, but consisted of a ring with a simulation of the face of a watch, with no precious stones but only particles of glass, and that the pen and knife contained no gold whatever, but were made of a base metal shell or covering simulating gold in color only; with the capacity and tendency to mislead and deceive members of the purchasing public into purchasing said perfume and premiums in the erroneous belief thereby induced as to the nature of the latter, to the prejudice of the business of its competitors and the public:

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

Mr. Henry Miller for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at East Boston, Mass., in the sale of perfumery direct to consumers residing at points in various States, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about two years last past, in advertisements by him in newspapers, periodicals and other publications of general circulation throughout the United States and in certain sections thereof, through which advertisements he sought and secured persons, mostly children, to act as his agents in the sale of his said perfumery by house-to-house canvass, by offer of certain articles of merchandise as "premiums" as a reward for services in selling said perfume, made many false and misleading assertions and representations concerning the nature, quality and value of said premiums, said assertions and representations including the following, among many others of like tenor and effect, concerning various premiums offered.

That a certain ring watch was ornamented with diamonds and engraving and composed in part of platinum, and that a certain "School Box and Outfit", both of which articles were depicted in said advertisements, contained a gold fountain pen and gold penknife, the facts being that the first-named article was not ornamented or composed as represented, and that the only pen and knife contained in said box and outfit contained no gold.

By means of such false and misleading assertions and representations, as alleged, "respondent induces and procures many persons, for the most part children, to become aforementioned sales agents for respondent, which said agents accept such employment acting in the belief that said statements and representations are true", all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

Respondent entered his appearance in said proceeding, and thereafter, the matter being ready for the taking of proofs with respect to the charges in said complaint, a stipulation as to the facts was entered and agreed upon by and between respondent and counsel for the Federal Trade Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts of the proceeding before the Federal Trade Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement, without further hearings, to make its report in said proceeding, stating its findings as to the facts and conclusion and entering its order disposing of the proceeding.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Samuel Dach is an individual doing business under the trade name and style Columbia Novelty Co. with his place of business in the city of East Boston, State of Massachusetts. He is and for more than two years last past has been engaged in the business of selling and distributing liquid perfume and miscellaneous novelties, hereinafter referred to as premiums, directly to the consuming public throughout the various States of the United States. He causes said products when sold to be transported from his place of business in East Boston, Mass., through and into other States of the United States to the respective purchasers thereof in such other States, and throughout the course and conduct of such business he has been and still is in direct active competition with many other individuals, partnerships, and corporations engaged in the business of selling and transporting similar and like products in commerce between and among the various States of the United States.

PAR. 2. Respondent's aforesaid business is, and for more than two years last past has been, conducted by him as hereinafter set forth. He causes advertisements to be published through circular letters and in magazines and newspapers of general circulation throughout the United States and in various sections thereof in which he deals, and offers to sell and deliver said premiums to the purchasing and reading public for and in consideration of the reader's purchasing from respondent, or selling as agent for and on behalf of the respondent a certain number of bottles of liquid perfume at a stated price per bottle and remitting to respondent the amount of the selling price of such perfume. As a result of said advertisements many hundreds of persons annually, for the most part children, accept respondent's offer in said advertisements stated and communicate by letter their acceptance of such offer to respondent at East Boston, Mass., whereupon respondent causes the stated number of bottes of his perfume to be shipped and transported from his place of business in East Boston, Mass., through and into other States of the United States to each of such respective purchaser-readers. Within a certain time after the receipt of said perfume, usually fifteen days, said purchaser-readers are required, under the terms of respondent's offer, to, and they do, remit to respondent the amount of money stated in said advertisements. Said purchaser-readers have the privilege of making said remittance and keeping said perfume for their own consumption or may, in their discretion, and in most instances they do, raise the amount of money necessary for said remittance by selling the perfume, as respondent's agent and for and on behalf of respondent, at the stated prices per bottle. Upon receipt of such remittances and in consideration thereof respondent causes the respective premiums so advertised to be transported from his place of business in East Boston, Mass., through and into other States of the United States to each of such purchaser-readers making such remittances.

PAR. 3. Among the premiums so advertised, sold and distributed, as stated above, is a certain novelty denominated, described, and represented by respondent in his aforesaid advertisements as a "Ring Watch" consisting of a finger ring with a large set or ornament in imitation of and simulating in general appearance a small open-faced lady's watch studded around the dial with fourteen brilliants. In said advertisement respondent caused said so-called ring watch and said brilliants to be depicted, described, and represented as a "ring watch studded with fourteen brilliant sparkling reproduction diamonds." In some of the circular letters referred to in paragraph 2 hereof respondent represented said novelty as a "ring watch studded with fourteen brilliant blue-white Raysola diamonds." In truth and in fact said so-called "Ring Watch" contains neither a watch nor diamonds of any kind or character but the face thereof is a simulation and imitation of the face of a watch and said brilliants described as "reproduction diamonds" and "Raysola diamonds" are not diamonds nor any other precious stones, but are only particles of glass.

PAR. 4. Another premium extensively advertised, sold, and distributed by respondent as set forth in paragraph 2 hereof is a novelty designated and described by respondent as a "School box and Outfit" consisting of a small box which contains a fountain pen, pencils, penholder, knife, and eraser. Respondent caused said so-called "School Box and Outfit" to be depicted in sundry advertisements aforesaid and therein represented and described the fountain pen and knife contained in said box as a "Gold Fountain Pen and Gold Knife." In truth and in fact said pen and knife are not made of gold and do not contain any gold whatever, but are made of a base metal shell or covering simulating gold in color only.

PAR. 5. The advertisements and representations of respondent as set forth in paragraphs 3 and 4 hereof are false and misleading and have had the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous belief that said representations were and are true in fact, and to purchase respondent's perfume and premiums in such erroneous belief, to wit, that said so-called "ring watch" is a watch and is studded with a certain kind of diamonds or precious stones and that said fountain pen and knife are in fact made of or contain gold, all to the prejudice of the business of respondent's competitors and the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the stipulation as to the facts in lieu of testimony executed and filed by the respondent and counsel for the Commission, 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,"

It is now ordered, That the respondent Samuel Dach, his agents, representatives, servants, and employees, cease and desist—

(1) From representing, describing or advertising as "diamonds" or as any other precious stones or gems, any stones, brilliants, ornaments or other parts of any jewelry or similar articles of merchandise sold and distributed in interstate commerce, unless said stones, brilliants, ornaments or other parts are in fact diamonds or other precious stones or gems as represented;

(2) From representing, advertising or describing as a "watch" any article of jewelry or other merchandise simulating in general appearance a watch and sold and distributed in interstate commerce, unless said jewelry or other merchandise so represented is in fact a timepiece known as a watch;

(3) From representing, advertising or describing as being made of or containing gold, any fountain pen, knife or other article of merchandise sold and distributed in interstate commerce, unless said fountain pen, knife or other article of merchandise is in fact made of gold or contains gold as represented.

It is further ordered, That the respondent, Samuel Dach, 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 hereinabove set forth.

IN THE MATTER OF

THE GOOD GRAPE COMPANY

MODIFIED ORDER TO CEASE AND DESIST[1]

Docket 1186. February 27, 1928

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony in support of the complaint and in opposition thereto, and on brief and argument of counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondent has and is violating 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 Good-Grape Co., its officers, representatives, agents, servants, and employees, cease and desist from—

(1) Using or authorizing the use by others, in interstate commerce, of " Good-Grape," the phrase or slogan " Fruit of the Vine," or the

[1] The complaint, findings and original order in this matter, relating to the use of the words "Good Grape," and such phrases as "Fruit of the Vine" in connection with the sale of an imitation grape beverage product, containing substantially less than 1 per cent of the product of the grape, but with a pronounced grape flavor, color and odor, artificially derived and a concentrate for use of bottling plants in the manufacture of such beverage, are reported in 10 F. T. C. 99.

The original order, Commissioner Thompson dissenting, required respondent, its officers, etc., to cease and desist from—

(1) Using or authorizing the use of the name "Good-Grape" whether on advertising matter relating to the concentrate "Good-Grape" or the beverage "Good-Grape" or on bottles or other containers thereof, or on labels, or crowns, or stoppers of such bottles or containers, or otherwise, unless and until the name "Good-Grape" is in every instance accompanied with an explanation in close proximity to the name "Good-Grape" in letters at least one-half as high and one-half as wide as the letters used in the accompanying name "Good-Grape," and of heaviness of color and style of lettering which will render them at least equally as conspicuous in proportion to their height and width as the letters in the accompanying name "Good-Grape," which explanation shall contain the statement that the concentrate "Good-Grape" or the beverage "Good-Grape" is an imitation and is not grape juice. The following may be used for this explanation: "Imitation Grape—Not Grape Juice."

(2) Using or authorizing the use by others in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, or at all, the phrase or slogan "Fruit of the Vine," in connection with the sale of (*a*) a concentrate or concentrates not made from grapes and not containing the juice from the natural fruit of grapes from which a beverage is made, or (*b*) a beverage, not made from grapes and not containing juice from the natural fruit of grapes.

(3) Using or authorizing the use by others in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, or at all, any word or words, pictures or symbols falsely representing or suggesting (*a*) that a concentrate or concentrates from which a beverage is made, is made from grapes and contains the juice from the natural fruit of grapes, or (*b*) that a beverage, is made from grapes and contains the juice from the natural fruit of grapes.

word "Grape" either alone or in conjunction or combination with any other word or words, letter or letters, as a corporate or trade name, or as a trade brand or designation in advertising, or on business stationery, or on labels or bottles or other containers, or the caps, crowns, or stoppers thereof, in connection with the sale or distribution of a product which is not composed wholly of the natural juice or fruit of grapes, except and unless such product is composed in substantial part of the natural juice or fruit of grapes, and "Good-Grape," "Fruit of the Vine," or the word "Grape," wherever used as above described, is accompanied with a word or words, equally conspicuous with it in characters or type, clearly indicating that such product is composed in part of material or materials other than the natural juice or fruit of grapes.

(2) Using or authorizing the use by others, in interstate commerce, in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, of any word or words, picture or symbol falsely representing or suggesting that a product is made from or contains the natural juice or fruit of grapes.

It is further ordered, That respondent, The Good-Grape Co., pursuant to the provisions of Rule XVI of the Commission's rules of practice, shall, within 60 days after service upon it of a copy of the order hereinbefore set forth, file with the Commission a report in writing, setting forth in detail the manner and form in which the said order has been complied with.

Syllabus

IN THE MATTER OF

ROBERT M. LEASE COMPANY, INC., ET AL.[1]

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AS EXTENDED BY AN ACT OF CONGRESS APPROVED APR. 10, 1918

Docket 1276. Complaint, Feb. 4, 1925—Decision, Mar. 3, 1928

Where several corporations, engaged in the manufacture, sale and shipment of automobile trucks, chassis and auto parts, and directed and controlled by the same general officers; and said officers;

(*a*) Shipped to foreign purchasers who had placed orders with them for new trucks, chassis and parts, complete with standard new factory equipment and right-hand drive, in reliance upon their advertisements and representations holding themselves out as willing and able to furnish the same promptly, in desired quantities, and so equipped, machines and parts which were neither new, complete nor equipped as desired and required, but were either incomplete, or old and rusty or rebuilt used or salvaged war equipment machines, and not fully equipped with standard parts, or with right-hand drive, or suited for the purposes for which purchased;

(*b*) Accepted orders and payments on automobile trucks and a large number of chassis in utter disregard of their ability to furnish said chassis in the time and quantities ordered and without so furnishing the same;

(*c*) Handled billing, payment and delivery to steamship companies, and loading in such a manner that export purchasers of machines were deprived of inspection before shipment, and forced to pay entirely in reliance upon their false representations and promises as to the character and completeness of the articles shipped; and

(*d*) Failed to ship missing machines or parts to replace those which were non-standard and not desired, or to replace with machines so ordered and promised those not in accordance with their promise and undertaking, or to make satisfactory adjustment for their delinquencies, although repeatedly promising so to do and at times asserting that they had done so;

With the effect of bringing discredit and loss of business to all manufacturers and business concerns engaged in and/or seeking to engage in export trade, and with the capacity and tendency so to do, to the injury and prejudice of the public, and their export trade competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the Federal Trade Commission Act, and of said act as extended by the Export Trade Act.

Mr. Charles Melvin Neff and *Mr. W. T. Chantland* for the Commission.

Mr. H. Howard Babcock, of New York City, for Exporters and Importers Association of the World, and John P. Agnew.

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[1] There is also included herewith (see page 99) order of dismissal in this case as to certain respondents, made as of Feb. 16, 1928.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, as extended by the provisions of section 4 of the Webb Act, the Commission charged respondents with misrepresenting business status and nature, and products dealt in, offering deceptive inducements to purchase, entering into contracts with neither intent nor ability to carry out same, making and misrepresenting shipments, not conforming to contracts, and declining to make restitution of moneys to which not entitled, and to observe contractual undertaking when called upon so to do; in violation of the provisions of section 5 of said first named act, prohibiting the use of unfair methods of competition in interstate commerce, as extended by section 4 of said last named act.

Respondents are composed of six corporations organized under the laws of the State of New York, namely the Robert M. Lease Co., Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., Lease Motors Co., Inc., Lease Motors Export Sales Corporation, and Panther Motor Co., Inc.; of the Exporters and Importers Association of the World, the trade name employed by respondent John P. Agnew; and of the four following individuals, namely, Robert M. Lease, Irving Lease, Albert Lease, and John P. Agnew.

The aforesaid corporations constitute a series formed by respondent Leases, for "the ostensible purpose of manufacturing and selling new Ford and other motor trucks and automobiles in foreign commerce in competition with other persons, partnerships and corporations engaged in making and selling, either or both, motor trucks and automobiles in foreign commerce," but with the real purpose of assembling and putting together "trucks and automobiles, many of whose parts were old, rusty, used and second-hand, and to sell these trucks or automobiles so put together in foreign commerce in competition with other persons, partnerships and corporations engaged in making and selling, either or both, motor trucks in foreign commerce," and with the intent, as charged, of misleading, deceiving and cheating purchasers in foreign countries.

Respondents Robert M., Irving, and Albert Lease were the president and treasurer, the vice president, and the secretary, of all of the respondent corporations, excepting the Lease Motors Co., Inc., of which, however, respondent Robert M. Lease was president and treasurer, and said respondent Leases and respondent Agnew at all the times mentioned in the complaint were, in each case, either "an officer or director or a stockholder or person controlling or directing power in some position connected with one or more of the abovementioned corporations and association, and during the times mentioned in this complaint, took a principal and responsible part in some or all of the acts hereinafter complained about in this complaint."

Respondent corporation Robert M. Lease Co., Inc., organized in 1918, was succeeded by respondent Lease Bros. Motor Co., Inc. Respondent Acoma Motors, Inc., is a subsidiary to said last-named corporation, with its business confined principally to acting as said corporation's sales agent or sales organization, and engaged in interstate and foreign commerce in competition with others similarly engaged, in the sale of the trucks and chassis herein concerned. Respondent Lease Motors Co., Inc., was organized to manufacture and sell motor trucks for the export trade. Respondent Lease Motors Export Sales Corporation had for its purpose the handling of the export business of the company last named, and respondent Panther Motor Co., Inc., was organized to engage generally in the manufacture and/or sale and distribution of automobiles, motor trucks and parts therefor, and goods and merchandise pertaining thereto. All of the corporations just named, with the exception of the last, have their office and principal place of business at 459 Vernon Avenue, Long Island City, Long Island, N. Y. Said last-named corporation has its principal office and place of business in the city, county, and State of New York.

Respondent Agnew does business, as above set forth, under the name of Exporters and Importers Association of the World, with office and principal place of business in New York City.

Respondents, as charged, conducting their said business in direct and active competition with others engaged in similar businesses in foreign trade, as a part of their plan and purpose to mislead, deceive and cheat customers and prospective customers falsely represented themselves through trade journals and otherwise, as manufacturers, vendors and distributors of new motor trucks and automobiles; thereby induced concerns and their brokers and agents in this and foreign countries to purchase and contract to purchase from them new Ford and new other motor trucks and automobiles complete with standard factory equipment and with right-hand drive,[2] respondents agreeing

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[2] As to this, the complaint alleges "That, at all the times mentioned in this complaint, and for a considerable number of years immediately preceding, a general and well-known custom and law of the road throughout the British Empire, Continental Europe, India and those other parts of the world, to which the respondents made shipments of trucks, required and demanded that all motor trucks, operated on the public highways in said foreign countries, be equipped with a right-hand and not a left-hand drive.

"That at all of said times this said custom and this said law of the road was notorious and well defined and one generally conformed to, and observed by all of those engaged in this country in the business of manufacturing for, and selling motor trucks to purchasers and customers in said foreign countries".

to deliver such vehicles, equipped as above set forth; and held themselves out to the foreign market, well knowing they would be unable to execute such agreements and contracts, and with no intent to fulfill their obligations according to the spirit and tenor thereof, as able and willing to furnish said market "with new Ford trucks and new Ford automobiles and other new trucks and automobiles modeled and built upon the Ford model complete with standard factory equipment and with right-hand drive, which they well knew they could not secure and, with the intent and purpose by such methods to defraud prospective purchasers and customers in foreign countries, they solicited customers and purchasers for new Ford trucks and new Ford automobiles, and new trucks and automobiles modeled upon the Ford model, representing and agreeing that they and all others would be new Ford or other trucks with new and standard factory equipment, with right-hand drive and in every respect fully adapted for use in the British Empire, in Continental Europe, in India, and other foreign countries."

Respondents' practice was, as alleged, in each and every case, to ship and tender for delivery to the aforesaid purchasers and customers in pretended and falsely claimed fulfillment of said agreements and contracts "motor trucks that were not new Ford or other new motor trucks, many of whose parts were not new but were old, used, rusted and second-hand parts, and motor trucks which were not complete with standard factory equipment but, on the contrary, had many of their parts missing, and motor trucks that did not have a right-hand drive and were not adapted for use in the British Empire, in Continental Europe, in India and in other foreign countries, all of which matters and things were well known to the said respondents before delivery".

Respondent, as charged, in further pursuance of their aforesaid plan and purpose, made it a part of the contracts and agreements that the purchase price must be paid to them upon the production and surrender to the banking representatives of the foreign purchasers and customers, of the ocean bills of lading and other usual accompanying documents covering respondents' shipment in pretended fulfillment of the agreements and contracts with the purchasers and customers, and, in order to deceive, mislead and cheat such customers and prospective customers afforded no opportunity to examine and inspect shipments and goods involved to determine whether they conformed to terms of sale and shipping documents—an inspection provided for by many, if not all of the contracts, before the motor trucks were placed on board ship—other than the opportunity offered to inspect the products and articles "after their enclosure in packages, crates and boxes and after their delivery upon the dock in said packages, crates and boxes preparatory to and immediately before the sailing of the ocean vessels to said foreign countries. That the said respondents, in some instances and as a part of their plan and purpose to mislead, deceive and cheat the said purchasers and customers, persuaded the said purchasers or their brokers to waive opportunity for said inspection".

The purchasers and customers concerned, as alleged, relied upon the representations and contracts involved providing for the sale and delivery by respondents to them of new Ford or new other motor trucks with standard factory equipment complete in every respect and with right-hand drive, and, in accordance with the conditions of their contracts, duly paid to respondents, prior to the receipt of said trucks, "many thousands of dollars as and for the agreed purchase prices under the contracts above mentioned and referred to; no part of which payments was ever returned by any of said respondents though often requested by purchasers so to do", and although the persons and concerns involved, "immediately upon discovery of the fact that the motor trucks so tendered for delivery by the said respondents were not new Ford or new other motor trucks, and that many of their parts were not new but were, on the contrary, old, used, second-hand and rusted parts, and that they were not trucks equipped with complete standard factory equipment and did not have a right-hand drive, notified the said respondents and demanded that the missing parts be furnished and that the said respondents comply in every respect with the terms, covenants and conditions of the said contracts, and that thereupon the respondents promised and agreed to furnish the missing parts immediately and to make the said trucks above mentioned and referred to, complete and in accordance with the said contracts entered into, and that though all due demand has been made, the respondents herein failed, neglected and refused, and still fail, neglect and refuse, to obtain and ship and furnish to the said purchasers the said missing parts above mentioned, and have otherwise failed, neglected and refused to carry out, fulfill and perform the contracts entered into by the said respondents and the said purchasers".

As a result of respondents' failure and refusal to carry out their contracts herein concerned with purchasers and customers, the latter were unable to carry out contracts entered into by them with others, based upon the belief that respondents would carry out their (respondents') contracts and agreements with the purchasers and customers herein, and were sued on their, said purchasers' and customers', contracts with others, by the parties with whom they had contracted, and had judgments in large amounts entered against them through no fault of their own.

Respondents further, as charged, in at least one instance received "from a foreign purchaser a remittance in excess of the purchase price specified in the agreements and in addition to a failure to furnish and supply the goods named in the said contract, actually failed and refused to comply with repeated demands from the said foreign purchaser to refund to said foreign purchaser the said excess, but on the contrary retained and converted the same to their own use. And in another instance the said respondents received, on account of an order for goods from a foreign purchaser, the purchase price of said goods and failed, neglected and refused to furnish or supply said goods for the pretended reason that the entire purchase price had not been transmitted to the said respondents and neglected and refused to refund to said foreign purchaser the said purchase price or any part thereof, and still neglect and refuse so to do".

According to the complaint "such practices of the respondents, herein set forth, brought and have a tendency to bring, American trade into disrepute with the general buying public in the British Empire, in Continental Europe, India, and other foreign parts of the world. The general buying public in those countries are much more conservative in the matter of becoming customers of manufacturers than the general buying public in the United States. When the general buying public in the British Empire or in Continental Europe, or in said other foreign parts of the world, are deceived, either as to the quality, quantity or prices of the goods ordered or as to the services agreed upon in respect to said goods, the said general foreign buying public are not willing to overlook the said deception and to continue trading. That the failures on the part of manufacturers and exporters to carry out their contracts in respect to sales of goods to purchasers in the British Empire, or in Continental Europe, India or in other foreign parts of the world, affect generally and adversely the fair reputation and good-will enjoyed by those other manufacturers and exporters in the United States whose goods, prices and service conform to their agreements with their foreign customers.

That such deceptions and failures hinder, obstruct and prevent honest manufacturers and exporters in the United States engaged in foreign commerce from securing and retaining the same. For generations the general buying public in the British Empire and Continental Europe, India, and other foreign countries, have made a practice of buying raw materials and fabricated articles from manufacturers and exporters located elsewhere than in the United States.

It is the habit and character of the general buying public in Continental Europe, in India, and especially in the British Empire to be extremely conservative and loath to change their usual and established sources of supply. During the past few years, and especially since the year 1914, and because of the late world war, it became impossible for these usual sources to supply raw materials and fabricated articles to the general buying public in the British Empire, in Continental Europe, in India and other foreign parts of the world. Thereupon and by reason thereof the said general buying public sought manufacturers and exporters in the United States as new and additional sources of supply. Previous to this time manufacturers and exporters in the United States had long and with but limited success sought purchasers of their goods in said foreign countries. The acts and the practices and conduct of the respondents had and do now have the tendency and capacity to bring other and honest manufacturers and exporters in the United States into bad repute with the general buying public in the British Empire, in Continental Europe, in India, and in other foreign countries and caused and causes said purchasing public to reduce its use of sources of supply in the United States for raw materials and fabricated articles.

"That the methods employed by the respondents in the conduct of their business in export trade as hereinbefore set forth have the capacity and the tendency to injure and damage and have injured and damaged, generally, the reputation and the business of persons, firms and corporations of the United States lawfully competing with the respondents in export trade and have the capacity and tendency to bring and have brought the business of competitors of respondents into disrepute with purchasers in said foreign countries, and the acts, methods and practices of the respondents herein set out constitute unfair methods of competition in export trade, and are unfair to all manufacturers and exporters in the United States in that they tend to bring into disrepute among foreigners the business of said manufacturers and exporters in the United States."

Respondents, further, as charged, in the case of respondent Robert M. Lease and the Lease Bros. Motor Co., induced a certain concern, namely, the Gray-Andrews Corporation, a New York corporation, to enter into a contract with said Lease Co. for the purchase by said corporation of a large number of automobile chassis, through false statements and representations as to said Lease Co.'s ability to construct, complete and deliver the same, and false statements as to its ownership of the building in which its officers were located, and as to a contract entered into by it for the purchase of a certain factory building, payment of a substantial deposit thereon and other steps taken and contracts made by it incident to the manufacture and delivery of products involved in the contract with the said Gray-Andrews Corporation; with the result that said last named corporation paid to said Lease Co. many thousands of dollars as called for by the contract in question, none of which money following the recision of the contract by the Gray-Andrews Co. on account of respondents' fraud and deceit and knowing false representations and statements and notwithstanding said Gray-Andrews Corporation's failure to receive any money or anything of value from said respondents, has been repaid to such corporation by said respondents who have refused said corporation's demand for the repayment of the money; said transactions being set forth in the complaint as follows:

PAR. 26. That the Gray-Andrews Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York.

PAR. 27. That at all the times hereinafter mentioned the respondent, Robert M. Lease, was the president of the various respondent corporations mentioned above, that he owned a considerable portion or amount of capital stock of each, that he controlled the business and management thereof, that he had personal charge in their behalf of the negotiations herein set forth, that in many instances he personally made the false and fraudulent representations herein set forth, and executed contracts herein involved, and as president of the said various corporations mentioned above.

PAR. 28. That prior to the 13th day of April, 1920, the said Gray-Andrews Corporation was negotiating with the respondent corporation, to wit, Lease Bros. Motor Co., Inc., through its said president, the respondent Robert M. Lease, for the purchase by the said Gray-Andrews Corporation from the respondent corporation, Lease Bros. Motor Co., Inc., of a large number of automobile chassis and for the making of a written contract between the Gray-Andrews Corporation and the said respondent, Lease Bros. Motor Co., Inc., with respect thereto; that the said respondent, Robert M. Lease, well knew that the said Gray-Andrews Corporation's purpose in entering into the said written contract was the desire to use the said automobile chassis for the purpose of foreign sale and shipment in foreign trade.

PAR. 29. That in the course of said negotiations the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., in order to convince the said Gray-Andrews Corporation of the said respondents' Robert M. Lease and Lease Bros. Motor Co., Inc., ability to construct, complete and deliver the automobile chassis, and of the said Lease Bros. Motor Co.'s, Inc., manufacturing and financial ability to perform the said intended contract, so far as the same was to be performed by it, and in order to induce the plaintiff to continue the said negotiations and to enter into said contract, stated and represented to the Gray-Andrews Corporation that said respondent corporation, Lease Bros. Motor Co., Inc., was the owner of the building where its officers were then located; that it had entered into a contract to purchase a factory building in Long Island City, with a floor space of approximately 200,000 square feet; that it had made a substantial deposit or down payment in cash on account of the purchase price named in said contract; that it had purchased suitable machinery for its factory; that it had purchased a foundry in the State of New York to be used for the purpose of casting cylinder blocks; that it had entered into contracts with various manufacturers by which contracts said manufacturers had agreed to manufacture and deliver to it, said respondent, Lease Bros. Motor Co., Inc., the various parts necessary for the construction and completion of the automobile chassis, concerning which the said Gray-Andrews Corporation and the said respondent, Lease Bros. Motor Co., Inc., were then negotiating; and that it, the said Lease Bros. Motor Co., Inc., would be able in every respect to construct, complete and deliver to the said Gray-Andrews Corporation the said automobile chassis, and perform its part of the said proposed contract, and that it would perform the same in good faith.

PAR. 30. That the said Gray-Andrews Corporation believing said representations so made by the respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., to be true and relying solely and wholly thereon, concluded the said negotiations, agreed upon the form of the said contract, and, when and as soon as the same was reduced to writing, executed said contract in duplicate together with the said respondent corporation, Lease Bros. Motor Co., Inc., acting by its said president, the respondent Robert M. Lease.

PAR. 31. That a true copy of said contract is hereto annexed and marked Exhibit "A" and made a part hereof.[a]

PAR. 32. That on or about the 8th day of April, 1920, the said Gray-Andrews Corporation, believing said representations to be true and relying wholly and solely thereon, paid to the respondent corporation, the said Lease Bros. Motor Co., Inc., the sum of $5,000 as part of the consideration agreed to be paid by the said Gray-Andrews Corporation to the said respondent Lease Bros. Motor Co., Inc., and on or about the 16th day of April, 1920, the said Gray-Andrews Corporation, still believing said representations to be true and relying wholly and solely thereon, paid to the said respondent, Lease Bros. Motor Co., Inc., the further sum of $20,000 in accord with the provisions of the said contract.

PAR. 33. That the said Gray-Andrews Corporation was induced to enter into the said contract and to pay the said sum of $25,000 solely and wholly by the said representations of the said respondents Robert M. Lease and Lease Bros. Motor Co., Inc., believing them and each of them to be true as aforesaid.

PAR. 34. That at the time the said representations were made by the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., the same were, and each of them was, wholly false and untrue, as the said respondents well knew, in that the said respondent Lease Bros. Motor Co., Inc., was not the owner of the said building; that it had not entered into a contract to purchase a factory as stated, that it had not made any down payment or deposit on account of the purchase price of the factory, that it had not purchased a foundry in New York State to be used in casting cylinder blocks, that it had not entered into contracts for delivery to it of the various parts necessary for the construction and completion of said automobile chassis; that it was not able in any respect to construct, complete and deliver said automobile chassis; that it was not able to perform its parts of the said contract; and that it did not at any time intend to perform the said contract.

PAR. 35. That the said representations and each of them were known by the said respondent, Robert M. Lease, and the said respondent, Lease Bros. Motor Co., Inc., to be false and untrue and the said representations and each of them were made by the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., for the purpose of defrauding and deceiving the said Gray-Andrews Corporation and inducing the said Gray-Andrews Corporation to enter into said contract and to pay the said sums of $5,000 and $20,000.

[a] Not published.

PAR. 36. That the said Gray-Andrews Corporation has not received any money, property, or thing of value from the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., or either of them, on account of or arising out of said contract.

PAR. 37. That the said Gray-Andrews Corporation has heretofore and on account of said fraud and deceit of the respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., rescinded the said contract and notified said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., of such rescission, and has demanded that the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., repay to the said Gray-Andrews Corporation the said sum of $25,000 but the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., and each of them has ever refused and still refuses to pay to the said Gray-Andrews Corporation the said sum of $25,000 or any part thereof.

PAR. 38. That the said sum of $25,000 is now due and owing by the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., to the Gray-Andrews Corporation, together with interest on $5,000 thereof from April 8, 1920, and on $20,000 thereof from April 16, 1920, and no part thereof has been paid.

All of the acts charged against the respondents, as alleged, " are such acts as are not only injurious to the private parties directly concerned thereby, but are such acts as are calculated to bring, and do bring, discredit, dishonor and loss of business to all American manufacturers and business concerns seeking foreign trade, and causing those foreigners who, were it not for such acts, might purchase goods from American business concerns, to purchase those goods from business concerns in other and foreign countries, and this at a time above all others when foreign markets are ready and willing to buy from American manufacturers and business concerns," and said acts and things " done by respondents, and by each of them, are all to the prejudice of the public and respondents' competitors, and the competitors of each respondent, and constitute unfair methods of competition in commerce in violation of section 5 of an act of Congress entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, as extended by an act of Congress approved April 10, 1918, the Federal Trade Commission issued and served a complaint upon respondents herein charging them with unfair methods of competition in export trade in violation of the provisions of said acts.

The defendants, John P. Agnew and Exporters & Importers Association of the World, having entered their appearances by their attorney and having duly filed their answer and the remaining defendants, to wit: Robert M. Lease Co., Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., Lease Motors Export Sales Corporation, Panther Motor Co., Inc., Robert M. Lease, Irving Lease, and Albert Lease, not having answered but being in default, hearings were held before an examiner of the Commission theretofore duly appointed, and counsel for the Commission offered evidence in support of said charges of the complaint, which evidence is recorded, duly certified and transmitted to the Commission, including exhibits, and none of the respondents offered any evidence in their defense, but respondents John P. Agnew and Exporters & Importers Association of the World were present by counsel and cross-examined witnesses testifying for the Commission, and at the close of such testimony stated in open court before the examiner that there would be no testimony introduced on behalf of said respondents but that they would rest their case entirely on the evidence brought out by the Government, and respondent Robert M. Lease was present in person at certain of the hearings and cross-examined certain witnesses. Thereupon this proceeding came on for decision on the record, briefs for the Commission and exceptions of respondents John P. Agnew and Exporters & Importers Association of the World to the trial examiner's report upon the facts, and the Commission being fully advised in the premises, now makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Robert M. Lease Co., Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., and Lease Motors Co., Inc., were at all times covered by this proceeding corporation organized and existing under the laws of the State of New York, with the office and principal place of business of each at 459 Vernon Avenue, Long Island City, Long Island, N. Y.; that the principal business of each was the manufacture sale and shipment in interstate and foreign commerce of automobiles, trucks, chassis, and auto parts in competition with other concerns similarly engaged. That respondent Robert M. Lease was the president of each of said four corporations and also the treasurer of the first named three, that respondent Irving Lease was the vice president of the first named three and secretary of the last named, that respondent Albert Lease was secretary of the three first-named corporations. That the acts and policies of all of said corporations were actively directed and controlled by said respondent Robert M. Lease, Irving Lease, and Albert Lease and each of them took a substantial and responsible part in the acts and practices described in paragraphs 2 to 5 hereof.

PAR. 2. That induced by, and relying upon, circulars and advertisements issued and published by respondents, Robert M. Lease, Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., Lease Motor Co., Inc., Robert M. Lease, Irving Lease, and Albert Lease, and other representations of fact made both in writing and orally by said respondents, by which said respondents held themselves out as willing and able to furnish promptly according to their said promises, representations and undertakings made in pursuance therewith, new Ford and other trucks and chassis in quantities as desired and fully equipped with standard parts and with right drive, for export trade, certain persons, partnerships and corporations during the year 1920 and thereafter located as follows: Two in England, one in Ireland, one in Norway, one in Sweden, one in Holland, one in Spain, one in Santo Domingo, four in India, one in Philippine Islands, so induced and so relying, placed orders with said respondents and said respondents agreed to sell and undertook to ship to said purchasers in said countries certain new Ford and other automobiles and motor trucks, chassis, and automobile parts, which machines or chassis were to be complete with standard new factory equipment and right hand drive. Instead of fulfilling their said promises, undertakings, and agreements, said respondents knowingly and willfully disregarded their representations, promises, undertakings, and agreements and shipped to said purchasers and places during the years of 1920 and 1921 on said purchases so made, machines and parts that were neither new, complete nor equipped as desired and required, but which were as to each of said purchases, either incomplete machines or used or salvaged war equipment machines, old and rusty, some rebuilt, others not fully equipped with standard parts nor equipped with right-hand drive. All of the shipments so made were deficient in one or more of the respects above enumerated and were not complete new machines equipped and suited for the purposes for which they were so purchased.

PAR. 3. Said respondents, in utter disregard of their ability to furnish machines and chassis in the time and quantities as ordered, knowingly and willfully accepted orders and payments on automobiles, trucks and a large number of chassis and failed to deliver the same either in the time as promised and undertaken and as required by the purchaser, or to deliver the same at all in the quantities ordered.

PAR. 4. By said respondents' method of handling the billing and payment and delivery to steamship companies and loading, their purchasers in export of said machines were deprived of inspection before shipment and forced to pay entirely in reliance upon respondents' said false representations and promises as to the character and completeness of the articles shipped.

PAR. 5. Although repeatedly promising so to do and at times asserting that they had done so, said respondents failed to ship missing machines and parts, or parts to replace the nonstandard and nondesired parts, or to replace with machines as ordered and promised, the ones not in accordance with such promise and undertaking or to make satisfactory adjustment for their delinquencies.

PAR. 6. The record does not disclose that the respondents Panther Motor Co., Inc., or the Lease Motor Sales Corporation had any part in said transactions.

PAR. 7. The exceptions of respondents John P. Agnew and Exporters & Importers Association of the World to the trial examiner's report are well taken.

CONCLUSION

The acts and practices of respondents, Robert M. Lease, Inc., Lease Bros. Motor Co., Inc., Acoma Motor Co., Inc., Lease Motor Co., Inc., Robert M. Lease, Irving Lease and Albert Lease, as above set forth in paragraphs 2 to 5, inclusive, of the foregoing findings of facts, in the circumstances therein set forth are to the injury and prejudice of the public, and to respondents' competitors engaged in export trade and said acts and practices are calculated to and do bring discredit, dishonor, and loss of business to all American manufacturers and business concerns engaged in and/or seeking to engage in export trade, and said acts and practices of each of said respondents constitute unfair methods of competition in violation of section 5 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, and of said act as extended by the provisions of an act of Congress entitled "An act to promote export trade and for other purposes," approved April 10, 1918.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of respondents John P. Agnew and Exporters & Importers Association of the World (the other respondents being in default), oral testimony and documentary exhibits, the trial examiner's report upon the facts, the exception of counsel thereto, and upon briefs submitted by counsel for the Commission, none having been tendered by counsel for any of the respondents, and the Commission having made its findings as to the facts and having entered its order of dismissal as to certain respondents, and having reached its conclusion that the remaining respondents have violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," as extended by an act of Congress approved April 10, 1918, entitled "An act to promote export trade, and for other purposes,"

Now, therefore, be it ordered, That respondents Robert M. Lease, Irving Lease, Albert Lease, Robert M. Lease Co., Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., and Lease Motors Co., Inc., and their agents, representatives, and employees cease and desist directly or indirectly from pursuing or continuing the unfair methods of competition in export trade for the purpose or with the effect directly or indirectly of injuring the public and competitors, and bringing into disrepute the export trade of the United States in the course of trade in automobiles, trucks, and auto parts, by the following methods, or any one or more thereof, to wit:

1. From in any manner either by circular, advertisement, or other publication, or other representation, oral or written, representing themselves as willing and able, or promising or undertaking to furnish in and for export trade, automobiles, motor trucks, or chassis in quantities greater than they can furnish in the time and manner called for by their promises and undertakings; and from so representing themselves as willing and able to furnish, or promising or undertaking to furnish in export trade, automobiles, motor trucks, or chassis, as and for new and complete and fully equipped machines with standard parts, when and if in fact respondents are not properly equipped or do not intend to furnish such machines or parts in exact accordance with their representations and undertakings including the time, quantity and character of articles.

2. From demanding or exacting payments in advance of receipt, or opportunity for full inspection by purchasers of the articles furnished, or from in any manner so conducting their said export trade as to cause such payments to be made without opportunity for inspection, when and if the said articles so furnished in export trade are not in exact accordance with the representations and undertakings of respondents, including time, and quantity and character of articles.

3. From by any device, means, or method similar to those hereinbefore set out so to conduct their export trade as to tend to prejudice the public and competitors and others engaged in the American export trade,

It is further ordered, That the respondents against whom this order is directed 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.

ORDER OF DISMISSAL AS TO CERTAIN RESPONDENTS

This proceeding having come on for final hearing before the Federal Trade Commission, and it appearing:

1. That as to the respondents Panther Motor Co., Inc., and Lease Motor Export Sales Corporation, there is no evidence that either of said concerns took part in any of the transactions complained of, and,

2. That as to respondents, John P. Agnew and Exporters & Importers Association of the World, there is no evidence sufficient to sustain the charges of the complaint,

It is hereby ordered, That the complaint be dismissed as to the respondents Panther Motor Co., Inc., and Lease Motor Export Sales Corporation, John P. Agnew, and Exporters & Importers Association of the World.

IN THE MATTER OF

MORRIS STEINBERG, AN INDIVIDUAL DOING BUSINESS UNDER THE NAME AND STYLE OF MARVEL DRESS COMPANY

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

Docket 1466. Complaint, June 13, 1927—Decision, Mar. 17, 1928

Where an individual engaged in the sale of women's dresses direct to the consumer; in advertising the same in newspapers and periodicals of national circulation, applied the words "wool embroidered serge dress rayon silk trimmed" to a dress composed entirely of cotton, with cotton and rayon trimming, and the words "wool embroidered serge dress", "silk hand-embroidered wool finish serge dress", "silk embroidered pongee", "pongee dress, silk hemstitched" and "silk lustre pongee dress", to all-cotton garments containing neither wool nor silk; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into believing said dresses to be composed of wool or of silk and to induce the purchase thereof in such belief, and with the effect of diverting business from and otherwise injuring and prejudicing competitors dealing in dresses of pongee fabric embroidered with silk material, and in those composed of wool fabric, and truthfully describing and representing the same:

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

Mr. William A. Sweet for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at Philadelphia in the sale direct to consumer purchasers in States other than Pennsylvania, of women's dresses upon orders solicited through advertisements and received through the mails, with advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in his aforesaid advertisements in newspapers and periodicals of general circulation throughout the United States or in certain sections thereof, described and represented dresses composed of cotton cloth and containing no silk whatsoever as "Genuine silk lustre pongee dress trimmed with silk embroidery" and "Silk embroidered pongee"; dresses composed almost entirely of cotton fabric and containing no wool whatsoever as "Beautiful new wool finish checked serge dress, $1.98, latest smartest, fall style—a splendid wool finish fabric"; and dresses composed of an inferior grade of cotton cloth, and with no silk material whatsoever, as "Amazing offer—beautiful heavy cloth dress suitable for winter wear, trimmed with silk embroidery, $1.49; value, $3.50".

The aforesaid descriptions and representations, as alleged, "are false and misleading and are calculated to and do deceive the purchasing public into the belief that such dresses are composed either wholly or in part of silk, or of wool, in the case of the first two, and, in the case of the last, are composed "of a heavy fabric suitable for winter wear and trimmed with embroidery composed of silk[1]", and said acts and practices tend to and do divert business from and otherwise injure and prejudice respondent's competitors among whom there are those who sell and transport in commerce women's dresses composed of pongee fabric embroidered with silk material, or of wool fabric, or of heavy cloth suitable for winter wear, who truthfully describe and represent the same; all to the prejudice of the public and such competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon the respondent, Morris Steinberg, charging him with the use of unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of said act.

Hearings were had in the course of which testimony and evidence were received in support of the charges in the complaint and in opposition thereto. The trial examiner filed his report upon the facts to which respondent filed exceptions. Counsel for the Commission filed his brief. No brief was filed by the respondent and the time for filing respondent's brief expired November 26, 1927.

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

[1] As regards the use of the word "pongee", the complaint alleges that said word "used in said advertisements signifies to and is understood by a substantial part of the purchasing public as a fabric composed entirely of silk, and the use by respondent of such word as aforesaid has the capacity and tendency to and does mislead and deceive the purchasing public into the belief that the said cotton dresses are composed of a silk fabric and to induce them to purchase the same in that belief".

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual doing business under the name and style of Marvel Dress Co., with his principal office and place of business in the city of Philadelphia in the State of Pennsylvania. For a period of two years, prior to June 13, 1927, he was engaged in the business of selling direct to the consumer, women's dresses upon orders solicited through advertisements inserted by him in newspapers and periodicals of national circulation, and received from such consumers through the United States mails in response to such advertisements. The dresses thus sold by respondent were shipped by him from his place of business in the city of Philadelphia in the State of Pennsylvania into and through other States of the United States to the purchasers thereof located in States other than the State of Pennsylvania. In the course and conduct of this business respondent was in competition with other individuals, partnerships, and corporations also engaged in the sale and transportation, in interstate commerce, of women's dresses.

PAR. 2. In the advertising matter used by respondent in connection with the sale of certain of his said women's dresses, respondent represented and described said dresses, respectively, in the following language:

Extraordinary sale wool embroidered serge dress with Charleston flare skirt, rayon silk trimmed. Only $1.49

Wool embroidered serge dress	$1.49
Wool embroidered serge dress	.98
Silk embroidered pongee dress	1.39
Silk hand embroidered wool finish serge dress	1.49
Silk embroidered pongee dress	.88
Pongee dress, silk hemstitched	1.19
Silk lustre pongee dress	.99

The dress described above as "wool embroidered serge dress rayon silk trimmed," contained no wool, either in the embroidery or in the dress, and contained no silk in the trimming, the dress itself being all cotton, the embroidery being all cotton, the trimming being cotton and rayon.

The dress described as "wool embroidered serge dress" contained no wool whatever, either in the embroidery or in the dress, but was composed entirely of cotton.

The dress described as "silk hand-embroidered wool finish serge dress" contained no silk and no wool, but was composed entirely of cotton.

The dresses described as "silk embroidered pongee," "pongee dress, silk hemstitched," "silk lustre pongee dress" contained no silk, but were composed entirely of cotton.

The word "serge" signifies and means and is generally understood by the public to signify and mean a fabric or material composed of wool unless it is essentially and clearly modified, as by the use of the term "cotton serge." The word "pongee" signifies and means and is generally understood by the public to signify and mean a fabric derived from the product of the cocoon of the silkworm.

PAR. 3. There are among the competitors of respondent referred to in paragraph 1 hereof those who sell and transport in commerce women's dresses composed of pongee fabric embroidered with silk material, and also of wool fabric, who truthfully describe and represent the same. The above acts and practices of respondent tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 4. The use of the words "serge" and "pongee," respectively, in the advertising matter used by respondent to represent and describe the dresses referred to in paragraph 2 hereof is false and misleading and has the capacity and tendency to mislead and deceive a substantial part of the purchasing public into the belief that said dresses are composed of wool or of silk, respectively, and to induce purchasers to purchase the same in that belief.

CONCLUSION

Practices of the respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in 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 brief of counsel for the Commission, the respondent having filed no brief, and the Commission having made its report stating its findings as to the facts and its conclusion based thereon that the respondent, Morris Steinberg, 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, Morris Steinberg, his agents, employees, and successors, cease and desist, in connection with the sale or offering for sale of women's dresses, in interstate commerce, from—

(*a*) Using the word "serge" to represent and describe dresses which are composed of a material or materials other than wool.

(*b*) Using the word "wool", alone or in combination with any other word or words, to represent and describe dresses which are composed of a material or materials other than wool, unless, when such dresses are composed in part of a wool material, the word "wool" is accompanied by a word or words, equally conspicuous with it in characters or type, clearly indicating that said dresses are composed in part of a material or materials other than wool.

(*c*) Using the word "pongee" to represent and describe dresses which are composed of a material or materials other than silk, the product of the cocoon of the silkworm.

(*d*) Using the word "silk", alone or in combination with any other word or words, to represent and describe dresses which are composed of a material or materials other than silk, the product of the cocoon of the silkworm, unless, when said dresses are composed in part of silk the word "silk" is accompanied by a word or words, equally conspicuous with it in characters or type, clearly indicating that said dresses are composed in part of a material or materials other than silk.

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

IN THE MATTER OF

N. SHURE COMPANY

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

Docket 1431. Complaint, Nov. 22, 1926—Decision, Mar. 27, 1928

Where a corporation engaged in the purchase of various merchandise from the manufacturers, and in the sale thereof through catalogues to retail dealers; in said catalogues, and in many instances, through designations and descriptions stamped upon the articles, or labels, containers or wrappers thereof,

(*a*) Represented certain watches as containing a "21 jewel Swiss movement" or as being 21 jewel watches, which did not contain such a number serving as frictional bearings, with the effect of misleading the trade and consuming public and of inducing them to purchase said watches as and for those containing 21 jewels performing a mechanical function;

(*b*) Represented knife and fork sets, toilet sets and photograph frames as composed in whole or in part of "Black ivoroy", "White ivoroy", "French ivory" and "Ivory-grained", and manicure sets as composed in whole or in part of "Amber", "Pearl", and "Shell", the fact being that said articles were not composed in whole or in part of the aforesaid substances, but of pyroxylin or celluloid in such a way as to simulate the appearance thereof;

(*c*) Falsely represented certain boxes and containers and the coverings of certain field glasses, made of a material resembling leather in color and finish, as respectively composed in whole or in part of "Leather" or of "Morocco", and neckties, handkerchiefs, scarfs, hosiery and bedspreads not composed entirely of silk, as "Silk", "Fibre silk", "Art silk" and "Rayon silk";

(*d*) Represented scarf pins and rings as ornamented and set with opals, rubies, sapphires, and diamonds, and necklaces as "Genuine pearls", "LaVega pearls", "Deltah pearls" and "Richelieu pearls", the fact being that such articles were neither ornamented, nor set with, nor composed of the genuine stones, but only of an imitation thereof; and

(*e*) Represented watches as "Gold-plated" and "Gold-filled", which were not so manufactured as to contain three one thousandths of an inch in thickness of gold on the outside and one one thousandth of an inch on the inside, the specified standards recognized by the trade;

With the capacity and tendency to mislead and deceive the consuming public in respect of the composition of the aforesaid articles, and to cause them to purchase the same in the erroneous beliefs thereby induced;

(*f*) Represented field and marine glasses not manufactured for the United States Government in accordance with Government specifications or requirements, and not a part of surplus stock disposed of by the Government, as "U. S. Signal Service" glasses;

(*g*) Represented as "Sheffield silver plate" and "Sheffield plate on copper base", castor sets, sugar and cream sets, and bowls neither made by the silversmiths of Sheffield, England nor by their process, nor products known to the trade and purchasing public as "Sheffield silverware" or "Sheffield plate", and in many instances stamped such designations and descriptions upon the articles themselves, and upon their containers or wrappers, and upon the labels affixed thereto by the manufacturers or dealers from whom it purchased the same;

With the capacity and tendency to mislead and deceive the trade and consuming public in respect of the source, and nature, or conditions of manufacture of such articles, and to cause them to purchase the same in such erroneous beliefs; and

(*h*) Advertised, offered and sold necklaces, and boxes of stationery, bearing upon the containers thereof bands and labels affixed by the manufacturers or dealers from whom it had purchased the same, with purported pretended retail prices greatly in excess of those at which said articles were commonly sold, or expected to be sold, by the retailers, with the capacity and tendency to mislead and deceive the consuming public into believing such prices to be those usual and customary for such articles, and to cause them to purchase the same in such belief;

With the effect of diverting trade from and otherwise prejudicing competitors dealing in merchandise similar to that above described and properly and truthfully represented by them as to quality, composition, and value, and from competitors who band and label their products with the usual and customary prices at which they are ordinarily sold to the consuming public:

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

Mr. William A. Sweet for the Commission.

Mr. Joseph W. Cox, of Washington, D. C., for respondent.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the sale of merchandise of various kinds at wholesale, to retailers and others located at points in various States, and with principal office and place of business in Chicago, with advertising falsely or misleadingly, misbranding or mislabeling and misrepresenting prices in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in the catalogues in which it depicts and describes the articles dealt in by it and which it sends to customers and prospective customers to be used by them in ordering and purchasing its merchandise, "causes to be set forth many false and misleading statements and representations concerning the origin, nature, character, value and prices" of articles therein depicted and described, said statements and representations including, among numerous others of a similar character, the following:

(*a*) Watches as having a certain number of jewels in their movements, with, in fact, a smaller number performing a mechanical function, the trade and general public commonly understanding that the assertion that a movement contains a specified number of jewels means jewels performing a mechanical function in the movement;

(*b*) Articles of merchandise including clocks, manicure sets, and toilet sets, made in whole or in part of other materials than those named, and of smaller value, though imitating and simulating the same in general appearance, as composed in whole or in part of ivory, amber, pearl, and shell, respectively;

(*c*) Articles including cases and containers for imitation pearls, manicure sets and other things, field and marine glasses, traveling bags and other articles, made in whole or in part of materials other than leather or of less value, though imitating and resembling the same in general appearance, as leather, through use of such words and terms as " leatherette ", " leather ", " moleskin ", " morocco ", and other like words;

(*d*) Articles including jewelry, watches, chains, and pocket knives, ornamented and set with stones and settings of much less value than those named, though imitating and resembling the same in general appearance, as ornamented and set with opals, rubies, sapphires, diamonds, and other precious stones;

(*e*) Articles including watchcases, chains, and pocket knives, as composed in whole or in part of gold, silver, and platinum, when in fact made of other materials of much less value, though imitating and resembling the same in general appearance;

(*f*) Articles including hosiery, neckties, handkerchiefs, and scarfs containing no silk, the product of the cocoon of the silkworm, but made in whole or in part of other materials of less value, though imitating and resembling the same in general appearance, as silk, through use of the words "silk", "fibre silk", "art silk", "rayon silk", and other like terms;

(*g*) Necklaces, articles of jewelry, and other articles, as composed of or ornamented and set with pearls, when in fact composed of or ornamented with beads, stones, and settings not pearls made by natural processes in the shells of mollusks, but manufactured articles, of much less value, though imitating and resembling the same in general appearance, it being understood among the jewelry trade and the general public that "the word 'pearl' when used without any qualifying word or phrase means, and is understood to refer to, pearls made by natural processes in the shells of mollusks ".

(*h*) Field glasses and marine glasses, as formerly belonging to the United States Government and sold as surplus property or as manufactured in accordance with Government specifications and requirements, through use of the term, device, and letters "U. S." and "United States";[1]

(*i*) Articles of merchandise, as silver-plated ware made by the silversmiths of Sheffield, England, or of the same kind, quality, and value as said ware, through the use of the word "Sheffield" in naming, designating, and describing said articles.[2]

(*j*) Blankets not made by North American Indians as so made, through use of the phrase "Indian blankets".

Respondent further, as charged, in many instances "causes aforesaid false and misleading representations, names, designations, devices and terms, respectively, to be stamped and imprinted upon sundry of its said articles of merchandise and upon the containers in which sundry said articles are by respondent packed, sold and shipped to aforesaid vendees, and upon labels which respondent causes to be affixed to sundry said articles and containers, and said articles so stamped, imprinted, labeled and contained are by respondent's aforesaid vendees offered for sale and sold to the consuming public."

Respondent also, as charged, causes to be affixed to many of the articles dealt in by it and to the containers thereof, "bands and labels bearing purported regular retail prices for said articles, which said prices are fictitious and exaggerated prices greatly in excess of the prices which respondent expects its said vendees to, and greatly in excess of the prices at which said vendees do, regularly and habitu-

[1] As alleged in the complaint, "said device and said term and phrase and each of them when used to name, designate, and describe articles of merchandise offered for sale in the ordinary course of trade, are understood by many of the trade and general public to mean that the articles so named, designated and described were formerly property of the United States Government. To many others among the trade and general public said device and said term and phrase and each of them are understood to mean that the articles so named, designated, and described have been made in accordance to and in conformity with the specifications and requirements of said Government for articles of the same kind and character, made for and purchased by said Government for its use, and there exists among merchants and the general public a belief that articles of merchandise made for the United States Government or in accordance to and in conformity with above said specifications and requirements of said Government are of unusually good reliable and dependable quality and value."

[2] As alleged in the complaint, "for many years the word 'Sheffield' used in naming, designating, and describing silver-plated ware has meant and still means to many merchants and to many of the general public in the United States that said ware is made by the silversmiths of the city of Sheffield, England, and imported into the United States. To many other merchants and many others of the general public in the United States the word 'Sheffield' when used to name, designate, or describe silver-plated ware means that said ware is of the same quality, kind, and value as the silverware manufactured by the silversmiths of Sheffield, England. For many years silver-plated ware made by the silversmiths of Sheffield, England, has been deemed and considered, and is now deemed and considered by merchants and the public generally throughout the United States, to be silver-plated ware of high quality and value, for which reason many of the general public have purchased and do now purchase silverware named, designated, and described as 'Sheffield' ware in preference to silverware not so named, designated, and described."

ally sell said articles to the consuming public. Said vendees offer said articles of merchandise for sale to the consuming public with said bands and labels bearing said fictitious prices still thereto attached and by such means lead many of the consuming public to believe that said articles are of the fair retail value of, and are regularly and habitually sold at said fictitious and exaggerated prices, and cause many of the consuming public to purchase said articles at prices much lower than said fictitious prices, in the belief that said articles are being sold and purchased at greatly reduced prices. Respondent thus places in the hands of its vendees the means of deceiving and defrauding the consuming public."

Said acts and practices, as alleged, engaged in for about five years last past, "have the capacity and tendency to and do cause many of said vendees to deal in, and resell, and many of the consuming public to purchase respondent's said articles of merchandise in the belief that respondent's false and misleading representations all in this complaint before set out, are true", and tend to and do divert business from and otherwise injure and prejudice respondent's competitors many of whom in nowise "misrepresent the origin, nature, character, value, and prices of the merchandise in which they deal"; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission issued and served a complaint upon the respondent, N. Shure 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 made, executed and filed an agreed statement of facts in which it is stipulated and agreed by the respondent that the Federal Trade Commission may take such agreed statement of facts as the facts in this case, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto and that the Commission may proceed further upon said agreed statement of facts to make its report in this proceeding, stating its findings as to the facts and its conclusions, and entering its order disposing of the proceeding; thereupon this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, N. Shure Co., is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State. It is now and for many years has been engaged in the business of purchasing merchandise of sundry sorts and kinds from the manufacturers thereof and reselling same to retail dealers located at points in several different States of the United States. It causes its said merchandise when so sold to be transported from its said principal place of business in Chicago, Ill., by means of the United States mails, into and through other States of the United States, to its said customers at their various places of location. In the course and conduct of its said business respondent is now and for many years has been in competition with individuals, partnerships, and corporations engaged in the sale and transportation of like articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In the regular course of its business, as described in paragraph 1 hereof, respondent obtains orders for and makes sales of its said merchandise through and by means of catalogues which it issues from time to time and distributes to its said customers and to prospective customers. The said catalogues contain pictorial representations of the merchandise offered for sale by respondent, written descriptions of same, together with prices and terms of sale. The prices so quoted are the prices charged by respondent to customers, except those fixed upon certain kinds of watches which are the list prices and which are quoted as subject to a trade discount. The said catalogues are customarily used by the said retail dealers in preparing orders for, and making sales of respondent's said merchandise.

PAR. 3. In its catalogues issued and distributed as set out in paragraph 2 hereof, numbered respectively 106, 107, and 110, and issued in the years 1925 and 1926, respondent caused to be set out certain statements concerning the quality, composition, and value of articles offered for sale by it, as follows:

(*a*) That certain watches contain a "21-jewel Swiss movement" or were "21-jewel watches," when in truth and in fact said watches did not contain 21 jewels, each and every one of which jewels served a mechanical purpose as frictional bearings.

The representation that a watch movement contains a specified number of jewels is commonly understood by the trade and by the consuming public to mean that each jewel of the specified number performs a mechanical function in said movement and the value of watches is determined in part by the number of jewels they contain.

The said representations made by respondent had the tendency and capacity to mislead and deceive the trade and the consuming public into believing that the watches so described contained 21 jewels, each of which performed a mechanical function in the movement of the said watches, and to cause them to purchase said watches in that belief.

(*b*) That certain knife and fork sets, toilet sets, and photo frames are composed wholly or in part of "Black ivoroy," "White ivoroy," "French ivory," and are "Ivory-grained," respectively, when in truth and in fact said articles are not manufactured from the tusks of mammals but are manufactured from material known as pyroxylin or celluloid so as to simulate ivory in appearance or finish.

The term "Ivory" is understood by the trade and by the consuming public to mean the product obtained from the tusks of mammals and which has been sold for many years under the name of "Ivory."

The said use by respondent of the terms "Ivoroy" and "Ivory" has the capacity and tendency to mislead and deceive the trade and consuming public into the belief that said articles so described are composed in whole or in part of genuine ivory and to cause them to purchase said articles in that belief.

(*c*) That certain manicure sets are composed in whole or in part of "Amber", "Pearl", and "Shell", when in truth and in fact said articles are not composed in whole or in part of amber, pearl, or shell, but are composed of pyroxylin or celluloid colored to resemble amber, pearl or shell, respectively.

The term "Amber" is understood by the trade and consuming public to mean a yellowish translucent rosin resembling copal found fossil in alluvial soils with beds of lignite and on seashores. The terms "Pearl" and "Shell" when used as above are understood by the trade and consuming public to mean the hard pearly interior layer of certain shells such as oyster and abalone shells and known as mother of pearl.

The said use by respondent of said terms has the capacity and tendency to mislead and deceive the trade and consuming public into the belief that said articles so described are composed in whole or in part of genuine amber or mother of pearl, respectively.

(*d*) That certain boxes and containers are composed in whole or in part of "Leather" and that the coverings of certain field glasses are composed of "Morocco," when in truth and in fact they are not so composed of leather but of a material made to resemble leather in color and finish.

The terms "Leather" and "Morocco" are understood by the trade and consuming public to mean a product prepared from the skins or hides of animals.

The use by respondent of said terms has the capacity and tendency to mislead and deceive the trade and consuming public into the belief that said boxes and containers and the coverings of said field glasses are composed in whole or in part of genuine leather and to cause them to purchase the same in that belief.

(*e*) That certain scarfpins and rings are ornamented and set with opals, rubies, sapphires, and diamonds, respectively, when in truth and in fact said articles are not ornamented and set with genuine opals, rubies, sapphires or diamonds, respectively.

The terms "Opals", "Rubies", "Sapphires", and "Diamonds" are understood by the trade and consuming public to indicate the semiprecious and precious stones which have long been designated and known by the said terms and which are of great value.

The use by respondent of these terms has the capacity and tendency to mislead and deceive the trade and consuming public into the belief that said articles are ornamented and set with genuine semiprecious and precious stones known as opals, rubies, sapphires, and diamonds, respectively, and to cause them to purchase same in that belief.

(*f*) That certain watchcases are "Gold-plated" and "Gold-filled", when in truth and in fact said watchcases are not manufactured so as to contain three one-thousandths of an inch in thickness of gold on the outside and one one-thousandth of an inch in thickness on the inside.

The said three one-thousandths of an inch in thickness of gold on the outside and one one-thousandth of an inch in thickness of gold on the inside are the proportions recognized by the trade as the specified standard of thickness of gold for the manufacture of watchcases sold to the trade and by the trade to the purchasing public as "Gold-plated" or "Gold-filled".

The use by respondent of the terms "Gold-filled" and "Gold-plated" have the capacity and tendency to mislead and deceive the trade and consuming public into the belief that said watchcases and other articles contain the recognized quantity and thickness of gold and to cause them to purchase the same in that belief.

(*g*) That certain neckties, handkerchiefs, scarfs, hosiery, and bedspreads are composed of "Silk", "Fibre Silk", "Art Silk", and "Rayon Silk", when in truth and in fact the said articles so represented are not made entirely of silk, the product of the cocoon of the silkworm but are composed of fabrics or materials other than silk.

The term "Silk" is understood by the trade and consuming public to indicate a fabric made from the product of the cocoon of the silkworm.

The use of the term "Silk" by respondent, as foresaid, has the capacity and tendency to mislead and deceive the trade and consuming public into the belief that said articles so described are composed of a fabric, the product of the cocoon of the silkworm and to cause them to purchase said articles in that belief.

(*h*) That certain necklaces described as "Genuine pearls", "La-Vega pearls", "Deltah pearls", and "Richelieu pearls" are composed of pearls, when in truth and in fact they are not so composed of the product formed within the shells of mollusks but are composed of a material made to imitate said product.

The term "Pearls" when used in connection with necklaces and other articles of jewelry is understood by the trade and consuming public to mean the product formed by natural process in the shells of mollusks.

The said use of the term "Pearls" by respondent has the capacity and tendency to mislead and deceive the trade and consuming public into the belief that the articles so described are composed of or ornamented with genuine pearls and to cause them to purchase said articles in that belief.

(*i*) That certain field and marine glasses are "U. S. Signal Service" glasses, when in truth and in fact said glasses are not products manufactured for the United States Government in accordance with United States Government specifications or requirements and are not a part of surplus stock disposed of by the said United States Government.

The term "U. S. Signal Service" when used to describe said articles is understood by the trade and a substantial part of the consuming public to mean that said articles so described are manufactured for or in accordance with specifications of the United States Government or are part of surplus property formerly owned by the United States Government.

The said use by respondent of the terms "U. S." or "U. S. Signal Service" has the capacity and tendency to mislead and deceive the trade and a substantial part of the consuming public into the belief that the articles so described were made for or in accordance with specifications of the United States Government or were a part of surplus property formerly owned by the United States Government and to cause them to purchase the same in that belief.

(*j*) That certain castor sets, sugar and cream sets and bowls are "Sheffield silver plate", or "Sheffield silver plate on copper base", respectively, when in truth and in fact the said articles so described were not made by the silversmiths of Sheffield, England, nor by the process used by them, and are not the products known to the trade and purchasing public as "Sheffield silverware" or "Sheffield plate", For many years the word "Sheffield" used to designate and describe silver-plated ware has meant and still means to many of the trade and the purchasing public in the United States that the ware so designated is made by the silversmiths of the city of Sheffield, England, or by the process used by them and is of the same quality as the silverware made in Sheffield, England. The silver-plated ware made by the silversmiths of Sheffield, England, has been and still is deemed and considered by the trade and the purchasing public throughout the United States to be of a particular process of manufacture and of high quality and value.

The said use by respondent of the term "Sheffield" or "Sheffield silver-plated" has the capacity and tendency to mislead and deceive the trade and consuming public into the belief that the articles so described were made by the silversmiths of Sheffield, England, or by the process of manufacture employed by them and to cause them to purchase the same in that belief.

In many instances the foregoing designations and descriptions were stamped upon the articles themselves and upon the containers or wrappers and the labels affixed to said articles by the manufacturers or dealers from whom they were purchased by respondent, and the said articles so marked and labeled were offered for sale and sold by respondent to retail dealers who in turn sold the same so marked and labeled to the consuming public.

PAR. 4. In the regular course of its business as described in paragraph 1 hereof respondent described and advertised in the catalogues referred to in paragraph 3 hereof and offered for sale and sold to its said retail dealer customers certain necklaces and boxes of stationery, upon the containers of which bands and labels with purported resale prices had been affixed by the manufacturers or dealers from whom said articles were purchased by respondent. The prices indicated in said bands and labels were not the prices at which said articles were commonly sold or intended to be sold by said dealers to the consuming public but were greatly in excess thereof. The said retail dealers offered for sale and sold the said articles so labeled, to the consuming public.

The said use by respondent of the bands and labels so marked has the capacity and tendency to mislead and deceive the consuming public into the belief that the prices marked on said bands and labels are the usual and customary prices at which said articles are sold to the consuming public and to cause them to purchase said articles in that belief.

PAR. 5. There are among the competitors of respondent mentioned in paragraph 1 hereof many who offer for sale and sell in interstate commerce merchandise similar in character to the merchandise sold by respondent and who properly and truthfully represent the quality, composition, and value of such merchandise. There are others among the said competitors who place upon their merchandise bands and labels marked with the usual and customary prices at which the said merchandise is customarily sold to the consuming public. The acts and practices of respondent as set out in paragraphs 3 and 4 hereof had the capacity and tendency to and did divert trade from and otherwise prejudice said competitors.

CONCLUSION

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

At the final argument of this matter before the Commission, and otherwise, the respondent, by its attorneys, expressed a willingness to abide by and not contest any order which the Commission might make in this case.

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint of the Commission, the answer of respondent and an agreed statement of facts, in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and the briefs and arguments of counsel, and the Commission having made its findings as to the facts, with its conclusion that respondent has been, and is, using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is ordered, That respondent, N. Shure Co., its officers, agents, employees, and successors, cease and desist from:

(*a*) Using the figures and word "21 jewel", or any other like figures or words to represent, describe or advertise watches or watch movements which do not contain the stated number of jewels, each of which jewels serves a mechanical purpose as a frictional bearing.

(*b*) Using the word "Ivory", or the word "Ivoroy", to represent, describe or advertise articles, unless such articles are in fact made or composed of ivory.

(*c*) Using the word "Amber", or the word "Pearl", or the word "Shell", except in an adjective sense denoting color, to represent, describe or advertise articles which are not made from or composed of amber, or of mother of pearl or shell, as the case may be.

(*d*) Using the word "Leather", or the word "Morocco", to represent, describe, or advertise a product which is not made from or composed of the skins or hides of animals.

(*e*) Using the word "Opal", or the word "Ruby", or the word "Sapphire", or the word "Diamond", respectively, to represent, describe or advertise articles which are not in fact the semiprecious or precious stones known as Opals, Rubies, Sapphires, and Diamonds, respectively.

(*f*) Using the words "Gold-plated", or "Gold-filled", to represent, describe, or advertise watchcases, which watchcases are not manufactured so as to contain three one-thousandths of an inch in thickness of gold on the outside, and one one-thousandth of an inch in thickness of gold on the inside.

(*g*) Using the words "Fibre silk", "Art silk" or "Rayon silk" or the word "Silk" alone or in combination with any other word or words to represent, describe or advertise a fabric which is not composed wholly of silk made from the cocoon of the silkworm.

(*h*) Using the word "Pearls" in connection with the words "Genuine", "La Vega", "Deltah", "Richelieu", or any other word or words to represent or describe necklaces which are not composed of pearls, the product formed by natural processes in the shells of mollusks.

(*i*) Using the letters "U. S.", or the letters and words "U. S. Signal Service", to describe, designate, or advertise field and marine glasses which are not manufactured by or for or in accordance with specifications of the United States Government.

(*j*) Using the word "Sheffield" alone or in combination with any other word or words to designate, describe or advertise silver-plated ware which has not been made in Sheffield, England.

(*k*) Offering for sale or selling in interstate commerce, articles of merchandise bearing upon them any band, label, or other mark indicating a false or fictitious price in excess of the price at which such articles are ordinarily and customarily sold to the purchasing public.

(*l*) Making any other untrue advertisement or description of any article offered for sale by it.

It is further ordered, That the respondent, N. Shure 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.

IN THE MATTER OF

WATERBURY CLOCK COMPANY, INGERSOLL WATCH COMPANY, INC., INGERSOLL WATCH COMPANY, GEORGE H. EBERHARD COMPANY

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

Docket 1460. Complaint, May 10, 1927—Decision, Apr. 3, 1928

Where a corporation long engaged in the manufacture of watches, and in the sale thereof under the trade name "Ingersoll Watches," through three corporations, its sole distributors for the United States; and said distributors; with the intent and effect of (1) securing agreements and understandings from wholesale and resale dealers that they would maintain the resale prices (a) specified and established by it and its distributors, individually and in cooperation with one another, and (b) widely advertised by them in newspapers and magazines, circulars and other trade literature distributed among their customers and the wholesale and retail trade generally, and (2) suppressing competition between said dealers and preventing the exercise by them of their own discretion in the sale of said watches, and not acting in good faith, but well knowing that price cutting afforded no basis for a proceeding for damages of any kind;

(*a*) Adopted the practice of placing on the cartons of their said watches and also on all their billheads, order blanks, and other stationery, a statement (1) giving notice that the advertisement or sale of said Ingersoll watches at prices different from those advertised by them damaged the trade-mark and good will represented by the name Ingersoll; (2) setting forth that the buyer admitted "the foregoing facts and conclusions"; (3) declaring their intention "to prevent such damage and to protect the Ingersoll trade-mark and good will by prosecuting the property rights therein to the fullest extent of the law"; and (4) offering to relieve any dealer having on hand a stock of their watches, which he desired to dispose of at other than their fixed prices, of said stock; and

(*b*) Sent to price cutting or alleged price cutting wholesale and retail dealers a form letter directing their attention to and emphasizing the aforesaid notice;

With the result of controlling prices and suppressing competition in the sale by dealers of said watches, constraining them to sell the same at the established prices, and preventing them from selling said watches at such lower prices as they might desire, and depriving the ultimate purchasers thereof of those advantages in price which they would obtain from the natural and unobstructed flow of commerce in said watches under conditions of free competition:

Held, That such a scheme of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Edward S. Rogers and *Mr. Arthur E. Walradt*, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, the Waterbury Clock Co., a Connecticut corporation, with principal office and place of business in Waterbury, engaged in the manufacture and sale of "Ingersoll" watches throughout the United States, respondent Ingersoll Watch Co., Inc., a New York corporation with principal office and place of business in New York City, respondent Ingersoll Watch Co., an Illinois corporation with principal office and place of business in Chicago, both subsidiaries of said Waterbury Co., and respondent George H. Eberhard Co., a California corporation with principal office in San Francisco, through which companies respondent Waterbury Co. sold its watches (said Eberhard Co. being engaged in the sale of such watches under the terms of a contract between it and the Ingersoll Watch Co.), with maintaining resale prices in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in the course and conduct of their aforesaid business, for about five years last past "have enforced, and still enforce, a merchandising system adopted by them of establishing and maintaining certain specified uniform prices at which said Ingersoll watches shall be resold by dealers handling same, and respondents enlist and secure the support and cooperation of said dealers and of respondents' officers, agents and employees in enforcing said system. In order to carry out said system, respondents, and each of them, during said time have employed and still employ the following, among other means, whereby respondents and those cooperating with them have undertaken to prevent and have prevented dealers handling said Ingersoll watches from reselling same at prices less than aforesaid resale prices established by respondents":

(*a*) Establishing uniform minimum prices at which wholesale dealers handling said Ingersoll watches shall resell the same to retail dealers and requiring said wholesalers to sell such watches to retailers exclusively;

(*b*) Establishing uniform minimum prices at which retailers shall resell said watches to the general public;

(*c*) Issuing price lists setting forth uniform minimum wholesale and retail prices, to dealers;

(*d*) Causing to be set forth upon the invoices, bills, order blanks and other business stationery and upon the individual containers of their said watches "a certain notice and warning to the effect that the sale of said watches at less than said minimum wholesale and retail prices, respectively, constitutes a damage to the trade-mark 'Ingersoll' and to the good-will which said name 'Ingersoll' represents, together with the statement that the buyer admits such damage and that respondents will prevent such damage and protect said trade-mark and good-will through legal proceedings in the premises";

(*e*) Making it generally known to the trade by letters, telegrams, interviews with their agents and salesmen, and otherwise that they expect and require (1) dealers handling their said watches to maintain and enforce said minimum resale prices; and (2) wholesalers to resell said watches exclusively to retailers, and to refuse to further sell and supply such watches to price cutting retailers;

(*f*) Entering into agreements and understandings with wholesale and retail dealers handling such Ingersoll watches providing for the maintenance of such resale prices by said dealers;

(*g*) Employing their salesmen and agents and employees to visit price cutting dealers, wholesalers selling their said watches to other wholesalers, and wholesalers selling and supplying the same to price cutting retailers, and persuading and coercing price cutting dealers, by argument and intimidation to maintain their said resale prices in the future, to confine their sales, in the case of wholesalers, exclusively to retailers, and to refrain from further selling and supplying their said watches to price cutting retailers;

(*h*) Seeking and securing from dealers handling their said watches information concerning and evidence of price cutting by other dealers, and of the selling of their said watches by wholesalers to other wholesalers, and to price cutting retailers;

(*i*) Employing their salesmen and other agents and employees to ascertain, investigate and secure information concerning and evidence of, price cutting by dealers, failure of wholesalers to confine their sales to retailers exclusively, and sale of their said watches by wholesalers to price cutting retailers, together with proofs of the offenses, and to report to it in the premises;

(*j*) Employing a system of serial numbers and other marks which they cause to be stamped and printed upon the containers of their said watches "by means whereof respondents, their salesmen and employees may, and they do, trace said watches through the channels of trade to the general public and thus identify wholesale dealers who sell said watches to other wholesale dealers; wholesale dealers who sell said watches to retail dealers at less prices than said minimum wholesale prices; wholesale dealers selling and supplying said watches to retail dealers who fail to maintain said minimum retail prices and retail dealers who sell said watches to the general public at prices less than said minimum retail prices ";

(*k*) Using information secured through the means set out in paragraphs (*h*), (*i*), and (*j*), and otherwise, to induce and coerce price cutting dealers to observe and maintain their resale prices in the future, and wholesalers to confine their sales in the future exclusively to retailers, and/or to refrain from supplying said watches to price cutting retailers, "by (1) exacting promises and assurances from said dealers that they will in future maintain said prices, sell said watches exclusively to retail dealers and refrain from selling and supplying said watches to retail dealers who fail to maintain said minimum retail prices, as the case may be; (2) threatening said dealers that if they do not comply with such demands respondents will refuse to further supply them with said watches; and (3) threatening dealers who fail to maintain said resale prices, with law suits based upon the provisions of said warning and notice referred to in specification (*d*) hereof ";

(*l*) Exacting promises and assurances from dealers that they will maintain said resale prices and otherwise conform to respondents' merchandising policies, as hereinabove set out, as a condition of opening new accounts with them or of continuing to supply them, with their said watches;

(*m*) Refusing further to supply their watches to price cutting dealers, to wholesalers selling to other wholesalers, and to wholesalers selling to price cutting retailers;

(*n*) Compiling and maintaining lists and records from the various means and sources of information hereinbefore referred to, of the names of price cutting dealers, of wholesalers selling to other wholesalers, and of wholesalers selling to price cutters, " which said lists and records respondents and their agents and servants use in and about preventing said dealers so listed and recorded from securing further supplies of said Ingersoll watches "; and

(*o*) Using other equivalent cooperative and individual means and methods for the enforcement of said system of resale prices;

As a result of said acts and practices, as alleged, respondents' said resale prices have been and now are, generally maintained, and, further, the direct effect and result thereof " have been and are now to suppress competition in the distribution and sale of said Ingersoll watches; to constrain said dealers to sell said watches at aforesaid prices fixed by respondents and to prevent them from selling said watches at such less prices as they may desire, and to deprive the ultimate purchasers of said watches of those advantages in prices and otherwise which they would obtain from the natural and unobstructured flow of commerce in said watches under conditions of free competition. Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondents, Waterbury Clock Co., Ingersoll Watch Co., Inc., Ingersoll Watch Co., and George H. Eberhard Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances and filed answers to said complaint, the hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Waterbury Clock Co., is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business and factory at the city of Waterbury in said State. It is now, and for many years has been, engaged in the manufacture of watches known as, and named "Ingersoll watches", and the sale thereof throughout the United States through respondent Ingersoll Watch Co., Inc., Ingersoll Watch Co., and George H. Eberhard Co., hereinafter mentioned. Respondents Ingersoll Watch Co., Inc., and Ingersoll Watch Co. are and have been since 1922, corporations, the first named organized and existing under the laws of the State of New York, with its principal place of business at the city of New York and the second named, organized and existing under the laws of the State of Illinois, with its principal place of business at the city of Chicago. Both of said corporations were organized for the sole purpose of selling the watches manufactured by respondent Waterbury Clock Co., the capital stock of each, with the exception of a few shares necessary to qualify officers and directors, is owned by respondent Waterbury Clock Co., and the president of the latter is also president of the other two corporations. Respondent George H. Eberhard Co. is a corporation organized under the laws of the State of California, with its principal place of business at the city of San Francisco in said State.

PAR. 2. The respondents other than the Waterbury Clock Co. are and for years have been the sole distributors of Ingersoll watches in the United States, each covering the territory commercially appurtenant to its place of business and each engaged in the business of selling said watches to jobbers and retailers throughout said territory. All of said three distributors cause the said Ingersoll watches sold by them to be transported from the factory and from their respective places of business in the States of New York, Illinois, and California, into and through other States of the United States to their respective vendees at their various points of location.

PAR. 3. In the course and conduct of their business all of the respondents are in competition with other individuals, partnerships and corporations engaged in the sale and distribution of watches in interstate commerce between and among the various States of the United States.

PAR. 4. Since 1922 the said respondents have each individually and acting in cooperation one with the other, specified and established uniform resale prices at which Ingersoll watches shall be resold by jobbers or wholesalers purchasing from any of said respondents and also standard and uniform resale prices at which retailers, whether purchasing direct from respondents or from jobbers, shall sell said watches to the consumer or ultimate purchaser thereof. Said respondents have given and do give wide publicity to the prices thus specified by means of newspaper and magazine advertising, catalogues, circulars, and other trade literature, circulated from time to time among their customers and the wholesale and retail trade generally.

PAR. 5. Respondents regard it highly important that the established prices be maintained by dealers and sales are not usually made by them to dealers who do not maintain same. Various methods having the purpose of controlling resale prices have been employed by respondents. The respondent Ingersoll Watch Co., Inc., writing to a customer on this subject said:

> We have spent a good deal of time and money in an effort to control prices and generally speaking we have been very successful and price cutting by jobbers is almost unknown, and there is very little by retailers. (Commission's Exhibit No. 9, p. 25.[1])

[1] Not published.

PAR. 6. In the year 1924 respondents adopted the practice, which has ever since been continued, of placing on the cartons or containers in which Ingersoll watches are packed, and also on all their bill heads, order blanks and other stationery, a notice reading as follows:

NOTICE

Watches not bearing the name "Ingersoll" are not "Ingersoll watches" and can not lawfully be advertised or sold as such.

The advertising or selling of Ingersoll watches at prices which are different from the current prices advertised by us damages the trade-mark and good will which the name "Ingersoll" represents.

THE BUYER ADMITS THE FOREGOING FACTS AND CONCLUSIONS

We purpose to prevent such damage and to protect the Ingersoll trade mark and good will by prosecuting the property rights therein to the fullest extent of the law.

To any dealer having on hand a stock of Ingersoll watches which for any reason he wishes to dispose of at other than our current advertised prices, we make the following offer:

To furnish in exchange without expense to him, duplicates of such watches without the name Ingersoll; or at our option, to repurchase at our then prevailing prices, all Ingersoll watches in merchantable condition in the dealer's possession. Watches so furnished in exchange may not be advertised or sold as Ingersoll watches, but otherwise may be dealt in as the buyer may choose.

INGERSOLL WATCH CO., INC.,
Subsidiary of Waterbury Clock Co.

PAR. 7. In connection with the above notice respondents use a form letter which is sent to both wholesale and retail dealers as to whom respondents have received from any source information that they are deviating from the established prices. This form letter is sent regardless of whether or not the person to whom it is addressed is a customer of respondents or procures his supplies from a jobber. The letter is in part as follows:

We call your attention specifically to the notice printed upon the cartons in which our watches are packed and also upon our order blanks and invoices (a copy of which is herewith enclosed) and we hereby repeat all the statements made therein.

PAR. 8. None of the respondents have ever brought any suit or action against any person on account of such person having advertised or sold Ingersoll watches at prices which were different from the current prices advertised by them, and well know that price-cutting does not afford any basis of suit or action for damages to trade mark or good will or damages of any character whatsoever. This fully appears from the following language of respondents' brief filed with the Commission:

> It is a matter of common knowledge that under the law as it now stands and has been interpreted by the courts, price cutting alone and uncombined with deceptive practices is no ground for legal action by the distributor of trade marked goods. The respondents have not attempted to interfere with or restrain any price cutter who goes no farther, but they have, as the record shows, brought suits with uniform success against price cutters who complicate price cutting with unfair practices and thus not only injure the respondents but deceive and mislead the general public.

PAR. 9. The notice set forth in paragraph 6 hereof is not given in good faith by the respondents with any purpose to warn dealers against any action or proceeding which respondents intend to bring on account of the deviation from the standard or established prices, but such notice is given for the purposes and with the effect of suppressing competition between dealers, both wholesale and retail; and of preventing the exercise by such dealers of their own discretion in the sale of said watches, and of securing agreements and understandings from such dealers that the standard and established prices will be maintained.

PAR. 10. The direct tendency and results of the foregoing acts and methods of respondents have been and now are to control prices and suppress competition in the sale by dealers of Ingersoll watches, to constrain said dealers to sell said watches at the prices fixed by respondents and to prevent them from selling said watches at such less prices as they may desire, and to deprive the ultimate purchasers of said watches of those advantages in prices which would obtain from the natural and unobstructed flow of commerce in said watches under conditions of free competition.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and are unfair methods of competition in commerce 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 answers of the respondents, the testimony and evidence, briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondents, Waterbury Clock Co., Ingersoll Watch Co., Inc., Ingersoll Watch Co., and George H. Eberhard Co., their officers, agents, and employees, do cease and desist from—

(1) Attaching to boxes, cartons, or other containers of watches, or otherwise publishing or making use of the notice set out in paragraph 6 of the findings herein, or any notice or statement which asserts, directly or in effect, that any dealer who sells any Ingersoll watch at a price less than the resale price thereof as established and advertised by respondents, then and thereby becomes liable in damages to respondents or any of them; or that such dealer admits such legal liability.

(2) Making, publishing, or otherwise using any threat, express or implied, to bring a suit or action in any court against any dealer, who sells an Ingersoll watch at less than such established and advertised resale price, for the recovery of damages on account of such deviation from such resale price.

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

IN THE MATTER OF

HERB JUICE MEDICINE COMPANY

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

Docket 1469. Complaint, July 16, 1927—Decision, Apr. 10, 1928

Where a corporation engaged in the manufacture and sale of an extensively advertised proprietary medicine; in pursuance of a merchandising policy directed to the maintenance of uniform prices established by it for the resale of its said product,

(*a*) Fixed the retail price thereof and made it generally known that dealers would be expected and required to maintain the same, under penalty of refusal of further sales;

(*b*) Demanded and obtained agreements from dealers, especially price cutters, as a condition of future sales, that they would maintain its prices;

(*c*) Declined to make shipments to jobbers selling to price cutting retailers, unless they would agree not to sell the same, and thereby cut off said price cutters' source of supply;

(*d*) Requested and obtained reports from dealer customers regarding price cutting by other dealers and investigated the same and acted thereon by refusing further shipments to the price cutters unless they agreed to maintain prices in the future; and

(*e*) Refused to fill orders from jobbers for shipment to price cutting retailers;

With the result that competition in the distribution and sale of said medicine was suppressed, and dealers therein were constrained to sell the same at the prices fixed by it, and were prevented from selling it at such prices as they desired, and ultimate purchasers thereof were thus deprived of the advantages which they would have obtained from the natural and unobstructed flow of commerce in said medicine under conditions of free competition:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.
Norville & Lyons, of Memphis, Tenn., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Tennessee corporation engaged in the manufacture, among other things, of a medicine under the name "Miller's Herb Juice", and in the sale and distribution thereof from its factory at Jackson, Tenn., to wholesale and retail dealers throughout the United States, with maintaining resale prices in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about four years last past, in the course and conduct of its said business "has enforced and now enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its said medicine shall be sold by dealers handling the same, and respondent enlists and secures the support and cooperation of said dealers and of respondent's officers, agents, and employees in enforcing said system.

"In order to carry out said system, respondent has employed and now employs the following means among others whereby respondent and those cooperating with it undertake to prevent and do prevent dealers handling respondent's said medicine from reselling the same at prices less than the aforesaid resale prices established by respondent":

(*a*) Establishing uniform minimum prices at which both wholesale and retail dealers handling its said medicine shall resell the same, and issuing to such dealers price lists and catalogues setting forth said prices;

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

(*c*) Entering into contracts, agreements, understandings, and arrangements with dealers for the maintenance by them of said prices, as a condition of opening accounts with them or continuing their supply;

(*d*) Procuring groups of dealers in given localities to agree among themselves and with it to observe and maintain said prices;

(*e*) Seeking and securing from dealers handling its medicine, information concerning and evidence of price cutting by other dealers, and of the sale of its medicine by wholesalers to price cutting retailers;

(*f*) Employing its salesmen and other agents and employees to ascertain, investigate and secure information concerning and evidence of price cutting by dealers, and of sales by wholesalers to price cutting retailers;

(*g*) Using information secured through the means set out in paragraphs (*e*) and (*f*) above, and otherwise, to induce and coerce price cutting dealers, to observe and maintain prices in the future, and wholesalers to refrain from the further sale of its medicine to price cutters, by exacting promises and assurances from (1) such price cutters that they will in the future maintain its said resale prices, and from (2), wholesalers that they will not in the future supply price cutters;

(*h*) Refusing further supplies of its medicine to price cutters unless and until they have given it satisfactory assurances that they will in the future maintain and observe its said prices;

(*i*) Refusing to sell wholesalers who have been supplying retail price cutters unless and until such wholesalers agree to discontinue further supplying such price cutters; and

(*j*) Using other equivalent and cooperative means and methods for the enforcement of its said system of resale prices.

As alleged, "As a result of said acts and practices respondent's said resale prices have been and now are generally maintained", and "the direct effect and result of the above alleged acts and practices of respondent has been and now is to suppress competition in the distribution and sale of respondent's medicine; to constrain said dealers to sell said medicine at aforesaid prices fixed by respondent and to prevent them from selling said medicine at such less prices as they may desire, and to deprive the ultimate purchasers of said medicine of those advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said medicine under conditions of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5".

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

Respondent having entered its appearance and filed answer to said complaint, hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. The respondent, Herb Juice Medicine Co., is a corporation organized in 1913 under the laws of the State of Tennessee, having its principal place of business in the city of Jackson in said State. It is and has been since its incorporation engaged in the manufacture, among other things, of a certain medicinal preparation known as "Miller's Herb Juice" and the sale and distribution thereof to wholesale and retail dealers throughout the United States. It causes Herb Juice when sold to be transported from its principal place of business and factory in the city of Jackson, Tenn., into and through States of the United States other than the State of Tennessee and its vendees at their respective points of location.

Par. 2. The said Herb Juice is a proprietary medicine compounded and advertised to be curative or alleviative of constipation, backache, loss of appetite, indigestion, biliousness, nervousness, liver trouble, weak kidneys, tired physical conditions, run down physical conditions, worn out physical conditions and other ailments and is manufactured from a formula owned by respondent.

Par. 3. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations engaged in the manufacture, sale and transportation in interstate commerce between and among the various States of the United States, of medicines compounded and advertised as curative or alleviative of one or more of the ailments hereinbefore mentioned.

Par. 4. Respondent having prior thereto manufactured and sold Herb Juice to a limited extent, began in 1925 to extensively advertise same, with the purpose of increasing the demand for and sale thereof, in many parts of the United States, including Missouri, Alabama, and Virginia, and thereupon adopted and thereafter enforced a merchandising system of fixing and maintaining certain specified uniform prices at which Herb Juice should be sold by dealers handling same, and enlisted and secured the support and cooperation of said dealers in enforcing said system.

Par. 5. In order to carry out said system, respondent employed the following means, among others, whereby respondent and those cooperating with it undertook to prevent and did prevent dealers handling Herb Juice from reselling same at prices less than the resale prices established by respondent.

(*a*) Respondent fixed the retail price of said medicine at 98 cents and $1 per single bottle, or $2.50 for three bottles, and made it generally known to the trade, through its agents and by correspondence, that respondent expected and required dealers to maintain said fixed retail prices. Respondent's policy and practice in this respect is shown by Commission's Exhibit 1–C, a letter written by respondent to a St. Louis retailer, under date of November 11, 1925:

It is our policy not to sell any dealer that cuts the price on our product below the price maintained by our demonstration store in any city, namely, $1 per bottle, or three bottles for $2.50. Therefore this is to advise you that we cannot accept any further orders from you unless we have your assurance that you will not sell Herb Juice for less than 98 cents per bottle.

(*b*) Respondent frequently through its agents and by correspondence demanded and obtained as a condition of future sales, agreements from dealers, especially from those dealers reported to be price cutters, to maintain the retail prices fixed by respondent.

(*c*) Respondent, through its agents and by letters, declined to make shipments to jobbers who sold to retailers deviating from the established prices, unless said jobbers would agree not to sell such retailers. Such agreements were in some cases obtained, and the price cutters' source of supply thereby cut off. Typical of correspondence in this respect are:

(1) A letter written to a St. Louis jobber under date of November 14, 1925 (Commission's Exhibit 3–B):

Our representative in St. Louis informs us that one of the department stores the past week advertised and sold Herb Juice for 83 cents per bottle. In view of this fact we are writing you this letter with the view of cutting off the supply of any dealer that sells Herb Juice for less than 98 cents per bottle, or three bottles for $2.50. Therefore we would appreciate it if you will notify all of your customers that they must not sell Herb Juice for less than 98 cents per bottle, or three bottles for $2.50, otherwise you will be forced to cut off their supply. We are going to hold up the price on Herb Juice in St. Louis if we have to discontinue selling every jobber, and before we accept any further orders from any jobber in St. Louis we must have their assurance they will not sell Herb Juice to any dealer that cuts the price less than 98 cents per bottle, or three for $2.50. We trust, therefore, you can see your way clear to give us such assurance before placing your next order.

(2) Letter to a Mobile jobber under date of December 4, 1925 (Commission's Exhibit 11–I):

We are very much pleased to note that you agree not to sell any more Herb Juice to the department store in Mobile that has cut the price to a ridiculous low figure. In accordance with this agreement we are pleased to advise that so long as you adhere to this request from us not to sell these people, we will be pleased to supply you with our goods. Assuring you that it is not our intention in the least to cut off your supply to the regular drug trade, but simply trying to prevent price-cutting of our preparation in your city, your future order, therefore, will have our best attention, so long as you do not supply those people that persist in cutting the price on Herb Juice.

(*d*) Respondent requested from its dealers reports as to the cutting of prices by other dealers, investigated and acted upon such reports by declining further shipments if the price cutter did not agree to maintain prices in the future.

(*e*) Respondent refused to fill orders received from jobbers for Herb Juice to be shipped to price cutting retailers.

PAR. 6. The direct tendency and result of the above acts and practices of respondent has been to suppress competition in the distribution and sale of respondent's medicine and constrain said dealers to sell said medicine at the prices fixed by respondent and prevent them from selling such medicine at such prices as they may desire and thus to deprive the ultimate purchasers of said medicine of the advantages which they would have obtained from the natural and unobstructed flow of commerce in such medicine under conditions of free competition.

PAR. 7. There is no evidence that the respondent actively employed any of the methods and practices hereinbefore found to have been employed after June, 1926. The respondent, however, in its answer filed herein, did not plead any abandonment of the methods charged, but denied that any unfair methods had ever been employed by respondent. The respondent later, in its brief filed before the Commission, states as follows:

> Insofar as the immediate application of the questions to be determined in this proceeding is concerned, it is in the nature of an abstraction, for whether or not the respondent was guilty of unfair business methods during the latter five months of 1925, the respondent by January 1, 1926, had voluntarily abandoned them and has not resumed them. As business exigencies in the future may require respondent to take measures to protect itself from like occurrences, it would not like to be precluded by an order entered in this cause.

The Commission finds upon the whole record that there is a dangerous probability that the respondent will in the future resume said methods and practices unless restrained by the Commission.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

Now, therefore, it is ordered, That the respondent, Herb Juice Medicine Co., its officers, agents, and employees do cease and desist from carrying into effect, or attempting to carry into effect, its policy of securing the maintenance of resale prices for its products by cooperative methods in which the respondent and its distributors, customers and agents undertake to prevent the sale of its products for less than said resale price:

(1) By entering into contracts, agreements or understandings with any dealer that respondent's products are to be resold by such dealer at prices specified or fixed by respondent;

(2) By procuring, or attempting to procure, by threats, or otherwise, promises or assurances from any dealer that the prices fixed by respondent shall be maintained by such dealer;

(3) By procuring, or attempting to procure, by threats or otherwise, agreements, promises or assurances from any jobber that such jobber shall refuse to sell respondent's products to retailers not maintaining the price specified or fixed by respondent.

(4) By requesting dealers to report the names of other dealers who do not maintain respondent's resale prices or who are suspected of not maintaining the same, or in any manner enlisting the cooperation of dealers in the maintenance of any resale prices specified or fixed by respondent.

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

IN THE MATTER OF

CHIPMAN KNITTING MILLS AND CHAS. CHIPMAN'S SONS CO., INC.

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

Docket 1295. Complaint Mar. 17, 1925—Decision, Apr. 16, 1928

Where a corporation engaged in the manufacture and sale of hosiery, including a woman's stocking, of which only the instep, sole and toe were knit on flat machinery permanentlly giving the article the desired shape, that is to say, so shaped in the knitting by the process of "narrowing" and "widening," as is "fashioned" hose, and of which the leg, shaped at the ankle by cutting, was made on a regular circular knitting machine, and which, in its seam up the back, mostly imitation, in its "fashion marks" at the back of the calf on each side of the seam, and under the knee, in its opening on the inside of the welt, and in its heel, cut to shape, and with its full fashioned instep, sole, and "diamond point" toe closely simulated a "fashioned" or "full fashioned" stocking, that is, hosiery knit on flat machinery as above set forth; and said corporation's corporate selling agency;

(*a*) Advertised, labeled and branded said stockings as "form fashioned"; and

(*b*) Supplied advertising material and literature so describing said hosiery to jobbers and retailers;

With the effect of causing confusion in the minds of the trade and purchasing public, and with the capacity and tendency to cause purchasers and prospective purchasers to buy said stockings, so named and labeled, as and for the better shape retaining and ordinarily more expensive genuine "fashioned" or "full fashioned" hosiery made on flat machines as above set forth:

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

Mr. G. Ed. Rowland for the Commission.

Fraley & Paul, of Philadelphia, Pa., for respondents.

Greene & Hurd, of New York City, for intervenors, National Association of Hosiery & Underwear Manufacturers.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Chipman Knitting Mills, a Pennsylvania corporation engaged in the manufacture of hosiery and in the sale thereof in wholesale and/or retail quantities throughout various States, and with principal or executive offices and manufacturing plant in Easton, Pa., and respondent Chas. Chipman Sons Co., Inc., a New York corporation with principal or executive offices in New York City, selling agents for said first named corporation's so-called "form fashioned" hosiery, with advertising falsely or misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, for more than one year last past in their advertisements in publications of general circulation throughout the several States, and in other advertising matter, and on the brands and labels attached to hosiery made by them, or the boxes containing the same, falsely represented and described the product in question as "form fashioned" hosiery, the fact being that the same was not "fashioned" as generally understood by the trade and purchasing public, but, instead of being made of a fabric knitted flat and of uniform texture, and shaped by the process known as widening and narrowing, was knitted over a cylinder, and cut out and sewed together with a seam extending the entire length of the boot of the hosiery, in order to simulate genuine fashioned hosiery.[1]

As alleged by the complaint "the use by the said respondents of the word 'fashioned', either independently or in conjunction with the word 'form' in denominating and describing their product in their advertising matter and on the brands or labels attached to said product and/or on the boxes containing the same, have the capacity and tendency to and/or do mislead and deceive the purchasers and prospective purchasers of said hosiery into the belief that the said product is 'fashioned' hosiery, and tends to and does cause such purchasers and prospective purchasers to purchase said hosiery in that belief and thereby divert trade from truthfully marked goods" and such misrepresentation unfairly puts to a competitive disadvantage those

[1] The complaint sets forth the foregoing as follows: "The terms 'fashioned' and 'full fashioned', as applied to hosiery are regarded as synonymous by a majority of the trade and purchasing public as descriptive of that type of hosiery made of a fabric knitted flat and of uniform texture and so shaped in the knitting by the process known to the knitting trade as widening and narrowing so as to conform to the shape of the leg, containing said uniformity of texture and being closed in the back with a stitched seam. The shape of the hosiery is accomplished by the dropping of stitches where the contour begins to narrow, thereby forming true gussets or 'fashioned' marks parallel the leg seams. This said process of dropping stitches is carried on also at the bottom of the heel, at the instep, the toe and sometimes just below the garter welt at the back of the knee, giving in all cases permanent shape effected by knitting. The fact is that the hosiery advertised, offered for sale, and sold by respondent as 'form fashioned' is what is known to the trade and purchasing public as 'seamless' hosiery, being hosiery knitted over a cylinder and made to conform to the shape of the leg by means other than the process used in the manufacture of 'fashioned' hosiery. The respondent fashions the hosiery manufactured by it by cutting out the fabric at the back of the ankle and sewing the same together and extending the said seam the entire length of the boot of said hose in order to simulate what is known to the trade and purchasing public as 'fashioned' hosiery knitted by the process hereinbefore stated".

individuals and concerns selling genuine "fashioned" hosiery and denominating and representing the same as such, or as "full fashioned", and dealing fairly among themselves and with the purchasing public; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Chipman Knitting Mills and Chas. Chipman's Sons Co., Inc., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed their answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and the respondents before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondents having submitted briefs and having argued the case before the Commission, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Chipman Knitting Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal executive offices and manufacturing plant located in the city of Easton, in said State. It is now, and has been for more than one year last past, engaged in the business of manufacturing hosiery and in selling the same in interstate commerce in wholesale quantities throughout various States of the United States, and the District of Columbia. On receipt of orders for its said hosiery, respondent causes said product to be shipped or transported in interstate commerce from its warerooms or manufacturing plant located in the State of Pennsylvania to purchasers located in other States of the United States, and the District of Columbia. In the course of its said business respondent has been and still is in competition with other individuals, firms, partnerships and corporations manufacturing hosiery and selling the same in interstate commerce.

PAR. 2. Respondent, Chas. Chipman's Sons 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 or executive office located in the city of New York, in said State. It is now, and has been for more than one year last past, the selling agent of various hosiery mills, including the mill of respondent, Chipman Knitting Mills, and as selling agent for such mills, sells and ships in interstate commerce from these mills and from its warerooms in the said city of New York various kinds and grades of ladies and misses' hosiery, and various kinds and grades of men's and children's hosiery, and causes the said hosiery, when sold by it, to be transported from the State or States in which manufactured into and through other States of the United States, and the District of Columbia. In the course and conduct of its said business said respondent has been and still is in competition with other individuals, firms, partnerships, and corporations selling hosiery in interstate commerce.

PAR. 3. Respondent, Chipman Knitting Mills, is engaged exclusively in the manufacture of women's seamless, or circular knit, hosiery, and the stocking designated by it as No. 100. It purchases from other mills full fashioned stockings which have been completely knitted and seamed, which it then dyes and finishes. Its output in 1925 was approximately 3,500 dozens pairs per day, consisting of 2,200 dozen pairs of seamless, or circular knit stockings, 1,000 dozen pairs of the No. 100 stocking, and 300 dozen pairs of full fashioned hosiery dyed and finished by it. Respondent, Chas. Chipman's Sons Co., Inc., is engaged principally in the sale of seamless, or circular knit, hosiery. It also sells full fashioned hosiery, but its sales of seamless, or circular knit, stockings in dozen pairs greatly exceeds its sales of full fashioned stockings. It also advertises and sells under the name and label " Form Fashioned ", the No. 100 stocking made by respondent, Chipman Knitting Mills.

PAR. 4. Respondent, Chipman Knitting Mills, claims to manufacture the stocking designated by it as No. 100 under three patents, as follows: U. S. Letters Patent No. 924,605 issued June 8, 1909, which expired June 8, 1926; U. S. Letters Patent No. 1,551,993, issued September 1, 1925; and U. S. Letters Patent No. 1,589,290, issued June 15, 1926. None of these patents covers the method of knitting either the leg or the instep, sole and toe of the said stocking, but relate wholly and exclusively to so knitting a heel tab on a circular machine, and cutting the same, that a seamless, circular knit leg tube may be transferred to that part of a flat, full fashioned machine known as a " footer ", in order that a full fashioned instep, sole and toe may be joined to the circular knit leg. Said respondent registered the trade-mark "Form Fashioned" in the U. S. Patent Office on November 1, 1921, registration No. 147,842, and has since used and now uses the same as a trade-mark for its said No. 100 stocking.

PAR. 5. Respondents advertise the No. 100 stockings under the trade-mark label "Form Fashioned", and pack, sell and ship the same under said label to jobbers throughout the United States, and said jobbers resell the said stockings under that label to retail dealers. Respondents also supply and ship to jobbers and to retailers various kinds of advertising material and literature featuring the said trade-mark label. Many jobbers purchasing the said No. 100 stockings from respondents, do not use this trade-mark label "Form Fashioned", and at their request, respondents pack and ship the stockings under the private brand names and labels of such jobbers, or simply tagged as their "No. 100". For one or more jobbers, respondents pack and ship these stockings under the name and label "F. F. F.", said letters standing for "Full Fashioned Foot", and said stockings are sold by these jobbers to retailers under said name and label. Respondents supply to such jobbers and retailers advertising material of various kinds featuring this name.

PAR. 6. Hosiery is generally divided into three principal classes known as "full fashioned" hosiery, "seamless", or "circular knit", hosiery, and "cut" hosiery. The vast majority of stockings for women sold in this country during the past thirty years fall within the first two classes, very few of the last class being manufactured and sold. The machines used and the method of knitting hosiery of the first two classes are distinctly different. Full fashioned hosiery is knitted on flat machines, invented about 1864 by William Cotton, and are known today as "Cotton patent type machines". Such machines knit a flat piece of fabric, which is shaped during the knitting process, and the edges of which have to be seamed together to complete the stocking. Seamless, or circular knit, hosiery is knitted on circular machines, which knit a seamless tube containing the same number of wales at the ankle as at the top of the stocking, and the completed stocking is seamless throughout. Until recently such stockings have been known as "seamless" stockings, but because of developments in the industry, which will be set forth hereinafter, they are now more generally referred to as "circular knit" hosiery. In neither full fashioned nor seamless hosiery is any part of the knitted fabric cut and sewed. Cut hosiery is manufactured either from flat, unshaped pieces of fabric which are cut to pattern and sewed together, or from seamless tubes knitted on the circular knitting machines. The majority of stockings sold in this country prior to the year 1880 were of the cut type. Because of its more expensive method of manufacture, and its better fit, due to the shaping given it during the knitting process, full fashioned hosiery customarily sells for a higher price than seamless, or circular knit, hosiery.

PAR. 7. The essential characteristic of full fashioned hosiery is that the flat fabric of the stocking is structurally shaped in the knitting to conform to the shape of the human leg and foot. This is accomplished by a process termed "narrowing", which consists in removing loops from two or more needles to an adjoining needle, knitting these loops in one operation of the transferee needle, and thereafter leaving the first needles out of the knitting operation. This results, first, in reducing the number of wales in the fabric, thereby "narrowing" the flat piece of fabric, and secondly, in producing noticeable gussets or prominences in the fabric. Such gussets or prominences have long been known in the trade by the trade term "fashion marks". These "fashion marks" appear in the flat fabric wherever the narrowing process has been employed and are customarily found in full fashioned stockings under the knee, at the back of the leg on each side of the seam, in the heel, under the instep, and at the toe. On machines of the Cotton patent type, it is mechanically possible to "narrow", or shape, the flat piece of fabric in this way at any point. As the foot is considerably narrower and much shorter than the leg, the knitting can be completed in a much shorter period. Cotton patent type machines are therefore divided into two parts, one called the "legger" and the other the "footer". A complete machine or set, usually consists of three "leggers" and one "footer". The legger knits the leg of the stocking, including the heel, and the "footer" knits the instep, sole and toe of the foot. Knitting is begun on the "legger" at what is to be the top of the stocking, forming a flat piece of fabric. As the knitting proceeds, each side of the flat fabric is generally slightly "narrowed" below the welt, with the result that "fashion marks" appear under or back of the knee in the completed stocking. When the widest point of the calf is reached, gradual "narrowing" is begun and continued down to the top of the ankle. At this point in the "narrowing" process, the loops are not transferred from the end needles of the flat needle bed, but from needles five or more inward from each end, so that in the completed stocking a vertical row of "fashion marks" appears on each side of, and four or more wales away from, the seam at the back of the stocking. These intervening wales between the seam and the two parallel rows of "fashion marks" are known in the trade as "bordering wales". At the heel a large number of needles at the center of the needle bed are taken out of action, and two heel tabs are knit, each of which is slightly "narrowed", leaving "fashion marks" in the heel of the completed stocking. The knitted fabric is then transferred to the "footer" and the instep, sole and toe knitted onto the leg. The "narrowing" process is continued on the footer, and the flat fabric is "narrowed" somewhat on each side to shape the instep. At the toe the "narrowing" is very rapid, loops being transferred inward on each side at every course, forming distinct "narrowing lines", which results in a structural formation in the fabric usually referred to as the "diamond point" toe. The flat piece of fabric is then removed from the "footer", and put on a seaming machine, which seams together the selvedge edges from the toe to the top of the stocking. The complete stocking has a seam extending along the bottom of the foot, through the heel and up the back of the leg to just inside the garter welt. The seaming machine can not reach the inside thickness of the welt, which results in an opening about two inches long being left at that point.

PAR. 8. The distinguishing characteristics of full fashioned stockings are, first, a seam from top to toe; second, the "fashion marks", which appear usually under the knee, and always at the calf of the leg, in two lines parallel to and on each side of the seam, in the heel and under the instep; third, a distinctive box-like structure of the heel; fourth, the "diamond point" toe; and fifth, an opening in the seam at the inside thickness of the garter welt.

PAR. 9. Seamless, or circular knit stockings, are knit on cylindrical machines, which knit one stocking at a time, in continuous succession. They present in appearance none of the characteristics of full fashioned stockings. The knitting is done by a revolving cylinder on which is a circle, or battery, of needles. The knitting begins at the top of the stocking, and continues until the toe is reached, and the stocking comes off the machine and another one is immediately started. The stocking when it is completed is in the form of a tubular web, containing the same number of wales at the ankle and in the foot, as at the top. At the heel and toe of the stocking the machine performs so-called "reciprocal" knitting in the course of which the machine instead of revolving, oscillates back and forth around only a part of the circle of needles. During this reciprocal knitting process certain needles are pushed to an inactive position until only about one-third of them are knitting. As the knitting proceeds these inactive needles are again put in action, the final result being a seamless "pouch" conforming to the shape of the heel and toe. The needles which are temporarily put out of action in this reciprocal knitting operation retain on them their loops, and there being no transfer of loops from one needle to another, as in the case of the full fashioned machine, no "fashion marks" appear in the completed seamless stocking. No circular machine has yet been put into commercial use which is capable of transferring loops from one needle to another, thereby reducing the circumference of the seamless tube. The knitted structure of the heel of a seamless, or circular knit, stocking presents an appearance noticeably different from the box-like appearance of a full fashioned stocking. Various improvements have been made to the circular machine designed to give shape to the stocking at the ankle. These consist of mechanical attachments which tighten the tension of the yarn at this point, and knit shorter stitches at the ankle than at the top.

The chief disadvantage of the seamless or circular knit, stockings is that the ankle has the same number of wales as the upper part of the leg, and hence does ont conform to the shape of the human leg at that point. Such shaping as is given at the ankle by tightening the tension or knitting shorter stitches is usually temporary, and after use and washing the stockings tend to lose their shape at the ankle and revert to the straight tubular form. The circular machines knit stockings in continuous succession, one at a time, and as the stockings are knitted as a tube, they can be turned out much more rapidly and at less expense than can full fashioned stockings. Skilled operators are not required, as in the case of the Cotton patent type machine, and one operator can take care of a number of machines.

PAR. 10. Up until about 1917 seamless stockings, as the name implies, contained no seams or "fashion marks." When more of the stocking became visible, by reason of the change in length of women's skirts, manufacturers of seamless stockings began knitting an imitation seam in their stockings by means of an attachment to the circular machine. Later, in order to more nearly imitate the appearance of full fashioned stockings these manufacturers also devised means for putting imitation "fashion marks" at the back of the calf of their stockings, in the same place at which they are found in full fashioned stockings where they would be visible when the stockings were worn. At the present time practically all seamless, or circular knit, stockings contain these imitations of full fashioned stockings.

It is not customary to put these imitations at points where they are not visible when the stockings are worn, and accordingly seamless, or circular knit, stockings have no seam along the bottom of the foot, or imitation "fashion marks" under the knee, in the heel, and under the instep. Since an imitation seam now appears at the back of seamless, or circular knit, stockings, the term "seamless" is no longer used to describe them, and they are usually referred to in the industry as "circular knit" hosiery. After imitation "fashion marks" were added to the imitation seam, some circular knit manufacturers, in advertising and labelling such stockings, began to use the word "fashioned," or a term containing that word, such as "mock fashioned," "semi-fashioned," etc., to describe their stockings. The use of such word, or terms, has created confusion in the minds of the purchasing public as to the true meaning of the word "fashioned," as applied to hosiery.

PAR. 11. Cut hosiery was originally knit in a flat, unshaped piece of fabric, and then cut to the shape of a stocking and sewed together. After the circular knitting machine was perfected, the tubular webbing produced by that machine was utilized as a material for such stockings. The tubular web was cut in lengths, feet cut in it, and sewed on sewing machines. At present very little cut hosiery is manufactured in this country.

PAR. 12. The No. 100 stocking advertised and sold by respondents under the name "Form Fashioned" is a combination circular knit, full fashioned and cut out stocking. The leg of the stocking is knit on a circular knitting machine, the instep, sole and toe are knit on the "footer" of a Cotton patent type machine, and a certain amount of material is cut out at the ankle to give the stocking shape at that point. The method of manufacture is as follows:

The leg is knit on a regular circular knitting machine, except that the cylinder contains more needles than the ordinary machine, because material is to be cut out of the ankle. As the knitting of the leg proceeds, the stitches are tightened at the ankle. A straight edged, semicircular heel tab is knitted on the bottom of the leg, under a patent owned by respondent, Chipman Knitting Mills, instead of the usual heel pouch as in regular circular knit stockings. This heel has a box-like appearance, and closely resembles a full fashioned heel. When the stocking comes off the circular knitting machine, the heel tab and a part of the ankle portion are split up the middle so it can be transferred to the full fashioned "footer," where the full fashioned instep, sole and toe are knitted on to the leg. The stocking is then transferred to a machine which sews the edges of the foot together, cuts off part of the heel so as to round off the point, cuts out a quantity of the fabric at the ankle and sews together the cut portion. About forty wales are cut out at the bottom of the ankle, the cutting tapering off until the calf is reached, where the cutting stops and the seamless tube is left intact from that point to the top of the stocking. After the cut edges of the heel and ankle are seamed together the machine knits an imitation seam from the point where this necessary seam ends up to the top of the stocking. An opening is cut in the inside thickness of the seamless knit welt, in the same place as an opening is of necessity left in the welt of full fashioned stockings. Imitation "fashion marks" are put in the stocking on each side of the seam at the back of the calf, as in most circular knit stockings, and also under the knee where they appear in full fashioned stockings. It is unusual for imitation "fashion marks" to appear in seamless, or circular knit stockings at this point.

PAR. 13. The use of the word "fashioned" as applied to hosiery means that the hosiery so described has been shaped in the structure of the knitted fabric by the process known as "narrowing" or "widening" so as to conform to the shape of the human leg. From the beginning of the hosiery industry the word "fashioned" has had a descriptive meaning in the trade. Prior to the invention of power-driven machines in England, stockings were knitted on hand stocking-frames, which had a straight, or flat, bed of needles, and on which was knitted a flat fabric. The operator of such a stocking frame could knit a straight, unshaped, parallel-edged fabric, or he could widen or narrow the fabric at will by stopping at the end of each course and transferring by hand the loop on the end needle outward to a new needle or inward to a needle already having a loop on it. Where widened, a small hole or pinpoint appeared in the fabric; where narrowed, a small gusset or "fashion mark" appeared. Only knitted fabric shaped in this way during the process of knitting has been termed "fashioned work."

In the early books on the hosiery industry, stockings produced by this process are referred to as "fashioned" hosiery, to distinguish them from hosiery produced by cutting to shape. Machines of the Cotton patent type automatically perform the same process of "narrowing" as was done by hand on the stocking frames, and the hosiery thus produced has always been termed "fashioned" hosiery. The term "full fashioned" is generally used in this country in advertising and selling stockings knitted on these machines, but many manufacturers, jobbers, and retailers, refer to such stockings by the single word "fashioned". Prior to the appearance of imitation seams and "fashion marks" on seamless, or circular knit, stockings, the word "fashioned" was not used in any way to describe such stockings, nor was it employed in advertising, labelling or selling them, and since that time there has been no change in the method of knitting such stockings which would entitle them to be described as "fashioned."

PAR. 14. The word "fashioned", as applied to hosiery has been for many years associated in the minds of the purchasing public with full fashioned hosiery, which hosiery is given a shape in the knitting process by the transferring of loops or stitches from one needle to another and the dropping or adding of needles in the knitting operation, and which bears certain distinguishing characteristics in outward appearance by which it can be identified. Hosiery shaped by this process retains its shape after continued wearing and washing. The use of the word "fashioned", either by itself or in conjunction with any other word or words, to describe, or as a label for, hosiery which bears the outward appearance of full fashioned hosiery but which has been shaped by cutting or by changing the stitch length, or tension, at the ankle, has the capacity and tendency to cause purchasers and prospective purchasers to buy said hosiery in the belief that they are buying full fashioned hosiery, or hosiery which has been shaped in the knitting process by the same or similar process to that employed in making full fashioned hosiery.

PAR. 15. The leg and heel of respondent's No. 100 stocking, advertised and sold under the name "form fashioned", is not fashioned as that term is used and understood in the hosiery industry. It is made on a circular knitting machine and the shaping given the stocking at the ankle is not accomplished by the knitting process, but is the result of cutting the fabric after the knitting is completed. The instep, sole and toe of the stocking is knit on a Cotton patent type "footer", and the flat fabric is shaped by "narrowing" in the knitting process, and may properly be described as "fashioned" or "full fashioned". The term "fashioned" as used in the name "form fashioned" applies to the whole stocking, and is not limited to the foot of said stocking. The word "form" has no distinctive meaning in the hosiery industry and does not qualify or limit the word "fashioned" in any material way. The use of the word "fashioned" in the term "form fashioned" to describe the No. 100 stocking manufactured and sold by respondents, without qualifying words which limit its application to the instep, sole and toe of said stocking, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that the entire stocking has been shaped in the knitting in the same way that full fashioned stockings are shaped, and to cause them to purchase such stocking in that belief.

PAR. 16. The term "form fashioned", used by the respondents as a name and label for the No. 100 stocking manufactured and sold by them, is so similar in sound and appearance to the term "full fashioned", a well-known trade term descriptive of stockings possessing certain well-recognized characteristics, as to cause confusion in the minds of the trade and purchasing public, and has the capacity and tendency to cause purchasers and prospective purchasers to buy said No. 100 stockings, under the name and label "form fashioned", in the belief that they are actually purchasing full fashioned stockings.

PAR. 17. The No. 100 stocking advertised and sold by respondents under the name "form fashioned" closely simulates a full-fashioned stocking. It has a seam up the back, most of which is an imitation seam, the same as a full fashioned stocking; it has imitation "fashion marks" on the back of the calf on each side of the seam, in the same place as they appear on a full fashioned stocking; it also has these imitation fashion marks under the knee, where they do not customarily appear in a circular knit stocking, but where they are to be found in practically all full fashioned stockings; it has an opening on the inside of the welt, which appears in all full fashioned stockings and which is cut there by respondents for the partly admitted purpose of imitating a full fashioned stocking; it has a heel which differs from the ordinary seamless heel and which, although the fabric is knit on a circular machine, resembles so closely the heel of a full fashioned stocking that it requires close examination by one familiar with hosiery to distinguish it; and it has a full fashioned instep and sole, and the "diamond point" toe. The "diamond point" toe is a distinguishing mark of a full fashioned stocking, and many women rely on it when purchasing hosiery to assure themselves that they are getting full fashioned stockings. This stocking as manufactured and sold by respondents is so similar in outward appearance to a full fashioned stocking that its advertisement and sale under the name and label "form fashioned" has the capacity and tendency to mislead and deceive purchasers into the belief that it is a full fashioned stocking and to cause them to buy it in that belief.

PAR. 18. The use by respondents of the word "fashioned" in the name and label "form fashioned", to describe a stocking, the leg and heel of which are made on a circular knitting machine and shaped at the ankle by cutting, without limiting the use of said word to the foot of said stocking, said foot being what is known and recognized as a "full fashioned foot", is misleading to the trade and purchasing public, and has the capacity and tendency to induce purchasers and prospective purchasers to buy said stocking in the belief that they are purchasing a stocking which has been shaped in the knitting by the process known as "narrowing", hereinbefore described, when such is not the case.

PAR. 19. The use by respondents of the name and label "form fashioned" to describe the No. 100 stocking manufactured and sold by them, which said stocking in its outward appearance closely simulates a full fashioned stocking, causes confusion in the minds of the trade and purchasing public, and has the tendency and capacity to mislead and deceive purchasers and prospective purchasers of said stocking, sold under the name and label above set forth, into the belief that they are purchasing a full fashioned stocking, when such is not the case.

CONCLUSION

The practices of said respondents, Chipman Knitting Mills and Chas. Chipman's Sons Co., Inc., under the conditions and circumstances set forth in the foregoing findings are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

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

Now, therefore, it is ordered, That the respondents, Chipman Knitting Mills, a corporation, and Chas. Chipman's Sons Co., Inc., a corporation, their officers, directors, agents, servants, and employees, do cease and desist from directly or indirectly:

1. Using the word "fashioned", either by itself or in conjunction with any other word or words, as a name for or to describe a stocking, unless said stocking is shaped in the knitting by the process known as "narrowing" or "widening", which involves the transfer of loops or stitches from one needle to another and the dropping or adding of needles in the knitting operation.

2. Using the word "fashioned", either by itself or in conjunction with any other word or words, as a name for, or to describe, a stocking only part of which is actually shaped in the knitting by the process known as "narrowing" or "widening", which involves the transfer of loops or stitches from one needle to another and the dropping or adding of needles in the knitting operation, unless said word

"fashioned" is qualified or limited in such a way as to apply specifically to the part of the stocking thus shaped.

3. Using the word "fashioned", either by itself or in conjunction with the word "form", as a name for, or in advertising, labelling and selling, a stocking the leg and heel of which is knitted on a circular knitting machine, with the ankle shaped by cutting out a portion of the material, and the instep, sole and toe shaped in the knitting on a Cotton patent type "footer" machine, by the process known as "narrowing", unless said word "fashioned" is qualified or limited in such a way that it applies specifically to the foot of said stocking.

4. Using the term "form fashioned" as a name and/or label for a stocking which closely simulates in outward appearance and characteristics a full fashioned stocking, but which in fact is not a full fashioned stocking.

5. Using the term "form fashioned" as a name and/or label for a stocking which closely simulates a full fashioned stocking in that it has a full fashioned foot, a seam up the back, most of which is imitation, imitation "fashion marks" at the back of the calf on each side of the seam, and under the knee, and a heel knitted on a circular knitting machine and cut to shape, which heel closely resembles a full fashioned heel.

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

IN THE MATTER OF

CHARLES T. MORRISSEY, DOING BUSINESS UNDER THE TRADE NAMES AND STYLES OF CHARLES T. MORRISSEY & CO., AND CHARLES ORANGEADE COMPANY

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

Docket 1444. Complaint, Mar. 10, 1927—Decision, May 14, 1928

Where an individual, engaged under a trade name including the word "Orangeade", in the manufacture and sale of "soft drink powders", for use, together with certain liquid flavors, in the preparation of beverages, and not composed, in either case, of fruits or fruit juices, but principally of tartaric acid as a base, with oil of limes, lemons or oranges, in the "lime" etc., flavors, and artificially colored;

(*a*) Labeled the packages, vials and other containers of said soft drink powders and flavors, "cherry", "strawberry", "grape", "raspberry", "ras-o-berry", "pineapple", "lime", "lemon", "orange", "orangeade", "orange-julep", "grape-julep", "cherry-julep", and "lemonette"; and

(*b*) Advertised said powders and flavors under such names, in publications of general circulation and by means of circulars and cards distributed to dealers and others, together with such representations as, "The best strawberry drink you ever tasted" and "Wonderful true fruit flavor orangeade in powder", and depictions of the respective fruits indicated;

With the capacity and tendency to mislead and deceive the public into believing said products to be derived from the fruits or the juices of fruits indicated, and to induce the purchase thereof in such belief, and with the effect of so doing, and of placing in the hands of distributors and dispensers of said soft drink powders and beverages made therefrom, the means, in the advertising matter and display cards supplied by him to distributors and dispensers of his aforesaid products, and the beverages made therefrom, of deceiving and defrauding the consuming public, and with the capacity and tendency to divert business from and otherwise injure and prejudice competitors dealing in pure fruit juices or extracts for compounding beverages, and in beverages already compounded, and who truthfully mark their products:

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

Mr. William A. Sweet for the Commisison.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, doing business under a trade name including the word "Orangeade", engaged in the manufacture of soft drink powders and in the sale thereof to purchasers in various

States other than the State of origin of shipments, and with place or places of business in Chicago, with misrepresenting product, misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in selling certain of his said powders, under the brands "Fruit Vale", "Charles" and "Crescent", containing none of the fruits or juices thereof as hereinafter depicted and represented, labels the packages, vials and other containers of his powders with the words, among others, "orangeade", "orange julep", "lemon", "limes", "grape", "grape julep", "cherry", "cherry julep", "strawberry", "pineapple", "raspberry", and "ras-o-berry", respectively, together with depictions of clusters of the fruit designated arranged in fanciful form on such labels, and in advertising the same in newspapers, magazines and other periodicals or publications of general circulation throughout the various States, and on placards and other display matter placed in the hands of dealers in and dispensers of beverages made from his said powders, makes such representations as "Wonderful true fruit flavor orangeade in powder * * *. Makes the best drink you ever tasted—no trouble. Real, rich, true orange flavor and color. Superior strength. * * * Grape, cherry, lemon, apple, strawberry, pineapple, etc. * * *" "Crescent orangeade powder is, without question, the best tasting, strongest and biggest profit paying orangeade made. It is delightfully refreshing, and has such a true, smooth, natural orange flavor that it has become the most popular orange drink on the market. * * * It costs you much less than orange drinks in syrup form, has a much richer, better flavor, and is more convenient to handle". "Just like luscious oranges"—"Our powder is derived from the juice of lemons reduced to powdered form."

The use by respondent, as alleged, "of the aforesaid designations, statements, depictions and representations of and concerning his said products, has the capacity and tendency to, and does, mislead purchasers of said powders and the beverages made therefrom into the belief that said powders and beverages are composed, in whole or in part, of the fruit or juice of the fruit as represented, depicted and designated, and to purchase same in said belief; and said placards and display advertising supplied as aforesaid to the distributors and dispensers of said powders and the beverages made therefrom, furnish them with the means of deceiving and defrauding the consuming public", and said acts and practices tend to and do divert business from and otherwise injure and prejudice competitors dealing in pure fruit juices or extracts therefrom, for the compounding of beverages and beverages already compounded, and who truthfully mark their products; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon the respondent Charles T. Morrissey, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Hearings were had in the course of which testimony and evidence were received in support of the charges in the complaint and in opposition thereto. The trial examiner filed his report upon the facts and the respondent filed exceptions thereto. A brief was filed by counsel for the Commission.. The time within which the brief of respondent was required to be filed under the Commission's rules of practice expired on April 4, 1928, and no brief has been filed by the respondent.

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

Findings as to the Facts

Paragraph 1. Respondent is an individual, doing business under the trade names and styles of Charles T. Morrissey & Co. and Charles Orangeade Co., with his usual place of business in the city of Chicago, in the State of Illinois. He is now and has been for more than two years prior to March 10, 1927, engaged in the business of manufacturing certain powders designated and known as "Soft drink powders", which are designed and intended to be used in compounding beverages by the addition of water and sugar thereto, and in the sale and distribution of said powders in interstate commerce between and among various States of the United States. He also manufactures and sells, in commerce, certain liquid flavors put up in vials and included in the packages or cartons containing said powders, which liquid flavors are intended to be used in connection with said powders in compounding said beverages. Respondent has caused and now causes his soft drink powders and liquid flavors when sold to the public to be transported from his place of business in the city of Chicago to the purchasers thereof into and through various States of the United States other than the State of Illinois. In the sale and shipment of said powders and flavors respondent is in competition with other manufacturers of similar powders, flavors, and extracts, used in compounding of beverages, and of beverages already compounded, and who cause the same when so sold to be transported to the purchasers thereof located in various States of the United States into which respondent has caused and now causes his products to be transported.

PAR. 2. In the course and conduct of his said business, as described in paragraph 1 hereof, the respondent has caused and still causes to be affixed to the packages, vials, and other containers of his said soft drink powders and flavors, labels bearing the names and designations, "Cherry", "Strawberry", "Grape", "Raspberry", "Lime", "Lemon", "Pineapple", "Ras-o-Berry", "Orangeade", "Orange-Julep", "Orange", "Grape-Julep", "Cherry-Julep", and "Lemonette", respectively, and with said labels bearing said names and designations so affixed, sold and transported said products in interstate commerce. Respondent in soliciting the sale and selling his said products, in interstate commerce, has caused advertisements to be inserted in publications having general circulation between and among various States of the United States, and advertising circulars and cards to be printed and distributed to dealers and others who used said products in making beverages which were sold to consumers. Such advertisements and advertising matter contain, among other names and representations, the following: "Orangeade", "Grape-Julep", "The best strawberry drink you ever tasted", "Orange-Julep", "Cherry-Julep", "Wonderful true fruit flavor orangeade in powder", together with depictions of clusters of fruit, cherries, grapes, strawberries, and oranges as the case may be.

PAR. 3. The soft drink powder and flavors, labeled respectively, "Cherry", "Strawberry", "Grape", "Raspberry", "Pineapple", "Ras-O-Berry", "Grape-Julep",, and "Cherry-Julep", as set forth in paragraph 2 hereof, contain none of the fruit, or juice of the fruit so represented, but consist principally of tartaric acid as a base, and are artificially colored with coal tar colors. The soft drink powders labeled respectively, "Lime", "Lemon", "Lemonette", "Orange", "Orangeade", and "Orange-Julep", contain none of the fruit or juice of the fruit so represented, but consist principally of tartaric acid, as a base, to which has been added oil of lemons, oil of limes, and oil of orange, respectively, which is derived from the peel of those fruits, and are artificially colored with coal tar colors.

PAR. 4. The labels and advertising matter used by respondent in connection with the sale of his said soft drink powders and flavors carry the false implication that the products so labeled and advertised are derived from the fruits or the juices of the fruits so designated and represented, when such is not the fact, and have the capacity and tendency to mislead and deceive the public into the belief that said products are so derived, and to cause them to purchase the same in that belief.

PAR. 5. The use by respondent of the said labels and advertising matter bearing aforesaid designations and representations of and concerning his said soft drink powders and flavors has the capacity and tendency to and does mislead purchasers of said products and the beverages made therefrom into the belief that said powders and flavors are composed in whole or in part of the fruit or juice of the fruit so represented, depicted and designated and to cause them to purchase the same in that belief; and said advertising matter and display cards supplied by respondent, to the distributors and dispensers of said soft drink powders and the beverages made therefrom furnish said dispensers with the means of deceiving and defrauding the consuming public.

PAR. 6. There are among competitors of said respondent individuals, firms and corporations which deal in and sell pure fruit juices, or extracts therefrom, to be used in the compounding of beverages, and in beverages already compounded, who truthfully mark their products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business from and otherwise injure and prejudice such competitors.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of 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 testimony in support of the complaint and in opposition thereto and the brief of counsel for the Commission, the respondent having failed to file a brief, and the Commission having made its findings as to the facts with its conclusion that the respondent has and is violating 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 Charles T. Morrissey, his representatives, agents, servants, employes, and successors, cease and desist from:

(1) Using or authorizing the use by others in interstate commerce of the words "cherry", "strawberry", "grape", "raspberry", "ras-o-berry", "pineapple", "lime", "lemon", or "orange", either independently or in conjunction or combination with any other word or words, letter or letters, as a corporate or trade name, or as a trade brand or designation in advertising or on labels, packages, or other containers or otherwise, in connection with the sale or distribution, in interstate commerce, of a product which is not composed wholly of the natural fruit, or juice of the fruit of the cherry, strawberry, grape, raspberry, pineapple, lime, lemon, or orange, respectively: *Provided*, that, when a product is composed in substantial part of any natural fruit, or the juice of such fruit, so as to derive its color and flavor from said fruit, and the name of the said fruit is used in a corporate or trade name, or as a trade brand or designation for said product, the name of said fruit shall not be used unless said name is immediately accompanied with some other word or words, letter or letters, displayed in type equally as conspicuous as that in which the name of the fruit is displayed clearly indicating that said product is not made wholly from the natural fruit or juice of the fruit designated, and that will otherwise indicate clearly that the product is composed in part of an ingredient or ingredients other than the natural fruit or juice of the fruit designated.

(2) Using or authorizing the use by others, in interstate commerce, in advertising or upon business stationery or on containers or on labels, or otherwise, of any word or words, picture or symbol falsely representing or suggesting that a product is made from or contains the natural juice or fruit of the cherry, strawberry, grape, raspberry, pineapple, lime, lemon or orange, respectively.

It is further ordered, That respondent, Charles T. Morrissey, pursuant to the provisions of Rule XVI of the Commission's rule of practice, shall, within 60 days after the service upon him of a copy of the order hereinbefore set forth, file with the Commission a report, in writing, setting forth in detail the manner and form in which said order has been complied with.

IN THE MATTER OF

R. P. KUHNS, HOMER LAY, ROY DECK AND E. J. STERNER, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE EASTERN SEED COMPANY.

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

Docket 1489. Complaint, Dec. 14, 1927—Decision, May 17, 1928

Where partners engaged in the sale of vegetables and flower seeds to persons in the various States, through the medium of agents, mostly children, whom they procured by the offer of premiums to be given as prizes for the sale of their said seeds; in advertising their aforesaid premiums and seeds in their catalogues,

(*a*) Misrepresented such premiums as of costlier and better materials and of a greater value than was the case, describing dress patterns, fabrics and wearing apparel of cotton and rayon, and containing no silk, as composed in whole or in part of silk, and as crepe de chine or pongee, cotton tablecloths and napkins as linen, gold plated watches, not engraved, with an imitation sapphire, as "14-K white gold—Guaranteed 25 years, beautifully engraved with sapphire stem crown", manicure sets, of imitation substances, as ivory or shell, pocketbooks containing no leather, nor embossed, as embossed leather, imitation leather cases of military brush sets, as fancy grained leather, machine made sweaters as hand made, hosiery containing only 8 per cent silk, as silk, and umbrellas respectively covered and ornamented with imitation taffeta and amber, as covered and ornamented with the genuine substances:

(*b*) Represented such premiums as of certain specified retail values greatly in excess of the actual values;

(*c*) Misrepresented the number of packages required to be sold to secure the various premiums, by enclosing three extra packages, on the pretense of covering the expense of increased postal rates and insuring delivery of the premium, post paid and insured, instead of sending the same collect without responsibility for loss or damage, the fact being that the postage and fees did not amount to the additional thirty cents the agents were required to remit in order to insure such delivery; with the result that said agents, mostly children, were thereby induced to order seeds because of said misrepresentations regarding packages necessary to be sold, in order to insure receipt of premium; and

(*d*) Made such false statements in describing their seeds, under pictures of their supposed gardens, as "Part of our flower testing garden. We grow to maturity part of each variety, to see if they test true to name and yield satisfactorily", and "A view of our vegetable-testing garden. A convincing proof of the reliability of our vegetable seeds. Each variety must undergo the same rigid test", the fact being that the pictures in question were not pictures of gardens maintained and owned by them, and that they purchased the seeds dealt in by them from the growers, accepting their statements as to the qualities thereof;

With the capacity and tendency to cause, and with the effect of causing, many persons, mostly children, to become their agents, and many persons to purchase seeds from said agents in reliance upon the truth of such false, deceptive and misleading statements and representations, and of diverting trade from competitors who truthfully labeled and advertised their products:

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

Mr. G. Ed. Rowland for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents R. P. Kuhns, Homer Lay, Roy Deck, and E. J. Sterner, partners engaged in the sale of vegetable and flower seeds to persons residing at points in various States, and with place of business at Lancaster, Pa., with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, for about three years last past, engaged as above set forth, in their letters, circulars, catalogues and other business literature sent to persons, mostly children, whose names and addresses are upon lists purchased by them, make many false, misleading and deceptive statements and representations, concerning the premiums offered to agents as compensation for the sale by said agents of its packages of seed, sold by said agents at 10 cents each, said statements and representations including the following:

(*a*) Articles and garments of wearing apparel as silk, in whole or in part, when composed of other materials;

(*b*) Tablecloths, napkins and other like textiles, composed of cotton, as linen;

(*c*) Watches as composed of gold and ornamented with sapphires, when composed almost entirely of other metal and ornamented with imitations of the aforesaid stones;

(*d*) Hair brushes, manicure sets and other toilet articles as made of ebony, ivory and shell, respectively, when in fact made of other materials;

(*e*) Pocketbooks as made of leather and embossed, when neither so made nor embossed;

(*f*) Certain machine-made garments as hand made;

(*g*) Hosiery composed of 8 per cent silk and 92 per cent other materials, as silk;

(*h*) Umbrellas as covered with taffeta and ornamented with amber, when neither so covered nor ornamented;

(*i*) That the premiums in question are, severally, of a specified retail value, when in fact the fair retail value thereof is substantially less; and

(*j*) Many other false, misleading and deceptive statements and representations concerning the aforesaid premiums of like tenor and effect.

Respondents further, as charged, in their aforesaid advertisements hold out to the agents that said premiums will be given to them in return for sale by them of a specified number of packages of seeds at 10 cents each and remittance to respondents of the monies thus procured, when as a matter of fact they require said agents to sell in each instance three additional 10 cent packages as a condition of earning and securing the premiums.

Respondents also, as charged, in their said advertising set forth false, misleading and deceptive statements and representations to the effect that they regularly test their seeds for quality and productiveness in gardens maintained by them for the purpose, when in fact they make no such test and maintain no such gardens.

Said acts and practices, as alleged, "have the capacity and tendency to and do cause many persons, for the most part children, to become agents for respondents and as such to sell respondents' said seeds and many of the public to purchase said seeds from said agents, all in the belief that respondents' false, misleading and deceptive statements all in this complaint before set out are true"; all to the prejudice of the public and of respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondents, R. P. Kuhns, Homer Lay, Roy Deck, and E. J. Sterner, partners, doing business under the trade name and style Eastern Seed Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answer to the complaint herein, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and conclusion and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same or in opposition thereto; thereupon this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are partners doing business under the trade name and style of Eastern Seed Co., with their place of business in the city of Lancaster, State of Pennsylvania. They are engaged in the sale of vegetable and flower seeds to persons residing at points in the various States of the United States. The method of sale and distribution of said flower and vegetable seeds is as follows: Respondents purchase lists containing names and addresses of persons, for the most part children, residing at points throughout the United States, and send letters, circulars and other literature to said persons soliciting them to become agents for respondents in the sale of their said flower and vegetable seeds. Respondents also send to said persons catalogues offering and describing various premiums which will be given by respondents to said agents as prizes for the sale of said seeds. Descriptions of respondents' seeds are set forth in said catalogue, together with alleged facts concerning them. Upon receipt of an answer from one of those solicited agreeing to become an agent to sell their said seeds, respondents send from their place of business in the city of Lancaster, Pa., to said agent at his place of residence, a number of packages of seeds, corresponding to the number of packages required in order to secure the premium which said agent has selected as set forth in the catalogue, which packages of seeds are to be sold by said agent at 10 cents per package. After selling the packages of seeds the agent remits to respondents the money secured by said agent in payment of said packages of seeds, and thereupon respondents send to the agent the premium selected. All of respondents' business is conducted by mail, and their seeds are sold throughout the United States in competition with other individuals, partnerships and corporations engaged in the sale of seeds in commerce between and among the various States of the United States by mail or otherwise.

PAR. 2. In the catalogue sent to its agents, as aforesaid, respondents make many false, misleading and deceptive statements and representations regarding the premiums offered to agents for the sale of their seeds, all of said statements having the effect, and being for the purpose of leading said agents to believe that the said premiums are made of costlier and better materials, and are of a greater value, than is actually the case. Among the said statements and representations are the following:

(*a*) That certain dress patterns, fabrics and articles of wearing apparel are made wholly or in part of silk, and are crêpe de chine or pongee; when in fact all of said articles are made of cotton and rayon, and not crepe de chine or pongee, and do not contain any silk obtained from the cocoon of the silkworm.

(*b*) That certain tablecloths and napkins are made of linen; when in fact said articles are made entirely of cotton and do not contain any linen.

(*c*) That certain wrist watches are made of "14-K white gold—Guaranteed 25 years, beautifully engraved with sapphire stem crown"; the fact is that said watches are gold plated, are not engraved, and do not contain a sapphire in the stem crown, but an imitation thereof.

(*d*) That certain manicure sets are made of ivory or shell; when in fact said manicure sets are not made of either ivory or shell, but of imitations thereof.

(*e*) That certain pocketbooks are made of embossed leather; when in fact said pocketbooks do not contain any leather, but are composed entirely of an imitation thereof, and are not embossed.

(*f*) That certain military brush sets are contained in cases made of fancy grained leather; when in fact said cases do not contain any leather, but are made of an imitation of leather.

(*g*) That certain sweaters are hand made; when in fact said sweaters are not hand made but are machine made throughout.

(*h*) That certain hosiery is made of silk; when in fact said hosiery contains only 8 per centum of silk from the cocoon of the silk worm, the rest of the material being rayon.

(*i*) That certain umbrellas are covered with American taffeta and ornamented with amber; when in fact said umbrellas do not contain any silk of the cocoon of the silkworm, but are covered with an imitation thereof, and are not ornamented with amber, but with an imitation thereof.

(*j*) That the premiums listed in said catalogue are of certain specified retail values; when in fact the retail value of said premiums, respectively, is a great deal less than said purported values.

(*k*) Many other statements and representations are made regarding other premiums listed in said catalogue, which said statements and representations are false, misleading and deceptive.

PAR. 3. In the course and conduct of their business, under the trade name and style of Eastern Seed Co., respondents represent that if an agent sells a specified number of packages of respondent's seeds at 10 cents, he is entitled to a premium of his selection, which will be sent to him postpaid upon receipt by respondents of the money obtained from the sale of the seeds. This statement is false and misleading because when respondents send the packages of seeds to the agent for sale by him, they enclose three extra packages of seeds together with a printed slip advising said agent that due to increased postal rates it is necessary to sell the three extra packages in order to insure the delivery of the premium, postpaid, insured. The said agent is further advised that if the extra packages of seeds are not sold and the additional sum of money remitted, respondents will send the premiums collect and will not be responsible for loss of or damage to the premium. The majority of premiums sent by respondents are transmitted by parcel post through the mails, and the postage and fees for insurance do not amount to the additional thirty cents which respondents require their agents to remit in order to insure delivery of the premiums; respondents thereby misrepresent to said agents the number of packages of seeds which it is necessary for the agents to sell before being entitled to a premium. Respondent's said agents, for the most part children, are thereby induced to and do order seeds from respondents because of the misrepresentations made by respondents regarding the number of said packages of seeds necessary to be sold in order to insure receipt by said agents of a premium.

PAR. 4. In the catalogue which respondents send to their agents are certain false, deceptive and misleading statements and representations concerning their said seeds. Among said false, deceptive and misleading statements and representations are the following, appearing under pictures showing growing flowers and vegetables: "Part of our flower-testing garden. We grow to maturity part of each variety, to see if they test true to name and yield satisfactorily" and "A view of our vegetable-testing garden. A convincing proof of the reliability of our vegetable seeds. Each variety must undergo the same rigid test". In truth and in fact respondents do not have any vegetable or flower gardens in which they grow or test part or any of the seeds which they sell; respondents do not test the seeds which they sell but accept the statements made by the growers of the seeds from whom respondents purchase them as to their qualities; and respondents do not grow any seeds themselves, but purchase them all from seed growers in different parts of the country. The pictures of flower and vegetable gardens in respondents' catalogue are pictures supplied to respondents by others, and are not pictures of flower or vegetable gardens maintained and owned by respondents.

PAR. 5. All of the aforesaid statements and representations made by respondents in connection with and relating to their aforesaid seeds, and also their representations concerning the number of packages of seeds it is necessary for their agents to sell to entitle them to premiums, have the capacity and tendency to and do cause many persons, for the most part children, to become agents for the sale of respondents' seeds, and many persons to purchase said seeds from said agents, in the belief that said statements and representations are true, when in truth and fact, said statements and representations are false, deceptive and misleading as hereinbefore set forth.

PAR. 6. Respondents, through R. P. Kuhns, who is the active head and manager of said Eastern Seed Co., claim that some of the statements and representations set forth in their catalogue as descriptive of the premiums contained therein, are furnished to them by the manufacturers from whom they purchase the said premiums, and are reprinted in the catalogues by respondents in the belief that said statements and representations are true statements, without any investigation as to their truth by respondents.

PAR. 7. Respondent R. P. Kuhns, is the active head of the partnership doing business under the trade name and style of Eastern Seed Co., and is responsible for and directs all activities of said partnership. Respondents Homer Lay, Roy Deck, and E. J. Sterner are partners with respondent R. P. Kuhns, but have nothing to do with the conduct of the business, their interest being solely a financial one.

PAR. 8. Many of respondents' competitors grow seeds which they sell and ship in interstate commerce in competition with respondents. Said competitors truthfully label and advertise the seeds which they sell as aforesaid. The misbranding and misrepresentations by respondents of their seeds and premiums offered to agents as hereinbefore set forth, is to the prejudice and injury of the competitors of respondents, and trade is diverted from competitors who truthfully label and advertise their products.

CONCLUSION

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

(*Seal*)

ORDER TO CEASE AND DESIST

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

Now, therefore, it is ordered, That the respondents, R. P. Kuhns, Homer Lay, Roy Deck, and E. J. Sterner, partners, doing business under the trade name and style Eastern Seed Co., their agents, servants, and employees cease and desist from directly or indirectly in catalogues, letters, circulars, or other advertising matter or otherwise:

(1) Using the words "crêpe de chine", "pongee", "taffeta" or either of them, respectively, to represent, describe or advertise fabrics, umbrellas, or articles of wearing apparel which are not composed wholly of silk made from the cocoon of the silkworm.

(2) Using the word "silk" or any modification thereof to represent, describe or advertise a fabric or article of wearing apparel, such as hosiery, (1) unless such fabric or article of wearing apparel is made entirely of silk derived from the cocoon of the silkworm, or (2) unless where the fabric or article of wearing apparel is made partly of silk, it is accompanied by a word or words aptly and truthfully describing other materials of which such fabric or article of wearing apparel is in part composed.

(3) Using the word "linen" to represent, describe or advertise tablecloths, napkins or other articles which are not composed wholly of linen made from flax.

(4) Using the words "gold" or "white gold" or either of them to represent, describe or advertise gold filled or gold plated watch cases.

(5) Using the marks or symbols "14-K" or marks or symbols of similar import to represent, describe, or advertise watch cases when the carat fineness of such watch cases is less than the number of carats indicated by the marks or symbols used.

(6) Using the words "engraved" or "sapphire stem crown" or either of them to represent, describe or advertise watch cases which are not engraved and which do not contain a genuine sapphire in the stem crown.

(7) Using the word "ivory" or the word "shell" to represent, describe or advertise articles unless such articles are in fact made or composed of ivory or shell, as the case may be.

(8) Using the word "leather" or the words "embossed leather" to represent, describe or advertise a product which is not made from or composed of the skins or hides of animals or which is not embossed, as the case may be.

(9) Representing that machine made sweaters or other articles of merchandise are hand made.

(10) Using the word "amber" to represent, describe or advertise articles which are not composed of genuine amber.

(11) Representing that premiums or other articles have retail values in excess of the price or prices at which such premiums or articles are ordinarily and customarily sold to the consuming public.

(12) Making any other false or misleading statement with respect to premiums or articles of merchandise.

(13) Falsely representing the number of vegetable and/or flower seeds it is necessary for an agent to sell to entitle him to a premium.

(14) Falsely representing the character, quality or origin of the seed sold by them, and more specifically any false or misleading statements concerning:

(*a*) Tests given their seeds for purity and germination;

(*b*) The place wherein seeds sold by them are grown;

(*c*) The source from which they obtain the seeds sold by them.

It it further ordered, That respondents, R. P. Kuhns, Homer Lay, Roy Deck, and E. J. Sterner, partners, doing business under the trade name and style Eastern Seed Co., shall within 60 days after the service upon them of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

B. J. SACKHEIM, AND MARY RAE SACKHEIM, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF NORMAN ROBERTS & COMPANY

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

Docket 1350. Complaint, Oct. 5, 1925—Decision, May 28, 1928

Where a firm engaged in the sale of wearing apparel for men, women and children, by mail, in advertising certain goat skin furs, and cotton and artificial silk fabrics in their catalogues and in newspapers and magazines, described the former as "Manchurian Fox", "Manchurian Lynx" and "Manchurian Wolf", and the latter as "wool serge style", "wool finish serge", and "silk", respectively; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public in respect of the nature or composition of the aforesaid furs and fabrics, and to cause them to purchase the same in such belief, and to divert and with the effect of diverting, trade from competitors engaged in the sale of furs composed of fox, lynx or wolf pelts, and of wearing apparel composed in whole or in part of wool, silk or cotton, and truthfully represented by them to purchasers and prospective purchasers:

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

Mr. Robert O. Brownell and *Mr. William A. Sweet* for the Commission.

Tarnopol & Flamm, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents B. J. Sackheim and Mary Rae Sackheim, partners engaged in the sale by mail of wearing apparel for men, women, and children, direct to consumer purchasers residing at points in various States, and with place of business in Chicago, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, for about two years last past, in their advertisements in newspapers, magazines and periodicals of general circulation throughout the United States or in certain sections thereof and in their catalogues and other trade literature, describing and picturing the articles of apparel dealt in by them, "cause to be set forth many false, fraudulent and misleading assertions and representations concerning the materials of and with which their said various articles of apparel are made, or decorated and trimmed."

Said false, fraudulent and misleading assertions and representations include, among many other of like tenor, the following:

(*a*) Fur scarves for women, as Manchurian Fox, Manchurian Lynx or Manchurian Wolf, when in fact made of pelts inferior in quality and value to those above set forth;

(*b*) Suits and dresses for women, composed wholly of cotton and, in some instances, decorated with braid made of a material resembling silk, as wool serge style and wool finish serge, and as decorated with silk braid;

(*c*) Dresses for women, shirts for men and hosiery for men and women as made of silk, when in fact made of a material inferior thereto in quality and value, though resembling the same in general appearance.

Said false and misleading assertions and representations, as alleged, "have the capacity and tendency to and do cause many of the consuming public residing in various States of the United States to purchase various articles of respondents' said wearing apparel in the belief that same are composed of or decorated and trimmed with the various materials of and with which respondents falsely assert and represent said articles of apparel to be made, or decorated and trimmed, as hereinbefore set out," and said acts and practices tend to and do divert business from and otherwise injure and prejudice competitors of respondents, many of whom deal in similar articles and truthfully represent to purchasers and prospective purchasers the actual materials of which made or with which decorated and trimmed; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon respondents B. J. Sackheim and Mary Rae Sackheim, partners, doing business under the trade name and style of Norman Roberts & Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

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

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents B. J. Sackheim and Mary Rae Sackheim are partners, doing business under the trade name and style of Norman Roberts & Co., with their office and principal place of business in the city of Chicago, State of Illinois. They are now and since the year 1922 have been, engaged in the business of selling wearing apparel for men, women and children, by mail in the following manner: Respondents solicit and secure orders for their said wearing apparel by means of advertisements, catalogues, and other trade literature which they cause to be published and circulated among the several States of the United States, all as set out more particularly in paragraph 2 of these findings. Respondents fill the orders so secured by shipping the wearing apparel so ordered from their principal place of business in the city of Chicago, Ill., through and by means of the United States mails, to the purchasers thereof at their respective places of location, in the several States of the United States. In the regular course and conduct of their said business, respondents have been and now are in competition with other persons, partnerships and corporations who are also engaged in selling wearing apparel by mail direct to customers located in various States of the United States.

PAR. 2. In the regular course and conduct of their business, for more than a year last past respondents published and caused to be published, advertisements in various newspapers and magazines having interstate circulation, and catalogues and other trade literature which they caused to be distributed through and by means of the United States mails to customers and prospective customers located in the several States of the United States. In the said advertisements and catalogues appeared pictures and written descriptions of the wearing apparel offered for sale by respondents, together with the prices thereof, and the customers referred to followed the said descriptions and prices in sending orders for respondents' merchandise.

PAR. 3. In their newspaper and magazine advertisements, catalogues, and other trade literature published and distributed as set out in paragraph 2 of these findings, for more than a year prior to

March 1, 1926, respondents designated and described (1) certain furs made of goat skins as "Manchurian Fox", "Manchurian Lynx", and "Manchurian Wolf"; (2) certain fabrics composed wholly of cotton as "wool serge style", and "wool finish serge", and (3) certain fabrics composed wholly of artificial silk as "silk".

PAR. 4. The terms "Manchurian Fox", "Manchurian Lynx", and "Manchurian Wolf" when used to designate and describe furs, are understood by the trade and by the purchasing public to mean that the furs so designated and described are made of fox, lynx or wolf fur, as the case may be.

The terms "wool serge style" and "wool finish serge" when used to designate and describe a fabric, are understood by the trade and the purchasing public to mean that the fabric so designated and described is composed wholly of wool.

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

PAR. 5. The use by respondents of the terms "Manchurian Fox", "Manchurian Lynx", and "Manchurian Wolf" to designate and describe furs made of goat skins as set out in paragraph 3 of these findings, had and has the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe that the furs so designated and described are made of the fur of fox, lynx or wolf, and to cause them to purchase the said furs in that false belief.

The use by respondents of the terms "wool serge style" and "wool finish serge" to designate a fabric composed wholly of cotton, as set out in paragraph 3 of these findings, had and has the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe that the fabric so designated and described is composed wholly of wool, and to cause them to purchase it in that false belief.

The use by respondents of the word "silk" to designate and describe a fabric composed wholly of artificial silk, as set out in paragraph 3 of these findings, had and has the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe that the fabric so designated and described is composed of silk made from the cocoon of the silkworm, and to purchase it in that belief.

PAR. 6. There are among the competitors of respondents mentioned in paragraph 1 of these findings, many who offer for sale and sell by mail direct to consumers, furs composed of fox, lynx, or wolf pelts, and other articles of wearing apparel of which some are composed wholly or in part, of wool, of silk, or of cotton, and who truthfully represent to purchasers and prospective customers the kind of fur and the materials of which the said articles of wearing apparel are composed. Respondents' acts and practices, as set out in the foregoing findings, tend to and do divert trade from said competitors.

CONCLUSION

The acts and practices of respondents, under the conditions and circumstances set forth in the foregoing findings, are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress 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 Commisison upon the complaint of the Commission, the answer of the respondents, the testimony and evidence, and the brief of counsel for the Commission, the respondents having filed no brief, and the Commission having made its conclusion based thereon 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, B. J. Sackheim and Mary Rae Sackheim, their representatives, servants, and employees cease and desist from—

(1) Using the words "wool serge style" or "wool finish serge" as a trade brand or designation in advertising, or on labels, or otherwise, in connection with the sale or distribution, in interstate commerce, of women's dresses which are not made from a fabric composed wholly of wool; provided, that, when dresses are made in substantial part of a fabric composed wholly of wool, and the words "wool serge style" or "wool finish serge" are used as a trade name or designation for said dresses, the said words or either of them shall not be used unless they are immediately accompanied with some other word or words displayed in type equally as conspicuous as said words are displayed, clearly indicating that said dresses are not made from fabric composed wholly of wool, and

that will otherwise indicate clearly that said dresses are made in part from fabrics other than wool fabrics.

(2) Using the word "silk" either independently, or in conjunction or combination with any other word or words, letter or letters, as a trade name or brand, or designation in advertising, or on labels, or otherwise, in connection with the sale or distribution, in interstate commerce, of a product which is not composed wholly of silk made from the cocoon of the silkworm; provided, that, when a product is composed in substantial part of silk, the word "silk" shall not be used unless it is immediately accompanied with some other word or words, letter or letters, displayed in type equally as conspicuous as that in which the word "silk" is displayed clearly indicating that said product is not made wholly from silk made from the cocoon of the silkworm, and that will otherwise indicate clearly that the product is composed in part of a material or materials other than silk. [And]

Whereas, On February 3, 1928, a trade practice conference for the fur industry was held by the Commission, which was attended by approximately ninety per cent of the volume of the fur industry, at which certain rules were established determining what is proper and what is improper in the naming of furs, which rules were approved by the Commission, February 27, 1928, to become effective immediately, and

Whereas, The respondent herein, on March 12, 1928, subscribed in writing to an agreement to abide by said rules,

It is further ordered, That the charges of the complaint with respect to the marking of furs, as set forth in paragraph 3 (a) of said complaint, be and the same are hereby dismissed.

It is further ordered, That the respondents shall, within 30 days after the date of receipt of the order herein set forth, file with the Commission a report setting forth the manner and form in which they have complied with the foregoing order.

IN THE MATTER OF

ABBOTT E. KAY AND R. T. NELSON, AS INDIVIDUALS AND AS COPARTNERS, DOING BUSINESS UNDER THE NAME OF AABAN RADIUM COMPANY

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

Docket 943. Complaint, Dec. 14, 1922—Modified Findings and Order, June 21, 1928[1]

Where two individuals engaged under a trade name including the word "radium" in the sale of a substance which they advertised and sold as radium but which showed no radio activity upon being subjected to the usual and accepted tests and was not the genuine and far more expensive radium; with the effect of deceiving and misleading the public as to the true character thereof and inducing its purchase as and for radium or containing radium or possessing radio active properties as known to the scientific or commercial world, and with the capacity and tendency so to do:

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

Mr. J. T. Clark for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Abbott E. Kay, and respondent R. T. Nelson, engaged individually and as partners, under the name Aaban Radium Co., in the manufacture and sale of a product which purported to contain, but contained no radium, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, advertised in magazines and other periodicals of general circulation throughout the United States as well as by circulars and letters to prospective customers that the product dealt in by them as above set forth, contains radium, with the tendency to mislead and deceive the purchasing public into believing the same to be genuine radium; all to the prejudice of the public and of respondents' competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a com-

[1] Original findings and order Nov. 10, 1923. Sec. 7, F. T. C. at p. 16 et seq.

plaint upon the respondents, Abbott E. Kay and R. T. Nelson, as individuals and as copartners doing business under the firm name of Aaban Radium Co., charging them with unfair methods of competition in commerce in violation of the provisions of said act.

The respondents, Abbott E. Kay and R. T. Nelson, having made answer and entered their appearances individually and in person; hearing was had before Web Woodfill, the examiner heretofore duly appointed; evidence both oral and documentary was introduced in behalf of the Commission and the respondents, and this proceeding came on for final hearing; and the Commission being fully advised in the premises and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That Abbott E. Kay is a resident of the city of Chicago, State of Illinois, and has resided in said city for more than ten years last past; that he is a graduate of the medical department of Illinois University and has been engaged in the practice of his profession in said city for a number of years last past; that the respondent, R. T. Nelson is a resident of said city also and is engaged in the business of loaning money on real estate mortgages and has been interested in the subject of radium for some time past; that the respondents acted together in the production and sale of so-called radium and held themselves out to the public as partners acting under the name and style of Aaban Radium Co. by having said name printed on the office door which they were preparing to use jointly in the sale and distribution of the product claimed by them to be radium.

PAR. 2. That the respondent, Abbott E. Kay, is engaged in the manufacture and sale of a product claimed by him to be radium and that he caused said product to be transported from the city of Chicago, State of Illinois, through and into various other States of the United States to prospective purchasers located in the several States as aforesaid, and that he offered said product for sale at the price of $10 per milligram to various persons located in other States to whom he shipped tubes and plaques of said product, the same being offered for sale when the said prospective purchasers so desired on what the said respondent terms the "escrow plan," which said plan is as follows: The said product being delivered to the prospective purchaser as aforesaid, said money being held in the said home bank by agreement for ninety days, after which time it is forwarded to said respondent, Abbott E. Kay. If, however, before the end of the said ninety days said prospective purchaser of said product decides that said product is not of the value as represented by said respondent, Abbott E. Kay, the said prospective purchaser may return said product to said home bank and after same has been identified said money so held in said bank is to be returned to said prospective purchaser.

PAR. 3. That the respondent, Abbott E. Kay, in his offer for sale and in causing his said product to be transported as heretofore set out is in active and direct competition with other persons, firms, and corporations engaged in the sale of genuine radium.

PAR. 4. That said respondent, Abbott E. Kay, has advertised said product for sale in the Boston Medical & Surgical Journal, which is a journal of general circulation throughout the United States; that he also advertised said product in other publications and in circulars and letters to prospective purchasers of said product in the several States, in all of which advertising matter the said respondent claimed that the product so offered for sale by him was genuine radium.

PAR. 5. That the United States Bureau of Standards at Washington, D. C., acting on the request of several of the said prospective purchasers who had received packages of said so-called radium from the said Abbott E. Kay, examined and tested the product so claimed to be radium by the methods usually employed for such purpose, the same being what is known as electroscopic test as well as a photographic test; that both the said tests showed that said product had no radioactivity and that the same is not radium but is some other substance the exact character of which has not been determined.

PAR. 6. The evidence shows that the prevailing price for radium throughout the United States for several years last past has ranged from $70 to $120 per milligram.

PAR. 7. The product known as radium is largely used by the medical profession in the treatment of cancer and various skin diseases and the usual and customary way of determining whether or not the substance claimed to be radium is in fact radium is and has been for many years past to submit the product to the Bureau of Standards in order that the same may be tested and its radioactivity determined by the use of instruments and other facilities provided by the United States Government at said bureau for the determination of such question.

PAR. 8. The product sold by respondent or either of them, as above set forth, is not radium and contains no radium or radio-active properties, as known to the scientific or commercial world.

PAR. 9. The representations by respondents, or either of them, as set forth in the preceding paragraphs have the capacity to and do deceive and mislead the public as to the true character of the product so represented by respondents, and cause and induce purchasers thereof in the belief that it is radium or contains radium, or possesses radio-active properties, as known to the scientific or commercial world.

PAR. 10. The respondent, Abbott E. Kay, claimed that he produced the substance claimed by him to be radium in a laboratory located in his own house in the city of Chicago, when according to his testimony a large and extensive plant is required to separate or extract the product known as radium from the rocks and ores in which it is found and mined, it sometimes being necessary to reduce as much as a ton of ore in order to find one milligram of radium.

CONCLUSION

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

MODIFIED ORDER TO CEASE AND DESIST

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

It is now ordered, That respondents, Abbott E. Kay and R. T. Nelson, as individuals and copartners, doing business under the name of Aaban Radium Co., their servants, agents, and employees, cease and desist from further, in any manner whatsoever:

1. Selling or offering for sale or advertising as and for radium or as containing radium, or possessing radio-active properties, the product heretofore sold and advertised as and for radium by respondents.

2. Applying, employing, or using descriptively the word "radium" or any compound thereof implying radio-activity in connection with the sale, offering for sale, or advertising of the product heretofore sold and advertised as and for radium by respondents.

3. Making or causing to be made in advertising matter or otherwise representations, statements, or assertions that the product heretofore sold and advertised by respondents is radium, or that said product contains radium.

4. Making or causing to be made any false statement, claim, or representation of similar import or effect in connection with the sale of any other product or substance.

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

Syllabus

IN THE MATTER OF

SIMON B. BLUESTINE AND SAMUEL L. BLUESTINE, PARTNERS, DOING BUSINESS UNDER THE TRADE NAMES AND STYLES NUSTILE HOSIERY MILLS, AND NUSTILE HOSIERY COMPANY

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

Docket 1351. Complaint, Oct. 22, 1925—Decision, June 30, 1928

Where a firm engaged in the sale of hosiery through salesmen to the consuming public in the different States, and neither owning nor operating any hosiery factory or mills, but purchasing the hosiery dealt in by them from others and reselling the same to the public in due course of commerce among the States,

(*a*) Set forth their trade name Nustile Hosiery Mills in their advertisements in trade publications of general circulation, soliciting persons to sell their hosiery by house-to-house canvass, and represented themselves to customers and prospective customers, in circulars, circular letters, pamphlets and other advertising matter, as hosiery manufacturers, enabling the public by reason of their alleged direct sales from manufacturer to consumer to purchase better hosiery for less money, directing their salesmen so to represent them to customers and prospective customers, using their aforesaid trade name in such circulars, letters, and pamphlets, and setting forth therein pictorial representations of a five-story mill or factory with their aforesaid trade name across the front thereof, and of various rooms labeled to represent rooms of their purported factory, and making statements relative to the alleged advantages resulting in quality, value, delivery, uniformity, and satisfaction of customers, through their pretended direct selling, and through their alleged business policies, such as "we have merited an institution which has no counterpart in catering to the direct selling hosiery field"; and

(*b*) Represented hosiery dealt in by them, through pamphlets and other advertising matter, as "Silk", "Pure Thread Silk" and "Japanese Silk", the fact being that the tops thereof were cotton and the legs contained but 13.1 per cent silk, with the balance rayon;

With the capacity and tendency to mislead and deceive the purchasing public respectively into buying the hosiery last above described as hosiery composed entirely of silk, and into purchasing hosiery from them as from the manufacturers thereof, selling their product directly to the users at prices substantially below those prevailing for a comparable product sold in the usual course of trade from manufacturer to jobber to retailer to public, to the injury of manufacturers selling directly to the public and of dealers purchasing from the manufacturer and reselling to the public:

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

Mr. W. T. Chantland for the Commission.
Mr. Reuben Levi, of Philadelphia, Pa., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Simon L. Bluestine and respondent Samuel L. Bluestine, partners engaged in the sale of hosiery direct to the members of the consuming public residing at points in various States, and doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., with place of business in Philadelphia, with using misleading trade name, misrepresenting business status and product and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, for about two years last past, engaged in the sale of their hosiery, as above set forth, through salesmen who solicit and secure orders through display of samples and through arguments and statements as made and suggested to such salesmen by respondents through leaflets, pamphlets, other trade literature and letters instructing and advising said salesmen as to the performance of their duties, and who display to customers and prospective customers sample cases and trade literature furnished to said salesmen by respondent, and corresponding with their customers in regard to complaints by customers, adjustment thereof and other matters, in their aforesaid advertisements and trade literature, and upon their sample cases, letterheads, billheads, and other business stationery set forth their said trade names, Nustile Hosiery Mills and Nustile Hosiery Co., together with a pictorial representation of a large building bearing the sign Nustile Hosiery Mills, and in their said trade literature, advertisements, and correspondence with agents and customers make many false and misleading statements and representations to the effect that they manufacture the hosiery dealt in by them and supply the same to the consuming public to the elimination of middlemen and at a corresponding saving and advantage in price to the purchaser, when in fact they neither own nor operate any mill or mills, but purchase their said hosiery from manufacturers thereof, and resell the same at a profit to them, the respondents, over and above the cost to them.

Said false and misleading statements and representations, as alleged, "have the capacity and tendency to and do (1) cause many of respondents' said salesmen to believe said statements and representations and to represent to customers and prospective customers that respondents manufacture the hosiery which they sell, and that respondents supply same to the consuming public to the elimination of middlemen and at a corresponding saving and advantage in price to the purchaser", and (2) cause many of the consuming public to purchase respondents' said hosiery in reliance upon said assertions and representations of them and their salesmen.

Respondents further, as charged, in their aforesaid circulars, price lists, leaflets, and other trade literature set forth false and misleading assertions and representations to the effect that (1) their said hosiery is "fashioned" or "full fashioned", when in fact said hosiery, with a mock seam extending the entire length of the boot so as to simulate genuine "fashioned" or "full fashioned" hosiery, is knitted over a cylinder, and made to conform to the shape of the leg by means other than those employed in the manufacture of genuine fashioned or full fashioned hosiery;[1] (2) hosiery composed of a mixture of wool, cotton and a fibre resembling silk in appearance is composed of wool and silk; and (3) hosiery containing about 14 per cent of silk mixed with about 85 per cent of such a fibre as above described, is composed of silk.

The use by respondents, as alleged, of the words "fashioned" or "full fashioned" as above set forth, and their aforesaid false and misleading statements and representations as to the composition of their said hosiery have the tendency and capacity to and do mislead and deceive their said salesmen, customers and prospective customers into believing such hosiery to be genuine "fashioned" or "full fashioned" hosiery, and composed wholly of wool and silk, or of silk, as the case may be, and said salesmen to so represent, offer and sell said hosiery, and customers and prospective customers and many of the consuming public to purchase such hosiery as made and composed as above represented, and to divert business from and otherwise injure and prejudice competitors, many of whom sell the genuine full fashioned or fashioned hosiery, hosiery composed wholly of a mixture of wool and silk, and hosiery composed wholly of silk, and who properly and rightfully represent the same as full fashioned or fashioned and properly represent the composition thereof to the trade and consuming public.

The above alleged acts and practices of respondents are, as charged, all to the prejudice of the public and respondents' competitors and

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[1] The complaint, referring to the meaning of the terms "fashioned" and "full fashioned", alleges that these terms "are understood by a majority of the trade and purchasing public as meaning and referring to that type of hosiery made of a fabric knit flat and of uniform texture, and permanently shaped in the knitting, by the process known to the knitting trade as widening and narrowing, so as to conform to the shape of the leg, retaining said uniformity of texture and being closed in the back with a stitched seam. Said shape is accomplished by the dropping of stitches at sundry points along or near said seam at the bottom of the heel and instep and at the toe, thereby forming true gussets or fashion marks".

constitute unfair methods in competition and commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents Simon B. Bluestine and Samuel L. Bluestine, partners, doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., charging them with unfair methods of competition in commerce in violation of the provisions of section 5 of said act. Respondents filed their answer. Hearing was had in the course of which testimony and evidence was received. Brief was filed by the attorney for the Commission, and thereupon this proceeding came on for decision and the Commission having considered the record and being now advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, prior to the issuance of the complaint herein, on October 22, 1925, were partners doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co. with their principal place of business in the city of Philadelphia, in the State of Pennsylvania, engaged in the sale of hosiery direct to the consuming public. In the course and conduct of said business respondents sold hosiery direct to their salesmen, such salesmen delivering the hosiery to consumers and collecting therefor; under the other method, their salesmen took orders from consumers, the respondents forwarding the hosiery to such consumers C. O. D. Under both of said sales methods, respondents were engaged in the sale of hosiery direct to members of the consuming public residing at points in various States of the United States, and caused such hosiery when so sold by them to be transported to the purchasers thereof from Philadelphia, Pa., through and into other States of the United States and carried on such business in direct, active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. In the course and conduct of said business as aforementioned, respondents employed salesmen to solicit orders from the consuming public by house-to-house canvass, which salesmen respondents solicited and secured by means of advertisements, which said advertisements respondents caused to be inserted in various trade publications of general circulation throughout the United States. In all of said advertisements respondents caused to be set forth their said trade name "Nustile Hosiery Mills".

PAR. 3. In the course and conduct of said business as aforementioned, respondents through circulars, circular letters, pamphlets, and other advertising matter represented, and directed their salesmen to represent, to customers and prospective customers that respondents were manufacturers of hosiery and by reason of the direct sales by them from manufacturer to consumer the public was thereby enabled to purchase better quality hosiery for less money. In said circulars, circular letters, and pamphlets and in advertising matter furnished salesmen respondents styled themselves "Nustile Hosiery Mills" and made use of the following language and representations:

(*a*) A pictorial representation of a five-story mill or factory with the words "Nustile Hosiery Mills" across the front of such building;

(*b*) Pictorial representations of various rooms labeled to represent rooms of their purported mill or factory;

(*c*) Our product.—When a sales representative deals direct with the mills, he has four distinct advantages over his competitors: (1) better quality for the money; (2) better and quicker deliveries; (3) merchandise runs uniform; (4) less complaints from his customers;

(*d*) We meet all competition in price as well as quality, but even the cheapest pair of stockings from our mill is better value than that sold by other hosiery mills; keyed to a lower pitch in the sale of quality;

(*e*) By keeping faith with our organization, by concentrating always on quality, by maintaining an honest relation between value and price, we have merited an institution which has no counterpart in catering to the direct selling hosiery field.

PAR. 4. Neither the respondents Simon B. Bluestine and Samuel L. Bluestine, partners, doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., nor said respondent individually owned or operated any factory or mills in which hosiery was manufactured, at the time of the taking of the testimony herein on March 6, 1928, or prior thereto, but the hosiery offered for sale and sold by them was purchased from others and then resold by respondents to the public in due course of commerce among the several States of the United States.

PAR. 5. The use by the respondents Simon B. Bluestine and Samuel L. Bluestine of the word "Mills" in their trade name under which they carried on business, under the circumstances set out in the findings herein, was calculated to mislead and deceive the purchasing public by inducing numerous persons to purchase hosiery from respondents upon the erroneous belief that respondents were manufacturers of hosiery and were selling their product direct to the users, and at prices substantially below those at which hosiery of like grade and quality were selling in the usual course of trade from manufacturer to jobber, to retailer, to the public; that such practices had the capacity and tendency to injure manufacturers of hosiery who did in fact sell their product direct to the public, as well as dealers who purchase hosiery from the manufacturer and resell same to the public.

PAR. 6. In the course and conduct of said business as aforementioned respondents through pamphlets and other advertising matter directed their salesmen to represent to customers and prospective customers that certain hosiery which respondents sold and offered for sale was "silk", "pure thread silk" and "Japanese silkworm silk", whereas in fact the tops of said hosiery were composed of cotton and the leg contained but 13.1 per cent silk, and 66.9 per cent rayon.

PAR. 7. The term "silk" or "pure thread silk" as applied to hosiery is commonly understood both by the trade and the purchasing public to mean hosiery composed entirely of silk. The use of the terms "silk", "pure thread silk", and "Japanese silkworm silk" by respondents, to describe hosiery made with top of cotton and the leg composed of silk and rayon, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers and lead them to believe that the hosiery so described is composed entirely of silk and to cause them to purchase said hosiery in such belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That respondents Simon B. Bluestine and Samuel L. Bluestine, partners, doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., their agents, representatives, servants, and employees do cease and desist from:

(1) Carrying on the business of selling hosiery in commerce among the several States of the United States under a trade name or any other name which includes the word "Mills" in combination with the words "Nustile Hosiery" or words of like import, and from making representations through advertisements, circulars, pamphlets, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they are the owners of or control a hosiery mill or mills or that the hosiery by them sold comes direct from manufacturer to purchaser, unless and until the respondents actually own and operate or directly and absolutely control a factory or mill wherein is made all hosiery by them sold or offered for sale under such title or name.

(2) Using the words "silk", "pure thread silk", or "Japanese silkworm silk", in advertisements or other printed matter or through salesmen or otherwise to represent, describe, or designate hosiery which respondents sell or offer for sale in commerce among the several States of the United States (*a*) unless such hosiery is composed entirely of silk derived from the cocoon of the silkworm, or (*b*) unless, where the hosiery is made partly of silk, the word "silk" is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

It is further ordered, That respondents, Simon B. Bluestine and Samuel L. Bluestine, partners, doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., shall within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

SAMUEL BOOTH

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

Docket 1483. Complaint, Oct. 15, 1927—Decision, June 30, 1928

Where an individual engaged in the sale of bedspreads containing no silk, at prices substantially in excess of prevailing prices for comparable articles, and knitted goods containing not more than 35 per cent wool, and neither owning, controlling, operating nor interested in any mill or factory;

(*a*) Designated said bedspreads as the "Famous Diana Silk Spread", "Diana Rayon Silk Spread", "Our Beautiful Silk Spread", and "Genuine Diana Silk Spread" and represented the same as silk, in his advertisements thereof and through agents, and as sold at wholesale prices;

(*b*) Represented certain patterns of his said knitted goods as consisting of 100 per cent pure worsted, or 100 per cent pure wool worsted, or silk interwoven into pure worsted; and

(*c*) Used a trade name including the words "knitting mills" in the sale of the aforesaid knitted goods, and represented said supposed mills as the largest knitting mills in the world selling knitted outer wear direct to the wearer;

With the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into purchasing the aforesaid products in reliance upon the truth of such representations as to the composition and prices thereof, and into believing that in purchasing said knitted wear from him, the purchasers acquired the same direct from the manufacturer, enabling them to retain or save an amount equivalent to profits ordinarily derived by the middlemen, and thereby divert trade to himself from competitors who truthfully described their products or represented the prices thereof:

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

Mr. James M. Brinson for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at Chicago under the name Household Supply Co., in the advertisement and sale of bedspreads, and, under the name Crawford Knitting Mills, of knitted goods, with misrepresenting product and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, and neither owning, controlling, operating nor interested in any mill or factory, nor making the knitted wear advertised and sold by him as above set forth, but purchasing the various articles which he advertised and sold, in their manufactured state, falsely represented the products dealt in, through agents, pamphlets, leaflets, circulars and circular letters, and advertisements in newspapers, trade papers, and periodicals of general circulation in the United States, said false representations including among others, the following:

Bedspreads containing no silk and sold at prices in substantial excess of the prevailing retail prices for such bedspreads or others of similar grade or quality, as "The Famous Diana Silk Spread", "Diana Rayon Silk Spreads", "Our Beautiful Silk Spread" and "Genuine Diana Silk Spread", and as offered and sold at wholesale prices;

Certain patterns of his knitted goods as consisting of 100 per cent pure worsted, others as 100 per cent pure long service wool worsted, and still others as of silk interwoven in pure worsted, when, as a matter of fact none of said knitted goods contained any silk nor more than 35 per cent of wool;

That the knitted goods offered and sold by him under the trade name Crawford Knitting Mills, are manufactured by the Crawford Knitting Mills, the largest knitting mills in the world selling knitted outerwear direct to the wearer, said Crawford Knitting Mills, as a matter of fact existing only as a trade name.

Each of said false representations, as alleged, and the use by respondent of said trade name Crawford Knitting Mills, have had and have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into buying said various articles in reliance upon the truth of such representations and in the belief that respondent owns or operates the mill or mills making said knitted wear and that in buying from or dealing with said Crawford Knitting Mills, the purchasers acquired respondent's wear directly from the manufacturer, thereby enabling such purchasers to retain or save an amount equivalent to profits ordinarily derived by the middleman; all to the prejudice of the public and of respondent's competitors, including those engaged in the sale of bedspreads and knitted wear directly to the consumers in the various States, and correctly and truthfully describing their said products, their origin or source and the quality and price thereof.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint, containing a copy of the rules of practice adopted by the Commission with respect to answer or failure to answer, upon Samuel Booth, trading as the Household Supply Co. and Crawford Knitting Mills, hereinafter called respondent, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent Samuel Booth, having entered appearance and filed his answer, wherein he neither specifically or otherwise denies the allegations of the complaint, nor alleges any defense thereto, and the chief counsel of the Federal Trade Commission having moved that the allegations of the complaint be taken as admitted and as true, that findings of fact be made in accordance with said allegations, and that an order to cease and desist based on said findings be made, and a copy of such motion having been duly served upon respondent, Samuel Booth, with notice that it would be heard at 2 p. m. on June 11, 1928, at the office of the Federal Trade Commission in Washington, D. C., at which time and place he might attend, if he so desired, and show cause why the said motion should not be granted and the findings and order made as therein moved, and thereupon this matter having come on regularly for decision and respondent Samuel Booth having failed to attend and then and there, or at all, to show cause why such order should not issue against him, and the Commission having duly considered the record and being fully advised in the premises now makes this its report in writing and states its findings as to the facts as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Samuel Booth is now, and for more than one year last past has been a resident of the city of Chicago, State of Illinois, engaged under the trade name of Household Supply Co. in advertising and selling bedspreads, and under the trade name of Crawford Knitting Mills in advertising and selling knitted goods, and caused said bedspreads and knitted goods to be transported to the purchasers thereof from Chicago, Ill., through and into other States of the United States and carried on such business in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. As an inducement to purchase his said bedspreads and knitted wear, it has been for more than one year last past and is the practice of respondent, in the course and conduct of his business, falsely to represent to purchasers and prospective purchasers through agents, pamphlets, leaflets, circulars, circular letters, and advertisements in newspapers, trade papers, and periodicals of general circulation in the United States the following, among other things, to wit:

That said bedspreads which he has described as the "Famous Diana Silk Spread", "Diana Rayon Silk Spread", "Our Beautiful Silk Spread", and "Genuine Diana Silk Spread" consist of silk and that they have been and are offered for sale and sold at wholesale prices; that certain patterns of his said knitted goods consist of 100 per cent pure worsted, others 100 per cent pure wool worsted and still others of silk interwoven in pure worsted; and that the knitted goods offered for sale and sold by him under and by his trade name of Crawford Knitting Mills were manufactured by Crawford Knitting Mills which were the largest knitting mills in the world selling knitted outer wear direct to the wearer.

The said bedspreads of respondent were not and have not been offered for sale or sold by him at wholesale prices, but in fact have been and are sold by respondent at prices in substantial excess of the usual and prevailing price therefor, or for other bedspreads of similar grade or quality, and neither the bedspreads nor the knitted goods sold or offered for sale by respondent has contained or contains any silk whatever, and the knitted wear has at no time contained more than 35 per cent of wool.

The respondent has at no time heretofore owned, controlled, operated, or had any interest in or connection with any mill or other factory, and none of the knitted wear advertised and sold by him under the trade name of Crawford Knitting Mills has been, was, or is being manufactured by him or by the so-called Crawford Knitting Mills, which has existed only as a trade name. The bedspreads, knitted wear and each and every part of the line of products so advertised and offered by respondent for sale to the public have been, were, and are purchased by the respondent in the manufactured state and thereupon and thereafter offered for sale and sold by him in commerce among or between the various States of the United States.

PAR. 3. Each of the false representations specified in paragraph 2 hereof with regard to the silk content of the bedspreads and the woolen content of the knitted goods and the prices thereof has had and has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public residing in the various States of the United States into the purchase of said bedspreads and knitted goods from respondent in reliance on the truth of such representations, and thereby to divert trade to respondent from competitors truthfully describing their products, or representing the prices thereof.

PAR. 4. The aforesaid use by respondent of his trade name Crawford Knitting Mills has had and has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the respondent owns or operates a mill or mills in which knitted wear has been and is manufactured, and that in purchasing from or dealing with the Crawford Knitting Mills the purchasers acquire the knitted wear of respondent directly from the manufacturer, thereby enabling them to retain or save an amount equivalent to profits ordinarily derived by the middlemen.

PAR. 5. There are and for more than a year last past have been competitors of respondent selling bedspreads and knitted wear directly to the consumer, in commerce among the various States of the United States, who correctly and truthfully describe them, their origin or source, and the quality and price thereof.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been duly heard upon the complaint of the Commission and the answer of respondent, and the Commission having made its report in writing stating its findings as to the facts and its conclusion that respondent Samuel Booth has been and is violating the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers, duties, and for other purposes",

It is now hereby ordered, That respondent, Samuel Booth, cease and desist from directly or indirectly—

(1) Carrying on the business of selling knitted goods or other commodities in interstate commerce under the trade name of Crawford Knitting Mills or any other name which includes the words

"mill" or "mills," "factory" or "factories," unless or until said respondent actually owns, operates, or controls the mill or mills, factory or factories, in which are manufactured the knitted goods offered for sale or sold by him.

(2) Using on brands or labels, or in advertisements or in any other form or forms or written or printed matter used in connection with bedspreads or other articles offered for sale or sold in interstate commerce, the word "silk" or any modification thereof, or any word or words signifying or implying that the product consists of silk, (*a*) unless the bedspreads or other articles are composed entirely of silk derived from the cocoon of the silkworm, or (*b*) unless, where the bedspreads or other articles are made partly of silk the word "silk" is accompanied by a word or words aptly and truthfully describing the other material or materials of which such bedspreads or other articles are in part composed.

It is further ordered, That the respondent Samuel Booth shall, within 60 days after 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 this order.

IN THE MATTER OF

GREER COLLEGE OF AUTOMOTIVE ENGINEERING, ERWIN GREER AND FREDERICK GREER

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

Docket 1505. Complaint, Mar. 22, 1928—Decision, June 30, 1928

Where a corporation engaged in the sale of a course of instruction in automotive engineering, under the active management and control of its president; in advertising a course falsely represented the regular price thereof, together with articles and accessories included therewith, as a special reduced price, extended for a certain limited time to prospective pupils, representing a substantially larger sum as its regular charge; with the capacity and tendency to mislead and deceive prospective pupils into believing that by reason of such supposed special price it offered the best available opportunity for the education represented, and an opportunity to secure such course at the supposedly lower price at a financial saving and advantage, and to cause pupils to take and pay for such course in preference to those of competitors who did not falsely represent their business:
Held, That such misrepresentation, under the circumstances set forth, constituted an unfair method of competition.

Mr. William T. Kelly, assistant chief counsel, for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged Greer College of Automotive Engineering, engaged at Chicago in conducting by correspondence a course in automotive engineering or in one or more of the various arts, sciences, professions, or trades included by it under said term, to wit, among others, automotive mechanics, electricity, battery trade, welding, salesmanship, and garage management, respondent Erwin Greer, its president and treasurer, and respondent Frederick Greer, its vice president, actively engaged in the management and control of its business activities, with advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.[1]

Respondent corporation, as charged, engaged as above set forth in furnishing to its various pupils written, printed, or mimeographed lessons, directions, or other matters, together with charts, drafts, dykes, encyclopedia and other articles, and things incidental to and in aid of the learning of said arts, etc., and the use and practice

[1] As alleged, respondent also conducts a resident school, but such part of its business is not concerned herein.

thereof, and under the active control of the aforesaid respondent individuals, in advertising its courses and the articles therewith supplied, in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in the several parts thereof and in enrollment and other blanks, catalogues, pamphlets, letters, circulars, and other forms of printed, written, or mimeographed matter, represents its regular tuition price as a certain figure and that for a limited time it is offering and selling the same at a specified substantially smaller sum, the fact being that the pretended reduced price is the usual full amount charged by it for its said courses and articles, to all pupils, irrespective of such pretended time limit.

The making of said false statements and representations, as alleged, has the tendency and capacity to mislead and deceive the public and prospective pupils and will probably mislead and deceive them into the erroneous belief that the same are true, that respondent is offering its course, of the value of its pretended regular price, for a limited time at a substantially lower price than said regular price, offering such pupils the opportunity of saving the amount of the pretended reduction and that by reason of such supposed reduced or special price, such school offers the best available opportunity for the education represented by the course.

Said acts and practices of respondent are, as charged, all to the prejudice of the public and respondents' competitors and constitute unfair methods in competition and commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission issued and served a complaint upon the respondents, Greer College of Automotive Engineering, Erwin Greer and Frederick Greer, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents have entered their appearance and have made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and conclusion and such order as it may deem proper to enter therein, without the introduction of testimony and presentation of argument, in support of same or in opposition thereto. Thereupon this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Greer College of Automotive Engineering, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having and maintaining its principal place of business at 2024–2026 South Wabash Avenue, in the city of Chicago, in the State of Illinois.

PAR. 2. Respondent Erwin Greer is president and treasurer, and respondent Frederick Greer is vice president of respondent corporation. Respondent Erwin Greer has been for more than one year last past and is now actively engaged in the management and control of the business activities of said respondent corporation that are hereinafter set forth.

PAR. 3. Respondent, Greer College of Automotive Engineering, at its said place of business has been for more than one year last past engaged in the business, along with the maintenance and operation of a resident school for the direct and personal teaching of certain arts and sciences, professions, or trades, of offering for sale and selling and furnishing courses of instruction by correspondence in said certain arts, sciences, professions, and trades, as hereinafter enumerated, to persons hereinafter referred to as pupils, such pupils residing and being and remaining at various places in the several States of the United States, and in selling and furnishing to such pupils severally, as incidental and accessory to such courses of instructions, the certain supplies, accessories, and articles hereinafter enumerated. The business of said respondent, as the same is hereafter referred to, includes only such courses of instruction by correspondence and the certain supplies, accessories, and articles above referred to as incidental and accessory to such courses of instruction by correspondence.

PAR. 4. In the conduct of said business said respondent, Greer College of Automotive Engineering, when a prospective pupil enters into a contract with said respondent and enrolls as such pupil, in consideration of the agreed cash tuition paid or agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mails or otherwise, a complete course of written or printed information and instructions in the arts, sciences, professions, or trades, or one or more thereof, included in the name automotive engineering as used by said respondent, which includes, among other things, the following: Automotive mechanics, electricity, battery trade, welding, salemanship, and garage management.

At the same time and as a part of the same transaction and contract, said respondent undertakes to sell to such pupils severally and to deliver to each of them, through the United States mails or otherwise, certain written, printed or mimeographed lessons, directions, or other matter, also certain charts, drafts, dykes, encyclopedia, and other articles and things incidental to and in aid of the learning of said arts, sciences, professions, or trades, and the use and practice thereof.

Thereafter and in pursuance of said contract with such pupils, said respondent furnishes and causes to be transported from its said place of business into and through the several States of the United States, and delivered to such several pupils at their respective places of residence, the several items of written, printed, or mimeographed matter and other articles and things above enumerated.

PAR. 5. In all its said business, and in the several parts thereof and in the procurement of pupils to enroll as such and to purchase said course of instruction and said articles and things above enumerated and to pay therefor, said respondent, Greer College of Automotive Engineering, is in competition with other persons who are likewise engaged in the same or in similar lines of business activity and who are seeking to procure prospective pupils in and throughout the several States of the United States to enroll as such and to purchase, receive, and pay for courses of instruction by correspondence as above set forth and for printed matter and other articles and things to be sold, furnished, and delivered to such pupils as incidental or accessory to the learning and practice of such arts, sciences, professions, or trades.

PAR. 6. In all of its said business and for the purpose of inducing prospective pupils to enter into contracts with it, to enroll as such pupils with it, and to purchase of it the course of instruction and the articles and things above enumerated and to pay to it the purchase price thereof, said respondent caused advertisements of its said courses of instruction and of said articles and things incidental and accessory thereto, to be inserted and made accessible to the public and to prospective pupils, in enrollment blanks.

In all such enrollment blanks said respondent, Greer College of Automotive Engineering, so under the active management of respondent, Erwin Greer, made the promises, statements, and representations hereinafter referred to as follows:

Said respondent from time to time and at intervals designated by respondent represented that the usual, ordinary, regular, and full cash tuition or selling price for a certain course of instruction included in the course of instructions so being offered by said respondent as above set forth, together with such articles and things so incidental and accessory thereto, was a certain sum, set out and specified in such advertisements or other written or printed matter; and also represented that said respondent for a certain limited time therein specified was offering to sell and deliver, or was engaging and obliging itself to sell and deliver, to prospective pupils such course of instruction and such articles and things incidental and accessory thereto, at a reduced and special price, to wit, a certain substantially smaller cash tuition or selling price likewise set out and specified therein. In truth and in fact said pretended, reduced or special tuition or selling price was and is the usual, ordinary, regular, full, and permanent price of the whole of such course of instruction, together with all such articles and things incidental and accessory thereto, to all prospective pupils without regard to such pretended limit of time.

The use by the said respondent Greer College of Automotive Engineering, so under the active control and management of respondent, Erwin Greer of said trade practice and method of competition, to wit, the making of said false statements and representations as above set forth had and have the capacity and tendency to mislead and deceive the public and prospective pupils into the erroneous belief:

(1) That said statements and representations are true.

(2) That said respondent, Greer College of Automotive Engineering, offered for a limited time to sell and deliver to prospective pupils such course of instruction of the value of said pretended regular price, at and for said substantially lower tuition or selling price so set forth and specified, to a financial saving and advantage to such prospective pupils in the amount of said pretended reduction.

(3) That said respondent's said school, for the time so specified, and because of such pretended reduced or special price, offered the best available opportunity for the education represented by such course of instruction.

PAR. 7. Among the competitors of Greer College of Automotive Engineering are many who do not falsely represent the character and nature of their business. Respondents' acts and practices all as hereinbefore set out have the tendency and capacity to cause said pupils to take and pay for respondents' said course in preference to those offered by said competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and an agreed statement of facts filed herein and the Commission having made its findings as to the facts and its conclusions that the respondents, Greer College of Automotive Engineering and Erwin Greer, 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",

It is now ordered, That the respondents, Greer College of Automotive Engineering and Erwin Greer, their representatives, servants, and employees, do cease and desist from:

(1) Representing in advertisements, correspondence, or otherwise that respondents' courses of instruction or any of them are offered at a less price than the price therefor which the respondents usually receive, when such is not the fact; or in any manner misrepresenting the regular and usual price of any such course of instruction.

(2) Making in advertisements or otherwise any untruthful or misleading statement or representation concerning any courses of instruction.

It is further ordered, That the respondents, Greer College of Automotive Engineering and Erwin Greer, shall within 30 days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

It is further ordered, That this proceeding be and the same is hereby dismissed as to respondent, Frederick Greer.

IN THE MATTER OF

THE LIGHT HOUSE RUG COMPANY, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1924

Docket 1468. Complaint, July 12, 1927—Decision, July 24, 1928

Where the words "light house" had come to be used in connection with institutions for the blind, and as applied to such articles as rugs and other woven fabrics had come to connote articles made by the blind, and where a trade school for the blind known as The Chicago Lighthouse taught its pupils or employees the art of weaving rugs upon hand looms, labeled the rugs there made "woven by the blind of The Chicago Lighthouse," and adopted and used the words "light house," and the picture of a lighthouse on folders and other advertising matter as a trade name and symbol to describe and designate its workshops and rugs; and thereafter a company incorporated by an individual employed by said Chicago Lighthouse to market its output of rugs,

(*a*) Adopted and used as a corporate name a name which included the words "light house," and used the same and the picture of a lighthouse on the label on its rugs, whether made by the blind or otherwise, and in the advertising matter used by it in connection with the sale thereof;

(*b*) Described rugs offered and sold by it, whether made by the blind or made by other than blind employees in its establishment, on power looms, and closely resembling those made by blind employees on hand looms, representing only a small portion of its total sales as "light house rugs";

(*c*) Issued circulars containing the words "light house rugs," its corporate name, and a picture of a lighthouse, and reproductions of newspaper articles concerning said Chicago Lighthouse, and its work for the blind, and pictures of the blind weaving rugs, and distributed said circulars among its sales people, who exhibited the same to purchasers and prospective purchasers;

(*d*) Placed the words "light house" on its order blanks and letters, together with the picture of a lighthouse, its corporate name, and the statement "sole distributors of The Chicago Lighthouse, an institution for the blind," which statement it continued even after said institution discontinued production; and

(*e*) Tagged its rugs with either the words "Woven by the blind of The Chicago Lighthouse," or "light house rugs," and the aforesaid picture or symbol, and sold the same, without distinction or disclosure as to their method of manufacture, at the same price, through stores regularly dealing in rugs, in which demonstrations of rug-weaving by blind weavers from The Chicago Lighthouse upon hand looms were held in the show windows, and represented through salesmen in various localities that the rugs generally were the product of local institutions for the blind;

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With the capacity and tendency to mislead and deceive the purchasing public into believing that said rugs were the products of the institution first named, that it was the sole distributor thereof, and/or that they were the products of institutions maintained and operated for the blind and that in purchasing the same, they were buying the output of blind people, instead of promoting a private enterprise, and of making it more difficult to secure a market for the product of the blind, to the prejudice of institutions for the blind, and of the workers therein, and of manufacturers selling their rugs on merit and without misrepresentation as to their origin, nature and character, from whom business was thereby diverted:

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

Mr. William A. Sweet for the Commission.
Samuels, Lawton & Wittelle, of Chicago, Ill., for respondent.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture of rugs, and sale and distribution thereof through dealers supplying the ultimate users, and also through its own salesmen and agents soliciting orders from the purchasing public, and with principal office and place of business in Chicago, with misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, and formerly purchasing and distributing the entire output of rugs made by the training school for blind people, known as "The Chicago Lighthouse",[1] following its own employment of the 16 blind people there-

[1] The complaint alleges the following facts relative to said school and the "lighthouses" established and operated for blind people, and the meaning which has come to attach to the word lighthouse in connection with rugs or other like items.

The Improvement Association For Blind People is a corporation incorporated under the not for profit act of the State of Illinois, on May 31, 1910, and has its principal place of business in the city of Chicago in said State. It has conducted for more than four years last past, and still conducts in said city of Chicago, a trade school for training blind people, designated and known as The Chicago Lighthouse.

In the year 1922, it began, at The Chicago Lighthouse, aforesaid, the making of rugs woven on looms operated by blind people, and continued the making of said rugs up to October, 1926. It employed 16 blind people as weavers, and the output of rugs made by said blind people was approximately 250 per week. These rugs varied in size from 24 by 48 inches to 36 by 72 inches.

Similar training schools for blind people, designated and known as lighthouses are established and operated in other cities of the United States, including the cities of Duluth and Minneapolis, Minn., New Orleans, La., Syracuse and New York City, N. Y., and Seattle, Wash., in which rugs and other articles made by blind people are produced, and the word lighthouse when used in connection with rugs or other articles is understood by a substantial portion of the public to indicate that they were produced by the work of blind people.

tofore employed at said lighthouse and their former superintendent, to make rugs in its own place of business, along with other rugs similar in composition, design, appearance and size, but made on power looms by other employees of it, in possession of their sight, labeled or tagged all its said rugs "light house rugs", together with a depiction of a lighthouse, and in its folders or circulars distributed to customers and agents used the words "sole distributors of The Chicago Lighthouse, an institution for the blind", together with a cut of a lighthouse, photographs of scenes showing blind people weaving rugs, and in other printed matter referred to said rugs as having been made by the blind, thereby falsely representing and implying that the rugs made by it upon power looms were produced by the labor of blind people.

Said use by respondent, as alleged, of the labels or tags upon the rugs manufactured by it upon looms operated by people who are not blind, and of said folders or circulars, has the capacity and tendency to, and does deceive a substantial portion of the purchasing public into the erroneous belief that said rugs manufactured by the respondent as aforesaid are produced by the labor of blind people, to induce purchasers thereof to purchase the same in that belief, and to divert trade from the producers of truthfully marked rugs, all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon respondent, The Light House Rug Co. (Inc.), charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced on behalf of the Commission and of the respondent before a trial examiner of the Commission theretofore duly appointed. The trial examiner filed his report upon the facts and the respondent filed exceptions thereto. Briefs and oral arguments were filed and made on behalf of the Commission and of the respondent.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Light House Rug Co., Inc., is a corporation organized and existing 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. It was incorporated in 1923 by Morris Kline and others with a capital stock of $5,000 which was increased about a year later to $20,000. It is engaged in the manufacture and sale in commerce of rugs and causes said rugs when sold to be transported from its place of business in the city of Chicago in the State of Illinois into and through other States of the United States to the purchasers thereof located in such States and is in competition in commerce with other manufacturers of rugs including institutions or workshops for the blind located in various States of the United States.

PAR. 2. The Improvement Association for Blind People is a corporation incorporated under the not for profit act of the State of Illinois in the year 1910 and its principal place of business is located in the city of Chicago in said State. For more than four years prior to July 12, 1917, it has conducted in the city of Chicago a trade school or workshop for training blind people, designated and known as The Chicago Lighthouse. Among the occupations which were taught to blind people at The Chicago Lighthouse aforesaid, was the art of weaving rugs upon hand looms. Rug weaving has been found one of the most practicable occupations for blind persons. Rug weaving at The Chicago Lighthouse on looms operated by blind people began sometime prior to 1922 and continued up to and including October, 1926. The number of blind people employed at The Chicago Lighthouse varied from time to time and the production of rugs also varied until in October, 1926, approximately 16 blind people were engaged in rug weaving and the output amounted to approximately 250 rugs per week. The usual size of these rugs was 24 by 48 inches. The material used was cotton warp and a jute filler. The rugs were made after designs prepared by a Miss Olga Olsen who had been engaged by the association to train blind people in the art of rug weaving at The Chicago Lighthouse. Prior to 1922 these rugs were sold from time to time through private sales or through some of the department stores located in the city of Chicago. These rugs bore a label on which were printed the words "Woven by the blind of The Chicago Lighthouse". The word "lighthouse" and a picture of a lighthouse were adopted and used on folders and other advertising matter as a trade name and symbol to describe and designate said workshops and the rugs made by the blind employed therein.

PAR. 3. In March, 1922, in order to dispose of its rugs and keep the blind rug weavers steadily at work, The Chicago Lighthouse made an arrangement with said Morris Kline to sell its entire output of rugs. This arrangement continued until October, 1926. Soon after this arrangement was made said Morris Kline incorporated the respondent and adopted the words "light house" in its corporate name, and used the said words and the symbol, consisting of a picture of a lighthouse, on the labels on said rugs and in advertising matter used in connection with the sale of the same. The respondent within about 60 days after the said arrangement with Kline had been made secured a factory or workshop not connected with The Chicago Lighthouse and installed therein power looms operated by sighted persons to supplement the production of the hand woven rugs made by blind people at The Chicago Lighthouse. The rugs made upon these power looms by sighted persons were of exactly the same material, design and size as the rugs made by the blind people at The Chicago Lighthouse. Only experts were able to distinguish between the hand loom product made by the blind and the power loom product made by sighted persons. A blind person can produce 8 or 10 rugs a day while a sighted worker can produce about 40 rugs a day upon a power loom. Both the rugs made upon hand looms by the blind persons at The Chicago Lighthouse and the rugs made upon power looms by sighted persons at the respondent's place of business were sold by the respondent through the same channels and at the same prices for the same sizes. At first the rugs were sold through stores regularly dealing in rugs in various cities throughout the United States. In connection with these sales blind weavers from The Chicago Lighthouse demonstrated the weaving of rugs upon hand looms installed in the show windows of the stores in which the hand loom product and the power loom product were sold. Demonstrations of this kind were made over a period of more than a year in the cities of Chicago, Ill., Detroit, Mich., Milwaukee, Sheboygan, Madison, Wis., Gary, Valparasio and Hammond, Ind., Kankakee and Peoria, Ill., and St. Joseph, Mo. Later the respondent appointed in several States agents to sell these rugs and house to house sales forces were organized. In connection with the sale of both the hand loom product and the power loom product respondent issued circulars bearing the names "Light House Rugs" and "The Light House Rug Co. (Inc.)", and also bearing a picture of a lighthouse, the trade-mark or emblem of The Chicago Lighthouse. These circulars contained reproductions of extended newspaper articles concerning The Chicago Lighthouse and its work for the blind as well as pictures of blind people weaving rugs. These circulars were placed in the hands of its sales force by respondent and were exhibited to purchasers and prospective purchasers of rugs. The order blanks used by respondent bore the words "Light House" in prominent letters and the picture of a lighthouse, the trade mark or emblem of The Chicago Lighthouse. These circulars also bore the name Light House Rug Co. (Inc.), and the statement "Sole distributors of The Chicago Lighthouse, an institution for the blind". This statement was used upon circulars issued by respondent even after October, 1926, when the production of rugs at The Chicago Lighthouse was discontinued entirely. The rugs bore tags upon which were either the words "Woven by the blind of The Chicago Lighthouse" or the words "light house rugs" and the symbol consisting of a picture of a lighthouse. Salesmen of respondent sold both the hand loom product and the power loom product indiscriminately without any attempt to distinguish between them. In 1927 the respondent sold approximately 82,000 rugs of which less than one-third was produced by the labor of blind people. Between 50,000 and 60,000 of these rugs were made on power looms by sighted persons either at the respondent's place of business in Chicago or for his account in a factory located in Philadelphia, Pa.

In October, 1926, the respondent took into its employ the superintendent of The Chicago Lighthouse and all of the blind weavers employed there and continued the production of rugs upon hand looms operated by blind weavers at its own place of business in addition to the rugs woven upon power looms there. The weaving of rugs at The Chicago Lighthouse was thereupon discontinued.

PAR. 4. The use by the respondent of the words "Light House" in its corporate name and on labels, circulars, and other advertising matter used in connection with the sale of its product is misleading and deceptive and has the capacity and tendency to mislead and deceive the purchasing public into the belief that its rugs are the product of The Chicago Lighthouse. The use by the respondent of the aforesaid statement "Sole distributors of The Chicago Lighthouse, an institution for the blind" is false and misleading and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the respondent is the sole distributor of the products made by the blind at The Chicago Lighthouse aforesaid.

PAR. 5. The Minneapolis Society for the Blind maintains and operates in the city of Minneapolis, Minn., a workshop in which rugs woven by blind people are made. These rugs are made of materials similar to the material in the rugs made by respondent; are of approximately the same size and are used for the same purposes. Most of these rugs are sold locally in the city of Minneapolis, while others are made for out of town shipment. Respondent sells its rugs in the city of Minneapolis and through the use of its aforesaid circulars and by oral representations of its salesmen gives the false impression to customers and prospective customers that its rugs are made by the blind at the workshop situated in Minneapolis.

The St. Louis County Association for the Blind, Inc., maintains and operates a workshop for blind persons in the city of Duluth, Minn., under the name of Duluth Lighthouse for the Blind. One of the industries for the blind conducted at this shop is rug weaving. Approximately seven blind people are employed there in making woven rugs. These rugs are sold locally in the city of Duluth and in the States of Michigan and Wisconsin. They are made of similar material, are of the same size and are used for the same purposes as respondent's rugs. They bear tags containing the word "lighthouse". Respondent's salesmen sell its rugs in the city of Duluth, and in the sale of said rugs respondent through its said circulars and the oral representations of its salesmen gives to customers and prospective customers the false impression that its rugs are made by the blind at the Duluth Lighthouse for the Blind.

The New York Institute for the Blind was established in 1906. In 1910 it adopted the word "lighthouse" and since that date has used the word "lighthouse" upon its stationery, counter signs, tags, and circulars used in designating and selling its products. It also adopted and continues the use of the picture of a lighthouse as a trade-mark or symbol for its products. Hand woven rugs made by the blind are among the articles made at the New York Lighthouse and the yearly output is valued at approximately $20,000. These rugs are sold and transported throughout the United States. They are made of similar material, are of similar size and are devoted to the same uses as are respondent's rugs. Approximately 14 hand looms operated by blind women are employed in making these rugs at the New York Lighthouse. Respondent through its salesmen sells its rugs in the city of New York and through its said circulars and the oral representations of its salesmen gives the false impression to customers and prospective customers that its rugs are made by blind people at the New York Lighthouse.

Similar workshops for the blind are maintained in the cities of Rochester, Syracuse, Elmira, Glens Falls, Watertown, Albany, Brooklyn, and Buffalo in the State of New York. The institution in the city of Buffalo, as well as the one in Syracuse, is designated and described as a "Lighthouse". These institutions, with the exception of the one in New York City, are under the general supervision of the New York State Commission for the Blind. There are approximately 93 blind rug weavers either in shops or in homes in New York State engaged in the production of woven rugs similar to those sold by respondent. Competition of respondent's machine rugs woven by sighted persons under actual or implied representation that they are made by the blind makes it more difficult to secure a market for rugs made by blind persons.

PAR. 6. The word "lighthouse" or words "light house", used in connection with institutions or with articles such as rugs and other woven fabrics known extensively to be articles which can be made and are made by blind people carries with it a connotation or implication that the articles are made by blind people. Sympathy for blind persons and the desire of the public to help them is an element in finding a market for rugs of the character made in institutions operated for the benefit of blind people.

The use by respondent of the words "light house" as hereinbefore set forth is misleading and deceptive and has the capacity and tendency to mislead and deceive the purchasing public into the belief that respondent's rugs are the product of institutions which maintain and operate workshops for blind people and which are known and designated as "Lighthouses".

PAR. 7. The labels, tags, advertising circulars, and literature used by respondent in connection with the sale of its rugs; the use of the words "light house" in its corporate name, the use of the said words and the emblem consisting of a picture of a lighthouse upon the tags and labels and advertising matter used in connection with the sale of its rugs; the practice of respondent of selling rugs made by the blind and rugs made by sighted persons under the common name of "light house rugs"; the representation indiscriminately by its salesmen that the rugs offered for sale are made by the blind whether they are made by blind people or by sighted persons; and the false impression or implication left with customers or prospective customers that respondent's said rugs are made by the blind persons in the locality have a tendency and capacity to mislead and deceive purchasers and prospective purchasers into the belief that they are purchasing the product of blind people rather than that they are promoting a private enterprise and causes confusion and makes it more difficult for blind rug weavers to find a market for their product.

The practices of the respondent and its agents as above set forth are unfair to the institutions which produce rugs by the labor of blind people and sell them in competition with the rugs of respondent and to the blind workers in these institutions, and are unfair to the manufacturers of rugs who sell their product on their merits rather than upon the basis of sympathy for the blind in competition with respondent.

PAR. 8. There are among the competitors of respondent those who in no wise misrepresent the origin, nature and character of the rugs made by them and respondent's acts and practices as above set forth tend to and do divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and the testimony in support of the charges in said complaint and in opposition thereto, and the briefs and argument of counsel for the Commission and counsel for the respondent, and the Commission having made its findings as to the facts with its conclusion that the respondent has and is violating 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, The Light House Rug Co., Inc., its representatives, agents, servants, employees, and successors cease and desist from:

(1) Using or authorizing the use by others in interstate commerce of the word "lighthouse" or the words "Light House" either independently or in conjunction or combination with any other word or words, letter or letters, as a corporate or trade name or as a trade brand or designation in advertising or on labels, circulars, or other advertising matter in connection with the sales or distribution in interstate commerce of its products.

(2) Using or authorizing the use by others in interstate commerce in advertising matter, circulars or otherwise of the words "Sole distributors of The Chicago Lighthouse, an institution for the blind", so as to confuse or mislead the purchasing public as to the origin of its products or so as to import or imply that it is the sole distributor

of the products made at The Chicago Lighthouse when such is not the fact.

(3) Using or authorizing the use by others in interstate commerce in advertising or upon business stationery or on labels, or otherwise, a pictorial representation of a lighthouse which simulates the emblem or symbol adopted and used by The Chicago Lighthouse to designate its product.

(4) Using or authorizing the use by others in connection with the sale and distribution of its products in interstate commerce any designation, representation or description on labels or in advertising matter, or otherwise so as to import or imply that its products are made by blind people when such is not the fact.

It is further ordered, That respondent, The Light House Rug Co., Inc., pursuant to the provisions of Rule XVI of the Commission's Rules of Practice shall within 60 days after the service upon it of a copy of the order hereinbefore set forth, file with the Commission a report in writing setting forth in detail the manner and form in which said order has been complied with.

IN THE MATTER OF

SCOTT & BOWNE

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

Docket 1470. Complaint, July 20, 1927—Decision, July 26, 1928

Where a corporation engaged in the manufacture of various products including a medicine sold and distributed under a trade name in large quantities to wholesale and retail dealers throughout the United States; in pursuance of a plan and policy adopted by it for the maintenance of suggested resale prices on its goods,

(*a*) Issued and sent out a list of selected wholesale distributors, following announcements of its aforesaid plan and policy, with request for adherence thereto in the matter of suggested minimum prices, from which were omitted names of many concerns who had theretofore long handled its goods without question as to dealings or credit, and to which it restored concerns thus omitted only after receipt of satisfactory assurances of conformance to its policy and suggestion in the matter of the maintenance of its minimum resale prices; and

(*b*) Generally refused to sell at wholesale prices to those of its prior distributors who failed or refused to give it the requested assurance in proper form and advised the same that they could buy from its approved distributors at retail buying prices, including in those thus demoted to the status of retailers, compelled to pay retailers' prices, the so-called cooperative wholesalers, who paid their members discounts based on purchases rather than on total business transacted,

With the result of securing the substantial maintenance of its suggested minimum prices by its vendees, and of lessening and suppressing competition in the sale and distribution of its products and particularly of the medicine above referred to, and of thereby preventing said vendees from selling its said products at such different or less price as they might desire, and depriving them and their purchasers of the advantages of free competition in the sale and purchase thereof:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. W. T. Chantland for the Commission.
Mr. John Walsh, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New Jersey corporation engaged in the manufacture, among other things, of a medicine known as "Scott's Emulsion" and in the sale thereof to purchasers in other States, and with principal office and place of business at Bloomfield, N. J., with maintaining resale prices in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, since about November 16, 1925, in the course of its said business "has enforced and now enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its said medicine shall be sold by dealers handling the same, and respondent enlists and secures the support and cooperation of said dealers and of respondent's officers, agents and employees in enforcing said system. In order to carry out said system, respondent has employed and now employs the following means among others whereby respondent and those cooperating with it undertake to prevent and do prevent dealers handling respondent's said medicine from reselling the same at prices less than the aforesaid resale prices established by respondent":

(*a*) Establishing uniform minimum prices at which dealers, both wholesalers and retailers, handling its said medicine shall resell same, and issuing to said dealers price lists setting forth said uniform minimum prices;

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

(*c*) Entering into contracts, agreements, understandings and arrangements with dealers for the maintenance by them of said prices as a condition of opening accounts with them or continuing their supplies of such medicine;

(*d*) Procuring groups of dealers in given localities to agree among themselves and with it to observe and maintain its prices;

(*e*) Securing from dealers handling its medicine, information concerning and evidence of price cutting by other dealers, and of the sale of said medicine by wholesalers to price-cutting retailers;

(*f*) Employing its salesmen, agents and other employees to ascertain, investigate and secure information and evidence relating to the matters immediately above set forth (par. *e*).

(*g*) Using information secured as set forth in paragraphs (*e*) and (*f*) and otherwise to induce and coerce price-cutting dealers to observe and maintain prices thereafter and wholesalers to refrain from further sales to price cutters, by exacting promises and assurances from (1) said price cutters that they will in the future maintain such prices, and (2) from wholesalers that they will not thereafter supply price cutters;

(*h*) Refusing to further supply its medicine to price cutters unless and until they have given it satisfactory assurances that they will in the future maintain and observe its said prices, such assurances usually including "favorable responses to inquiry as to what concerns with price maintenance policies have chosen them on their list as a 'selected service jobber,' a term now well-known in the drug trade, as a jobber who willingly agrees to conform to any price maintenance sales plan of a manufacturer."

(*i*) Refusing to sell wholesale dealers who have been supplying price cutting retailers unless and until said wholesalers agree to discontinue further supplying such price cutters;

(*j*) Using other equivalent and cooperative means and methods for the enforcement of said system of resale prices;

(*k*) Offering retailers a special refund on condition that they submit the wholesaler's invoice of the goods on which the refund is claimed, and (2) requesting copies of wholesaler's catalogues, circulars and advertising matter relating to respondent's product, in order to check up on the wholesale prices.

As a result of said acts and practices, as alleged, respondent's said resale prices have been and now are generally maintained, and further, the direct effect and result thereof, as charged, "has been and now is to suppress competition in the distribution and sale of respondent's medicine; to constrain said dealers to sell said medicine at aforesaid prices fixed by respondent and to prevent them from selling said medicine at such less prices as they may desire, and to deprive the ultimate purchasers of said medicine of those advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said medicine under conditions of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had, and evidence was introduced upon behalf of the Commission and respondent, before a trial examiner of the Commission duly appointed thereto, and said trial examiner having filed his findings of fact herein and counsel for the Commission and for respondent having filed their exceptions thereto.

Thereupon this proceeding came on for final decision on the record herein. And the briefs having been filed and oral arguments having been heard and duly considered and the Commission being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Scott & Bowne, is now and for many years has been a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Bloomfield, in said State.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture among other products of a certain medicine known as "Scott's Emulsion" and the sale and distribution thereof in large quantities and of substantial value from its factory at Bloomfield, N. J., to wholesale and retail dealers throughout the various States of the United States. In the course and conduct of its said business respondent has been and is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of similar medicines and medicines for similar purposes in interstate commerce between and among the various States of the United States.

PAR. 3. As of date November 16, 1925, and under the guise of reclassifying its distribution, respondent sent out generally to the trade and to all its theretofore distributors a form letter which set forth a plan and policy of respondent for price maintenance by its dealers which included suggestion and request of adherence by its distributors to suggested minimum resale prices in accordance with price lists which accompanied said letter. It is admitted that such plan was general and covered respondent's entire business. The testimony and documentary evidence in the record clearly establishes the fact that the policy and plan was not merely a paper plan but was one which respondent actively sought to enforce.

PAR. 4. As of date November 17, 1925, respondent issued and sent out generally its new list of selected wholesale distributors, from which list were omitted many concerns which had theretofore and for many years handled the goods of respondent as wholesale distributors, without question or controversy as to dealings or credit. Among such omitted concerns were a number of admitted and commonly recognized high standing.

PAR. 5. By the specific admission of the general sales manager of respondent who was in charge of the carrying out of its new plan and policy for resale price maintenance, not any distributor who was omitted from the list of November 17, 1925, was reinstated by respondent until satisfactory assurance either written or verbal was received by respondent that such omitted distributor was ready and anxious and willing to follow and go along with respondent's policy and suggestions which included such maintenance of suggested minimum resale prices.

PAR. 6. There is claim and some evidence by respondent that in some instances matters other than prices and price maintenance entered into the respondent's omission or cutting off and reinstatement, but the preponderance of the evidence is that as to all such distributors where assurances were called for, given, and received, respondent's entire plan and policy was included, which included assurances and agreement to resell respondent's products at not less than the suggested minimum resale prices.

PAR. 7. To those of their prior wholesale distributors who failed or refused to give respondent the requested and required assurances in proper form, respondent thereafter generally refused to sell at wholesale prices, but advised them that they could buy from respondent's selected list of wholesale distributors at the retailer's buying prices, copies of which retailer's buying price lists being furnished them. This was equivalent to continuing to cut off such wholesalers in that wholesalers could not buy at such disadvantage and supply their trade at any profit to themselves.

Some wholesalers thus discriminated against did actually continue to buy and pay such adverse discriminatory prices in order to maintain their complete line of products for their customers.

PAR. 8. That the suggestion and requirement of assurances of accord with respondent's plan and policy were more than pro forma is established by the following among other matters of record:

Whenever first assurances were not deemed adequate or not made by a sufficiently responsible member of the proposed purchasing concern, additional inquiry and request for adequate responsible assurance was demanded, and in many instances personal interviews were arranged for at respondent's headquarters with the managing officers of respondent which in most instances resulted in satisfactory assurances and accord.

PAR. 9. The so-called cooperative wholesalers which paid to their members discounts or rebates based on purchases rather than on total business transacted, were by respondent regarded as price cutters to the extent of such discount and rebate and so were generally not reinstated as jobbers but demoted to the status of retailers and compelled to pay retailers' prices.

PAR. 10. In one instance a wholesaler of high credit standing with eleven hundred customers, with which no question as to dealings had theretofore arisen, which had been placed on respondent's new list of selected wholesalers of November 17, 1925, wrote respondent that its practice was to allow 5 per cent from the list price for cash within 10 days, which it did not consider a cut price and asked respondent's view on that practice. Respondent in answer repeated its prior request that its products be sold at list price without discount except the generally termed " cash discounts " of not in excess of 1 per cent or 2 per cent. Thereafter respondent refused to fill repeated orders placed by said concern, until after this proceeding was commenced, when another order placed with respondent was filled.

PAR. 11. In other instances concerns whose orders were refused prior to the commencement of this proceeding have had orders filled which were placed after the commencement of this proceeding. However, respondent has not abandoned its plan and policy but on the contrary asserts its right to continue it.

PAR. 12. The effect of respondent's policy, plan, and practices, as set forth in the preceding findings, has been to secure the substantial maintenance of its suggested minimum resale prices by its vendees, and to lessen and suppress the competition in the sale and distribution of respondent's products, particularly " Scott's Emulsion", thereby preventing its vendees from selling its products at such different or less price as they might desire, and thereby depriving them and their purchasers of the advantage of free competition in the sale and purchase of such products of respondent.

CONCLUSION

1. The practices of the respondent in furtherance of its plan and policy in the procurement of the maintenance of its resale prices for its products as set forth in the foregoing findings, under the conditions and circumstances described therein, have a tendency to, and do, to a substantial degree, unduly lessen and restrict competition between the distributors of respondent's products, wholesalers and retailers.

2. Said policy, plan, and practices so described 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".

By the Commission, Commissioner Myers not participating.

ORDER TO CEASE AND DESIST

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

Now, therefore, it is ordered, That the respondent, Scott & Bowne, its officers, directors, agents, employees, and successors do cease and desist from carrying into effect or attempting to carry into effect its plan or policy of securing the maintenance of uniform resale prices for its products by any or all of the following means:

(1) Seeking or securing or entering into contracts, agreements, or understandings with customers or prospective customers that they will maintain the resale price specified by respondent.

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

(3) From directly or indirectly, as a part of any plan or policy, requiring or exacting, from those wholesalers or distributors who fail or refuse to adopt, follow, or abide by respondent's suggested resale prices, higher prices than those at which respondent sells generally to its wholesalers or distributors.

It is further ordered, That the respondent, Scott & Bowne, 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.

IN THE MATTER OF

AUTOMATIC BURNER CORPORATION AND A. B. C. OIL BURNER SALES CORPORATION

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

Docket 1492. Complaint,[1] *May 17, 1928—Decision, Sept. 10, 1928*

Where a corporation engaged in the manufacture of oil burners, and in the sale thereof through its corporate selling agency, and said agency, advertised that as a result of tests made by the United States Department of Agriculture their burner had been officially proven and stated by said department to have an "over-all efficiency of over 80 per cent" and "topped all other burners", the fact being that in the tests made upon the foregoing and other burners, a large number of separate "runs", showing wide variations, were made for each burner, that due to lack of proper equipment and other matters said tests were not regarded nor promulgated by said department as conclusive, and that the most favorable "run" for the aforesaid burner was selected by said corporation; with the intent and effect of creating the false impression that there was presented a fair compilation and analysis of the complete test, duly promulgated as a Government report:

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

Mr. W. T. Chantland for the Commission.
Ryan, Condon & Livingston, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Automatic Burner Corporation, engaged in the manufacture and sale of oil burners for heating homes and business establishments, and respondent A. B. C. Oil Burner Sales Corporation, its sales subsidiary, both Illinois corporations, with principal offices and places of business in Chicago, with claiming Government indorsement falsely or misleadingly and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, following (1) the undertaking of certain tests of various oil burners by the United States Department of Agriculture, which tests, for lack of

[1] Amended.

proper equipment and for other reasons were not regarded by said department as conclusive, nor the results thereof compiled or promulgated as such nor given the department's sanction, and (2) the making of a report by a former employee of the department, theretofore engaged in said tests, and employed by respondents to make such report, in which report said former employee set forth only results shown by the most favorable of 51 "runs" made for respondents' burner, as for each of the others, and showing great variations for each, so that the only result of any fair value for each would be the average.

Widely circulated said report, and by reference and advertising, intentionally so referred thereto as to create the impression that it presented a fair compilation and analysis of the complete test and that, as such, it was and had been duly promulgated as a Government report, making such false and misleading statements, on the basis of said report, in their advertising in a trade paper of general circulation, to wit, "Fuel Oil", as that, as a result of the tests made, the said "ABC Burner" of respondents had been officially proven and stated by the United States Department of Agriculture to have an "over-all efficiency of over 80 per cent" and "topped all other burners,"[2] and, later, notwithstanding a promise to the aforesaid department, upon having their attention drawn to the false and misleading character of their advertising, resumed and knowingly and willfully continued false and misleading advertising of similar form and import.[3]

Said false and misleading advertising, as charged "was calculated to mislead dealers and the purchasing public, to the prejudice of competitors, dealers, purchasers, and the public, and constitutes an unfair method of competition in commerce within the intent and meaning of section 5."

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[2] The matter referred to, specifically, was as follows:

80.7 PER CENT EFFICIENCY? ABC WINS AGAIN

The Department of Agriculture, Washington, D. C., recently completed the most comprehensive test of oil burners ever made. ABC won easily the thermal efficiency test with the high mark of 80.7 per cent, etc.

[3] Some of said advertisements were as follows:

(a) "First in United States Government test."

(b) "That's why it (referring to the ABC burner) was given highest heating efficiency rating in United States Government oil-burner test. Should we send you the Government report?"

(c) "80.7 per cent efficiency 'ABC wins again.' The Department of Agriculture, Washington, D. C., recently completed the most comprehensive test of oil burners ever made. ABC won easily the thermal efficiency test with the high mark of 80.7 per cent."

(d) Another of such advertisements which then appeared, in several newspapers of wide and general circulation, of similar tenor, is described in footnote relating to said advertisement (designated as exhibit (A)), but not published. See footnote on page 214.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its amended complaint upon the respondents, Automatic Burner Corporation and ABC Oil Burner Sales Corporation, charging them with unfair methods of competition in commerce in violation of the provisions of said act. Respondents having entered their appearance and having now tendered their motion and substituted answer, waiving hearing and consenting to order to cease and desist, in accordance with Rule III (*a*) of the Rules of the Commission, in words and form as follows:

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

In the matter of Automatic Burner Corporation et al. (Docket No. 1492)

MOTION AND SUBSTITUTED ANSWER OF RESPONDENTS, WAIVING HEARING AND CONSENTING TO ORDER TO CEASE AND DESIST

Automatic Burner Corporation and ABC Oil Burner Sales Corporation, the above named respondents, move that they be given leave to substitute this as their answer to the amended complaint in the above matter, and answering say that they have long since ceased the publication of advertisements of the character complained of, and they have no intention to resume the publication thereof, and desiring to waive hearing on the charges set forth in said amended complaint and not to further contest the proceedings, these respondents now state that they refrain from contesting the said proceedings and they consent that an order to cease and desist be entered herein in accordance with Rule III (2) of the Federal Trade Commission.

AUTOMATIC BURNER CORPORATION,
ABC OIL BURNER SALES CORPORATION,
Respondents.

By ________________________________
Their Attorneys.

RYAN, CONGDON & LIVINGSTON, *Attorneys,*
231 South LaSalle Street, Chicago, Illinois.

The said motion and answer is hereby received and directed to be filed, and the motion of the counsel for Commission to proceed to make findings and order, on the pleadings in accordance with said rule, is hereby granted, and the Commission being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Automatic Burner Corporation is a corporation organized in 1921 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 for a number of years last past has been and now is engaged in the manufacture of oil burners designed for use in heating homes and business establishments, and in the sale of said oil burners through its selling agency, ABC Burner Sales Corporation, in and among the several States of the United States. Respondent Automatic Burner Corporation through its said selling agency causes said oil burners when sold to be transported from its said place of business in the State of Illinois into and through other States of the United States, to the purchasers thereof.

PAR. 2. Respondent ABC Burner Sales Corporation is a corporation organized 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 since prior to 1925 has been and now is the selling agency of respondent Automatic Burner Corporation, and as such is engaged in the sale of said Automatic Burner Corporation's oil burners in and among the several States of the United States and causes said oil burners when sold to be transported from the said State of Illinois into and through other States of the United States, to the purchasers thereof.

PAR. 3. Since prior to 1925, there have been, and now are, numerous other persons, concerns, and corporations engaged in the manufacture and sale in commerce of oil burners in competition with each other and with these respondents.

PAR. 4. In 1925 the United States Department of Agriculture undertook to make certain tests of various oil burners including those made and sold by the persons described in paragraphs 1 and 2 hereof. Due to the lack of proper equipment and other matters, said tests were not regarded by the Department of Agriculture as conclusive, and the results thereof were not compiled nor promulgated as final and conclusive, nor given the sanction of the Department of Agriculture as such. In the making of such tests for each of the various burners, 51 separate "runs" were made, which "runs" as to each burner showed great variations, so that the only result that could be regarded as of any fair value would be the average of the 51 "runs" made as to each burner.

PAR. 5. Among the burners so tested in 51 "runs" was the burner made and sold by respondents, to wit, the ABC burner. Respondents employed a person formerly with the Department of Agriculture, who had been engaged in the making of said tests, to prepare a report for them. In said report was fully tabulated the result only of one "run," which is therein called "test B" which was "run" No. 396, and the run which showed the highest degree of efficiency of any of the "runs" as to respondent's burner. Said report has been widely circulated by respondents, and by reference and advertising so referred to, with the intent, purpose and effect of creating the impression that it presented a fair compilation and analysis of the complete test, and that, as such, it was, and had been duly promulgated as, a Government report.

PAR. 6. Respondents, using said reports so made as a basis, in December, 1925, advertised in a trade paper of general circulation, to wit: "Fuel Oil" that as a result of the tests made the said "ABC burner" of respondents had been officially proven and stated by the United States Department of Agriculture to have an "over-all efficiency of over 80 per cent" and "topped all other burners," whereas in truth and in fact no such proof, comparison, finding, or statement was made by said Department of Agriculture, and the matter so used in advertisements was false and misleading. Specifically the false and misleading matter in the advertisement above referred to was as follows:

80.7 PER CENT EFFICIENCY. ABC WINS AGAIN

The Department of Agriculture, Washington, D. C., recently completed the most comprehensive test of oil burners ever made. ABC won easily the thermal efficiency test with the high mark of 80.7 per cent, etc.

PAR. 7. That in 1925, after the appearance of said advertisement, the attention of respondents was called to the false and misleading character thereof by the Department of Agriculture, and respondents, in December, 1925, promised to desist from its use. Notwithstanding said promise, respondents thereafter, in 1926 resumed and knowingly and willfully continued their said false and misleading advertisements, of similar form and import. Some of such subsequent advertisements contained, among other things, the following:

(*a*) First in United States Government test.

(*b*) That's why it (referring to the ABC burner) was given highest heating efficiency rating in United States Government oil-burner test. Should we send you the Government report.

(*c*) 80.7 per cent efficiency: "ABC wins again." The Department of Agriculture, Washington, D. C., recently completed the most comprehensive test of oil burners ever made. ABC won easily the thermal efficiency test with the high mark of 80.7 per cent.

(*d*) Another of such advertisements which then appeared, in several newspapers of wide and general circulation was as set out in Exhibit A, attached hereto and made a part hereof.[4]

[4] Not published, said exhibit (A), being a reproduction of an advertisement used by respondents, captioned "Proof from U. S. Government ABC oil burner saves you money," and featuring the alleged indorsement, "unbiased authoritative", by the United States Government, of respondents' said burner, with its highest rating, along with further matter setting forth the advantages or alleged advantages of said burner.

CONCLUSION

That said false and misleading advertising was calculated to mislead dealers and the purchasing public, to the prejudice of competitors, dealers, purchasers, and the public, and constitutes an unfair method of competition in commerce within the intent and meaning 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the motion and substituted answer of respondents, and the Commission having made its findings as to the facts and its conclusion thereon, in accordance with Rule III (2) of its Rules of Procedure, that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Now, therefore, it is ordered, That the respondents, Automatic Burner Corporation and ABC Oil Burner Sales Corporation, their officers, directors, agents, employees, and successors do cease and desist—

From in any manner directly or indirectly representing or advertising that its ABC burner has, by tests made by the United States Department of Agriculture, been given a rating of an "over-all efficiency of over 80 per cent," or "topped all other burners," or that as the result of any such tests made said burner was "first in United States Government tests," and from in any manner advertising or representing that the United States Department of Agriculture has promulgated the results of any tests concerning the oil burners of said respondents, or of comparative tests between their said oil burner and the oil burners of others.

It is further ordered, That the respondents, Automatic Burner Corporation and ABC Oil Burner Sales Corporation, shall, within 60 days after the service upon them of copies 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.

Syllabus

In the Matter of

SAMUEL BREAKSTONE

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

Docket 1457. Complaint, Apr. 20, 1927—Decision, Sept. 14, 1928

Where spark plugs conspicuously bearing the capital letters "AC" on the exposed part of the porcelain cores thereof, sold in individual cartons and containers bearing said letters or symbol, and nationally advertised thereunder, and made under patented processes, had long been manufactured and come to be well and favorably known to the trade and consuming public by such brand, and as the product of the particular manufacturer, which had long made the same, and to constitute nearly half of all spark plugs made and sold in the United States, to be in great demand among the trade and consuming public, and to be standard equipment for a large number of automobiles of various makes; and thereafter an individual, engaged in the sale in various States of automobile parts, supplies, and accessories, who had purchased several hundred thousand cores made by such manufacturer (who made cores for its own plugs only and did not market the same separately in the case of its one-piece plugs), for airplane motors, bearing its trade-mark "AC", and sold by the Government after the war,

(*a*) Sold said cores so branded, in spark plugs not made by said manufacturer, for use in automobile motors, in competition with it and its dealers, and with manufacturers of and dealers in other plugs, and through numerous wholesale and retail dealers, who marketed the same in competition with dealers handling not only the genuine AC plugs, but those of others also without removing or attempting to remove the aforesaid symbol or trademark, or disclosing directly or indirectly that such plugs were not the product of said manufacturer, and that the cores were not adapted or intended for use in automobiles; with the capacity and tendency to mislead and deceive a large and substantial part of the trade and consuming public into buying and selling said inferior and poorly functioning plugs as and for genuine AC plugs made by the aforesaid manufacturer (from which they were indistinguishable by the purchasing public in the ordinary course of trade), for use in automobile motors, and with the effect of so doing; and

(*b*) Sold cartons and containers bearing conspicuously thereon the brand "AC Spark Plug", originally the property of and intended by the aforesaid manufacturer for use in the sale of its own product (and of the type familiar to the trade and consuming public in such connection), but discarded and sold by it for junk and eventually purchased by him, to spark plug dealers, and supplied the same to dealer-purchasers of his spurious AC plugs for their use in packing and marketing said plugs; with the intent and effect of furthering his false and misleading practices in the sale of said plugs, through being packed and marketed therein, and with the capacity and tendency thereby to mislead and deceive a large and substantial number of dealers into buying and selling, and consumers into purchasing, said plugs as and for the genuine AC plugs, of said manufacturer, and with the effect of so doing, and of supplying to the trade a means and instrumentality for committing a fraud upon the purchasing public, whereby dealers could and did sell and distribute the spurious plugs as and for the genuine;

With the capacity and tendency to unfairly divert trade and business from, and lessen the market for, the aforesaid manufacturer, and for numerous dealers in its genuine AC plugs, and for manufacturers of and dealers in competing plugs, and to prejudice and injure dealers in and consumers of said spurious plugs, and with the effect of so doing, and of constituting a fraud upon the purchasing public:

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

Mr. Henry Miller for the Commission.

Haight, Adcock & Banning, of Chicago, Ill., for respondent.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale of automobile parts, supplies, and accessories to wholesale and retail dealers and directly to consumers in sundry States, and with place of business in Chicago, with passing off or misrepresenting source or origin of product, misbranding or mislabeling and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, for about two years last past sold as and for genuine AC spark plugs made by the AC Spark Plug Co., for use in automobile motors, spark plugs with cores, (1) originally made for the Government for use in airplane motors (and not properly effective in automobile motors), by the aforesaid AC Spark Plug Co., and stamped with its long theretofore well and favorably known symbol "AC", (2) later sold by the Government as surplus property, and (3) subsequently purchased by respondent to the extent of many thousands and by him mounted in spark plug shells procured by him for such purpose,[1] with said symbol "AC" conspicuously stamped upon the exposed part of the core, respondent, in connection with the sale and distribution of said spark plugs to his aforesaid wholesaler, retailer and consumer vendees falsely and misleadingly representing, in advertising, in written correspondence, and orally that said spark plugs were the

[1] And neither made by nor for said AC Spark Plug Co.

aforesaid AC spark plugs manufactured by said competitor and designed and intended for use in automobile motors.[2]

Said representations and the appearance of the symbol "AC" upon the exposed portion of the cores of respondent's spark plugs, as above set forth, as alleged, "have the capacity and tendency to and do cause many of said dealers and many of the consuming public to purchase respondent's said spark plugs for use in automobile motors in the belief that respondent's said false and misleading representations are true".

Respondent further, as charged, in connection with the sale of his said spark plugs under such false and misleading representation, and to further the same, sold and delivered many of such spark plugs packed and delivered in individual containers which formerly belonged to and were used by said AC Spark Plug Co. for its said AC plugs and bore thereon the symbol "AC" and words "Spark Plugs" in large and conspicuous letters, were later sold and delivered by said competitor to another as waste material, and were procured in large numbers by respondent for the use and purpose immediately above set forth; respondent further selling and supplying said cartons to sundry of his dealer vendees by whom, in accordance with respondent's intent, respondent's said plugs were packed and sold in such cartons to other dealers and to the consuming public.

Respondent, as charged, by and through said acts and practices "places in the hands of his said wholesale and retail dealer vendees an instrument and means of committing a fraud upon retail dealers and upon the consuming public, respectively, by enabling said dealers to represent, offer for sale and sell respondent's said spark plugs as said "AC" spark plugs manufactured by respondent's said competitor, the AC Spark Plug Co.", and said acts and practices "tend to and do divert business from respondent's said competitor, the AC Spark Plug Co., and further, because respondent's said spark plugs

[2] Allegations of the complaint as relating more particularly to such competitor AC Spark Plug Co., and its product, as set forth therein, allege that among respondent's competitors is "the AC Spark Plug Co., a corporation organized under the laws of the State of Michigan, with its principal office and place of business in the city of Flint in said State, and during all of said times engaged in the manufacture and sale of spark plugs for internal-combustion motors, to wholesale and retail dealers located at points throughout the United States. At a time prior to the commencement of the acts and practices of respondent * * * set out, said competitor chose as a symbol and trade-mark for its said spark plugs the device 'AC' and for many years and during all times * * * mentioned has caused and now causes said symbol to be stamped in conspicuous letters upon the exposed porcelain portion of the cores of its said spark plugs, and said spark plugs have been, and are now, supplied to wholesale and retail dealers and by them to the consuming public with said symbol still so stamped upon said spark plugs. Said spark plugs have for many years and during all times * * * mentioned enjoyed and still enjoy a great and widespread popularity, good will and demand among the trade and the consuming public and are identified in the minds of the trade and consuming public with said symbol 'AC' appearing upon said spark plugs as above set out."

do not properly function when applied to automobile motors", tend to and do otherwise injure and prejudice said competitor; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

Respondent having entered his appearance herein by counsel and filed his answer to said complaint, hearings were had at which testimony was taken and evidence introduced by counsel for the Commission in support of the allegations of the complaint and by counsel for respondent in opposition thereto before an examiner of the Commission, theretofore duly appointed. Said evidence, including a transcript of testimony taken, was filed of record in the office of the Commission, and thereafter briefs and oral argument were submitted by counsel for the Commission and for the respondent.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Samuel Breakstone, an individual having his office and place of business in the city of Chicago, State of Illinois, is, and for more than three years last past has been, engaged in the business of selling and distributing automobile parts, supplies and accessories, including spark plugs, to wholesale and retail dealers and to the consuming public throughout the United States. Said bussiness is, and throughout the course thereof has been, conducted by respondent as follows: He offers for sale and sells his products through the personal solicitation of himself and other salesmen traveling into the several States of the United States who take orders for his merchandise which are transmitted to his place of business in Chicago, Ill. Respondent also solicits orders for his merchandise in States other than Illinois by means of advertisements and written communications and the orders for his goods given in response to such solicitation are likewise transmitted to respondent's place of business in Illinois from States other than Illinois; and respondent receives such orders and causes the merchandise so ordered to be transported from his place of business in Chicago, Ill., to the respective purchasers thereof in States other than Illinois; and in so carrying on said business respondent is and throughout the course and conduct thereof has been, continuously engaged in interstate commerce, and in direct, active competition with many other individuals, partnerships and corporations similarly engaged in the sale and distribution of automobile parts, supplies, and accessories, including spark plugs, in commerce in, between and among the several States of the United States.

PAR. 2. Among the competitors of respondent referred to in paragraph 1 hereof is the AC Spark Plug Co., a corporation of Flint, Mich. (formerly and prior to July, 1922, named Champion Ignition Co.), which for many years has been engaged in the manufacture, sale and distribution in interstate commerce of spark plugs for internal combustion motors, including automobile motors, to wholesale and retail dealers and users throughout the United States. At a time long prior to the commencement of the acts and practices of respondent hereinafter set out, said AC Spark Plug Co., formerly Champion Ignition Co., adopted and used as its symbol and trade-mark for said spark plugs which it manufactures, sells, and distributes, the device consisting of the capital letters "AC" (being the initials of Albert Champion, its president), and for about twenty years last past has caused and still causes said symbol and trade-mark to be conspicuously stamped upon the exposed portion of the porcelain cores of its spark plugs; and said spark plugs have been and still are sold and distributed in the trade and to users with said symbol and trade-mark still so stamped thereon. Likewise said spark plugs manufactured by said corporation are sold and distributed in the trade and to the consuming public in individual cartons and containers of said corporation which bears said distinguishing trade-mark and symbol "AC". The spark plugs so manufactured and sold by said AC Spark Plug Co., formerly Champion Ignition Co., are marketed, known, and referred to by the manufacturer, the trade, and the consuming public as AC Spark Plugs. And said trade-mark and symbol "AC" in connection with spark plugs signifies and indicates to the trade and consuming public that such spark plugs have been manufactured by said AC Spark Plug Co., formerly Champion Ignition Co. The spark plugs manufactured, branded, sold, and distributed by said AC Spark Plug Co. (formerly Champion Ignition Co.) as above set forth are hereinafter referred to as "genuine AC spark plugs". Said genuine AC spark plugs are manufactured by patented processes and have a high reputation for quality and dependability; and for many years they have enjoyed a great and widespread popularity, good will, and demand among the trade and consuming public. The annual sales of such genuine AC spark plugs in the United States amount to approximately 25,000,000, or 45 per cent of the total number of all makes of spark plugs consumed; and they are standard factory equipment for a large number of automobiles, including such cars as the Cadillac, LaSalle, Buick, Nash, Oldsmobile, Pontiac, Chevrolet, Hudson, Essex, Chandler, Peerless, Overland, and Chrysler. Said spark plugs are nationally advertised throughout the United States as AC spark plugs, on which advertising in excess of $600,000 per annum has been expended by the AC Spark Plug Co. Said genuine AC spark plugs and the porcelain cores thereof are and have been manufactured by said AC Spark Plug Co. in many different designs and styles to meet the particular requirements and needs of the various types of motors in which they are to be used, all of which plugs, however, bear said trade-mark and symbol "AC" and are known, designated and referred to by the manufacturer, dealers and consumers as AC spark plugs. Said AC Spark Plug Co. manufactures porcelain cores for use in said genuine AC spark plugs only, and the porcelain cores manufactured by it for its one-piece spark plugs are not marketed separately.

PAR. 3. In October, 1918, said AC Spark Plug Co. (then named Champion Ignition Co.) began the manufacture of genuine "AC" spark plugs for the United States Government under a contract with the United States Director of Aircraft Production, War Department, whereby the Government agreed to purchase 2,500,000 spark plugs to be designed and manufactured by said company for service in aircraft motors used by the Government in the prosecution of the World War. Before all the spark plugs so agreed to be purchased by the Government had been manufactured, and after the Armistice of November 11, 1918, was signed and the hostilities of the World War ceased, the Government exercised its right under said contract of terminating the same; and, in addition to the spark plugs already manufactured it thereupon took over and acquired title to and possession of the spark plugs and spark plug parts in process of manufacture under said contract. In the year 1920 a large quantity of said spark plugs and spark plug parts so acquired by the Government was sold by it "as is" and as surplus war property to one Symonds, who immediately caused the same to be shipped to and stored in a public warehouse in Chicago, Ill. Said material with the exception of some finished spark plugs which said Symonds withdrew and sold from time to time, was allowed to remain in such storage until on or about April 3, 1925, when the operators of said warehouse sold the entire lot remaining "as is" to respondent for the sum of $225. Said material so purchased by respondent consisted of a quantity of spark plugs, estimated to be approximately 40,000, and a large quantity of spark plug parts including about 300,000 or more porcelain spark plug cores designed and manufactured by the AC Spark Plug Co. for use in airplane motors and all bearing the aforesaid " AC " trade-mark placed thereon by the AC Spark Plug Co. in the processes of manufacturing said spark plugs for airplane motors under the above-mentioned contract with the Government. Said AC porcelain cores, having been designed and manufactured for use in airplanes, were neither designed nor suitable for use in automobile motors as such motors require, for proper functioning, a spark plug containing a core of a different design and style. Respondent resold said spark plugs contained in said material purchased and thereafter in or about July, 1925, began and for many months following continued to manufacture or assemble at his place of business in Chicago, Ill., certain one-piece spark plugs (hereinafter referred to as "spurious AC spark plugs") for use in automobile motors in which plugs respondent used as the porcelain cores thereof the above-mentioned porcelain cores acquired by him and bearing said "AC" trade-mark and symbol of the AC Spark Plug Co. All other parts of said spurious AC spark plug so manufactured by respondent were procured by him from dealers or manufacturers, but were not manufactured or ever owned, controlled, or dealt in by said AC Spark Plug Co. By the use of said AC porcelain cores respondent caused his spurious AC spark plugs to bear conspicuously said trade-mark and symbol AC in the customary and familiar place where the manufacturers of spark plugs, including the AC Spark Plug Co., cause their respective trademarks or distinguishing symbols to be affixed. Said spurious AC spark plug so manufactured or assembled by respondent, are a close imitation of and so similar in general appearance, size and style, color, materials, and brand or trade-mark to said genuine AC spark plugs manufactured for automobile motors by said AC Spark Plug Co. as to be indistinguishable by the purchasing public in the regular and ordinary course of trade.

PAR. 4. Among the products dealt in and sold by respondent, as set forth in paragraph 1 hereof, were said spurious AC spark plugs which he manufactured or assembled at his place of business in Chicago, Ill., as set forth in paragraph 3 hereof. Beginning in or about July, 1925, and for many months thereafter respondent offered for sale, sold and distributed in excess of 250,000 of said suprious AC spark plugs with said "AC" trade-mark and symbol thereon to wholesale and retail dealers and the purchasing public generally in various States of the United States. In accordance with respondent's plan of distribution and in the regular course of business, said spurious AC spark plugs were marketed in and by the trade and to the consuming public under said trade-mark, symbol, and brand "AC" contained thereon. In the course of having been so marketed to, in and through the trade and to the consuming public, said spurious AC spark plugs were offered for sale, sold, and distributed, (1) by respondent in competition with the AC Spark Plug Co., manufacturers and sellers of the genuine AC spark plugs, and numerous dealers of such genuine AC spark plugs, as well as in competition with numerous manufacturers and dealers of other makes of spark plugs for automobile motors; (2) by numerous wholesale and retail dealers in competition with many other wholesale and retail dealers marketing not only the spark plugs manufactured by the AC Spark Plug Co., but also marketing spark plugs of numerous other manufacturers and sellers of spark plugs for use in automobile motors. In offering for sale, selling, and distributing said spurious AC spark plugs as aforesaid respondent, (1) did not remove or obliterate, or attempt to remove or obliterate said "AC" symbol or trade-mark from said spurious AC spark plugs, but caused same to be offered for sale, sold and distributed to, in and by the trade and to the consuming public under and branded with said trade-mark and symbol "AC"; (2) did not disclose directly or indirectly to his customers or to the purchasing public that said spurious AC spark plugs were not genuine AC spark plugs or that they were not manufactured by the AC Spark Plug Co. or that the porcelain cores of said spurious AC spark plugs were designed, manufactured, or intended for use in airplane motors and not for automobile motors, of all of which facts respondent had knowledge prior to and during the time of his manufacture and sale of said spurious AC spark plugs as set forth above; and (3) caused said spurious "AC" spark plugs to be represented, offered for sale, sold and distributed to, in and by the trade and to the consuming public as spark plugs designed, intended and proper for use in automobile motors.

PAR. 5. Respondent's use of said trade-mark and symbol "AC" upon said spurious AC spark plugs, and his representing and marketing of such spurious AC spark plugs for use in automobile motors, all as hereinabove set forth, were false and misleading, had the capacity and tendency to and did mislead and deceive a large and substantial number of the trade and consuming public into buying and selling said spurious AC spark plugs in, and because of, the following erroneous beliefs:

(1) That said spurious AC spark plugs were genuine AC spark plugs.

(2) That said spurious AC spark plugs were manufactured by said AC Spark Plug Co., of Flint, Mich.

(3) That said spurious AC spark plugs were designed, intended and proper for use in automobile motors.

In truth and in fact, (1) said spurious AC spark plugs were not genuine AC spark plugs, and were not manufactured by said AC Spark Plug Co. nor any part thereof excepting the porcelain cores, which were designed and manufactured for use in airplane motors and not automobile motors, as hereinabove set forth; (2) said spurious AC spark plugs were inferior in quality to said genuine AC spark plugs, and were not of a design or style suitable for, nor would they properly function in automobile motors.

PAR. 6. On or about August 21, 1925, and for the purpose of procuring the spark plug cartons hereinafter mentioned, respondent purchased a carload of miscellaneous scrap paper containing among and as part of said scrap paper a large quantity, approximately 1,000,000, individual AC spark plug cartons and AC spark plug containers, each having printed thereon in large and conspicuous letters the brand "A.C Spark Plugs" with the letters and symbol "AC" in large type conspicuously displayed in numerous places. Said cartons were the regular AC spark plug cartons formerly the property of said AC Spark Plug Co. and were the type of cartons in which the genuine AC spark plugs manufactured by the AC Spark Plug Co. for automobile motors were for years packed and marketed through the trade and to the consuming public throughout the United States, and were of the type of carton familiar to the trade and consuming public as containers for said genuine AC spark plugs. Said cartons purchased by respondent had prior thereto been discarded, sold and delivered by the AC Spark Plug Co. as waste paper and as junk to a dealer in such materials doing business at Flint, Mich., under the name of Flint Scrap Iron & Metal Co., from which dealer they were purchased as scrap paper by a seller and buyer employed by the Aetna Auto Parts Co. of Chicago, Ill., who made said purchase without the knowledge of his employer, and after consultation with respondent as to the uses to which respondent could apply said cartons in his business as containers in which to market spark plugs. Said scrap paper so purchased by said buyer and seller and containing said AC spark plug cartons was shipped in a carload lot to Chicago, Ill., and immediately thereafter on or about August 21, 1925, was delivered intact to respondent who reclaimed said AC spark plug cartons from the rest of the scrap paper contained in said shipment.

PAR. 7. Throughout many months immediately following receipt of said AC cartons as set forth in paragraph 6 hereof, and having information of the fact that said AC Spark Plug Co. had discarded said AC spark plug cartons as scrap paper and junk, and intended that said cartons be not used commercially as containers for spark plugs, respondent nevertheless sold and distributed large quantities of said cartons from his place of business in Chicago, Ill., to spark plug dealers in various States of the United States for commercial use as containers in which to pack and market automobile spark plugs in the trade and to the consuming public. And respondent continued the sale and distribution of large and substantial numbers of said AC spark plug cartons subsequent to the issuance of said complaint herein. Further, with the purpose, intention, and effect of causing his said spurious AC spark plugs to be packed and marketed through the trade and to the consuming public in said AC spark plug cartons, and thereby furthering his false, deceptive, and misleading practices in the sale and distribution of said spurious AC spark plugs as hereinabove set forth, respondent supplied, sold, and distributed said AC spark plug cartons in large and substantial quantities to dealer-purchasers of said spurious AC spark plugs. Thereupon and in accordance with the respondent's purposes and plan, said dealer-purchasers or other dealers caused said spurious AC spark plugs to be packed, displayed, offered for sale, sold and distributed in said AC spark plug cartons among the trade and to the consuming public throughout various States of the United States. Respondent's sale and distribution of said cartons in connection with said spurious AC spark plugs as hereinabove set forth was with intent on the part of respondent to mislead and deceive, had the capacity and tendency to, and did, mislead and deceive a large and substantial number of dealers into buying and selling, and consumers into purchasing said spurious AC spark plugs as and for genuine AC spark plugs designed and manufactured for use in automobile motors by said AC Spark Plug Co. In and by the sale and distribution of said cartons and said spurious AC spark plugs under the conditions and circumstances hereinbefore set forth, respondent supplied to and introduced in the trade a means and instrumentality for committing a fraud upon the purchasing public whereby dealers could and did, in the ordinary course of trade and business, sell and distribute said spurious AC spark plugs as and for genuine AC spark plugs designed and manufactured by the AC Spark Plug Co. for use in automobile motors. Respondent's use of said "AC" trademark and symbol and said AC spark plug cartons in connection with the sale and distribution of said spurious AC spark plugs as above set forth, were calculated to and did mislead and deceive a large and substantial number of dealers into buying and selling, and the consuming public into purchasing said spurious AC spark plugs as and for, and in the erroneous belief that they were genuine AC spark plugs designed and manufactured by said AC Spark Plug Co. for automobile motors.

PAR. 8. Respondent's acts and practices in the sale and distribution of said AC spark plug cartons for commercial use as containers for spark plugs, and his use of said trade-mark and symbol "AC" in connection with said spurious AC spark plugs, all as hereinbefore set forth, have the capacity and tendency to and did unfairly divert trade and business from, and lessen the market for, said AC Spark Plug Co., and numerous dealers of genuine AC spark plugs as well as other manufacturers and dealers of spark plugs for automobile motors who sell and distribute same in competition with respondent, or with the aforesaid dealers of respondent's spurious AC spark plugs. Likewise said acts and practices of respondent tended to and did prejudice and injure numerous dealers and consumers of said spurious AC spark plugs, and constituted a fraud upon the purchasing public.

PAR. 9. Respondent has the intention and purpose to, and there is danger and the probability that he will, unless permanently restrained, continue in whole or in part said false, misleading, and deceptive practices carried on by him as hereinabove set forth.

CONCLUSION

The acts and things done by the respondent in the sale and distribution of said AC spark plug cartons; and his use of said trade-mark and symbol "AC" in connection with said spurious AC spark plugs and the sale thereof as designed and proper for use in automobile motors, all as and under the conditions and circumstances set forth in the foregoing findings as to the facts, are to the injury and prejudice of the trade and consuming public, and respondent's competitors, 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 thereto, the testimony, evidence, briefs, 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 the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, his agents, representatives, servants, and employees, do cease and desist, in the course and conduct of interstate commerce—

(1) From using the letters or device "AC", or causing the same to appear, upon or in connection with any spark plugs or spark plug parts which have not been manufactured by the AC Spark Plug Co. of Flint, Mich., or its assigns;

(2) From selling and distributing to dealers or others any spark plug, the core of which is marked with the trade name AC unless said spark plug be entirely manufactured by the AC Spark Plug Co.

(3) From using any other letters, words, or device upon or in connection with any spark plug or spark plug parts which indicate, import, or imply to the purchasing public that such spark plugs or spark plug parts have been manufactured by the AC Spark Plug Co., if and when such is not true in fact.

(4) From representing in any manner whatsoever in the sale and distribution of spark plugs that such spark plugs were designed, manufactured, or are proper or suitable for use in automobile motors when such is not true in fact, or when the cores of such spark plugs have not been designed or manufactured, or are not suitable or proper, for use in such automobile motors.

(5) From selling and distributing, or otherwise supplying to dealers or others any spark plug containers, labels, or brands bearing the symbol or device "AC", or words or device of similar import, with the purpose or effect of thereby causing such dealers or other persons to use them, or to distribute the same for use, as commercial containers, brands, or labels for any spark plugs or spark plug parts which have not been manufactured by the AC Spark Plug Co. of Flint, Mich., or its assigns.

(6) From in any manner whatsoever making, or causing or enabling dealers to make, any false, misleading, or deceptive representations, statements, or assertions as to the origin, manufacture, quality, design, style, or uses of any spark plugs or spark plug parts.

It is further ordered, That respondent Samuel Breakstone shall within 30 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

In the Matter of

BERKEY & GAY FURNITURE COMPANY

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

Docket 1396. Complaint, July 27, 1926—Decision, Sept. 25, 1928

Where a corporation engaged in the manufacture of dining room, living room and bedroom furniture with solid mahogany, walnut or gumwood legs, posts, stretchers and rails, and with broad or flat parts of plywood of gumwood, poplar, chestnut or wood of similar grade, veneered with mahogany or walnut, where exposed to view, and in the sale thereof in competition with manufacturers of truthfully described veneered and solid furniture, to small town dealers who order by catalogues and price lists for their customers, and to dealers and department stores, who make their selection after personal inspection at its place of business, or from photographs or illustrations, after solicitation, and follow the practice of requiring manufacturers to describe furniture purchased upon invoices, tagging furniture displayed in accordance therewith, and so advertising the same in daily papers; described said furniture in catalogues, price lists, photographs, and illustrations furnished to wholesale and retail dealers, in invoices reflecting the sale thereof, and in advertisements in periodicals and trade papers of general circulation among the purchasing public, as "walnut", or "mahogany", or "walnut and gumwood", or "mahogany and gumwood", as the case might be, without disclosing its veneered composition, or the relatively small amount of mahogany or walnut used therein, and thereby led to the offer and sale of such furniture by the aforesaid dealers and stores (and probably by the ultimate purchaser or consumer, if resold by him) as mahogany, mahogany and gumwood, or walnut and gumwood; with the capacity and tendency to mislead and deceive purchasers and prospective purchasers of it and of its dealers into buying such furniture as and for furniture consisting entirely of mahogany or walnut or of the designated wood or woods, as above set forth, and not veneered:

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

Mr. James M. Brinson for the Commission.

Knappen, Uhl & Bryant and *Mr. Francis D. Campau*, of Grand Rapids, Mich., for respondent.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Michigan corporation engaged in the manufacture and sale of dining room and bedroom furniture, and with principal office and place of business at Grand Rapids, with misrepresenting product and advertising falsely or misleadingly in regard thereto in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, for about three years last past described, advertised, and invoiced as "walnut and gumwood", "mahogany and gumwood" or by other combinations of names of the different woods from which its said furniture is made, bedroom and dining-room furniture made by it and composed principally of gum or chestnut wood or other woods of similar grade and quality, veneered, in practically all cases, with a thin covering of mahogany or walnut, about two twenty-eighths of an inch thick, without disclosing in its said descriptions and advertisements in catalogues distributed to customers and prospective customers and in magazines and in trade journals of nation-wide circulation, and in its invoices of sales to retailers, that said furniture is veneered.

The designation, as alleged, by respondent of veneered furniture made and sold by it as above set forth, "as 'Mahogany and Gum', 'Walnut and Gum', or by a designation composed only of the names of the principal woods included in the construction of the furniture, without disclosing that such furniture is veneered, results in placing in the hands of the retail dealers through whom furniture manufactured and sold by respondent, is sold to the consuming public, the means whereby such dealers can commit a deception or fraud upon the public by merely describing such furniture to customers and prospective customers by the designations given it by respondent, without disclosing that the mahogany or walnut wood used in the construction of such furniture consists only of a thin veneer about two twenty-eighths of an inch in thickness, and numerous persons have been induced by such means to purchase veneered furniture manufactured and sold by respondent in the belief that the exposed portions of such furniture was made of solid mahogany or solid walnut".

Respondent's said practice, as charged, causes trade to be diverted to it from competitors, many of whom manufacture mahogany and walnut veneered furniture and describe the same in their invoices, catalogues, and advertisements as "veneered", giving the name of the wood composing the veneer as well as that of the wood from which the core of the furniture is made, and others of whom manufacture and sell furniture made entirely of mahogany or walnut; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the Berkey & Gay Furniture Co., a corporation, hereinafter called the respondent, 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, testimony and documentary evidence were received and duly recorded, and filed in the office of the Commission; thereafter the proceeding regularly came on for decision before the Commission on such complaint, answer, the testimony and evidence received, briefs and arguments of counsel, and the Commission having duly considered the same, now makes this its report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Berkey & Gay Furniture Co., for several years last past has been, and now is, a corporation organized and existing under the laws of the State of Michigan with its principal office and place of business at Grand Rapids in said State. Since some time in 1926, it has owned and controlled the Wallace Furniture Co. and the Grand Rapids Upholstering Co., each of which it utilizes for the sale of its products. Respondent and its said subsidiary corporations have been, and now are, engaged in the manufacture of dining room, living room and bedroom furniture, and its sale at their respective points of location to dealers for resale to the public. It causes its furniture, when sold, to be transported from Grand Rapids, Mich., into and through the various States of the United States to the purchasers thereof, in competition with individuals, partnerships, and corporations engaged in the sale and transportation of dining room, living room, and bedroom furniture in like commerce.

PAR. 2. In the course of its business it has been, and is, the practice of respondent to manufacture its furniture from plywood, composed of layers of gumwood, poplar, chestnut, or wood of similar grade, attached with glue. This plywood is so constructed that the grain of one layer of wood runs in opposite direction from the grain of the adjacent layer or layers of wood. Usually the flat and broad parts of its furniture, such as table tops; tops, ends, and fronts of cabinet pieces are composed of five plies, but for special purposes they sometimes consist of 3, 7, 9, and even 11 plies. The central layer, which may be termed the basic layer, is known and described as the core, which itself consists of narrow widths of lumber joined together edgewise.

Plywood consisting of more than 3 layers of wood, such as 5, 7, 9, or 11 plies, contains so-called cross bands, usually one-twentieth of an inch in thickness, the grain of which runs in opposite direction to that of the layer of wood composing the so-called core. Upon one or both of the outer plies, depending upon whether or not exposed, there is glued a veneer of walnut, or mahogany, usually one twenty-sixth of an inch in thickness. The respondent uses for interior construction, such as the bottom, sides, and backs of dressers, walnut or mahogany, sometimes solid and sometimes laminated, and uses walnut, mahogany, or gumwood, for legs, posts, rails, standards, mirror frames, moldings, and chairs. Chairs and certain parts of its furniture, such as moldings, mirror frames, legs, posts, rails and standards, usually consist of solid wood, unless the design requires lumber of greater thickness than 2 inches, in which case these parts of the pieces of furniture are made from two or more layers of wood glued together.

PAR. 3. It has been, and is, the practice of respondent to distribute among, or furnish to, wholesale and retail dealers in furniture, catalogues, price lists, photographs, and illustrations, in which it has described, and describes, its furniture constructed as stated in paragraph 2, as mahogany, or walnut, or mahogany and gumwood, or walnut and gumwood, depending upon whether or not the legs, posts, and stretchers of its products consist of walnut, mahogany, or gumwood. In other words, its furniture, consisting of solid mahogany or walnut legs, posts, stretchers, and rails, with its broad or flat parts composed of other woods, veneered with mahogany, or walnut, where exposed to view, is described as walnut or mahogany. When such broad or flat parts, so composed, are veneered with walnut, or mahogany, and the legs, posts, rails, and stretchers are composed of gumwood, the furniture so constructed is described by respondent as mahogany and gumwood, or walnut and gumwood.

After the issuance of complaint herein, this respondent began to describe furniture with broad or flat parts veneered with mahogany, or walnut, on different wood, where exposed to view, as laminated 5-ply veneered construction, in its price lists, illustrative plates and other literature for dealers, and also on cards for display of the furniture in salesrooms of retail dealers. Respondent has failed and still fails, however, in its catalogues, price lists, illustrations, or photographs, or cards furnished for display in connection with its product, to disclose or indicate the name of the wood, or woods, composing the veneered product, or the relatively small amount of mahogany or walnut in its construction.

It has been, and still is, the practice of respondent to furnish wholesale and retail dealers, invoices reflecting sale of furniture in which it is described as mahogany, or walnut, or mahogany and gumwood, or walnut and gumwood, without any disclosure whatever of its veneered composition, or of the relatively small amount of mahogany or walnut used in its construction.

Respondent sells its furniture only to wholesale and retail dealers, but it has been and is its practice to advertise in magazines, journals, and trade papers of general circulation, among the purchasing public in the various States of the United States, in which it has followed, and still follows, the aforesaid method of describing its furniture.

PAR. 4. It is the practice in the retail furniture business, for dealers carrying furniture of the grade, character, and quality, such as manufactured by respondent, to visit its place of business at Grand Rapids, Mich., during certain seasons, and then and there to select from the furniture offered for sale by respondent, that which they sell, or offer for sale, at their respective places of business in the various States of the United States, or to order their furniture from respondent through the agency of its traveling solicitors, who furnish them with photographs or illustrations at their places of business.

There are, however, in addition to the dealers who visit Grand Rapids for the selection of furniture, or who are solicited by representatives of respondent, other dealers who neither visit Grand Rapids, nor are solicited or visited by such representatives of respondent, and who rely entirely on catalogues, price lists, and such advertising literature as respondent distributes among them. This business is small compared with that transacted by respondent with dealers who visit its place of business, or are visited by its representatives. It amounts, however, to 2 per cent of its business, and is conducted usually with small-town dealers, who, on account of the expense, are unable to carry such furniture in their stock and on their floors, and respondent sells such furniture to them through the medium of its catalogues, price lists, and advertising literature. It is the practice among such small-town dealers to submit catalogues and price lists so received from respondent to their customers desiring to purchase furniture of the grade and character manufactured by respondent, and thereupon to order from such catalogues, or price lists, that which the customer may designate. This method of business enables the dealer to earn a profit without the burden or expense of the investment required to carry such furniture in stock.

PAR. 5. It has been, and is, the practice of retail dealers in furniture whose business constitutes a fair preponderance of the sales in medium and high grade furniture in Chicago, to expose furniture purchased from respondent, or competitors, for sale on the floors of their places of business with tags attached thereto, containing the description given in catalogues, price lists, or invoices. Such dealers include the department stores of Marshall Field & Co., and Carson, Pirie & Scott. A similar practice prevails in Boston, New York, Philadelphia, St. Louis, and Minneapolis, and large department stores in such cities follow this system of using on tags, attached to furniture displayed for inspection by purchasers or prospective purchasers, the same description as that on the invoices furnished by respondent or other manufacturers.

Many dealers in furniture, including some department stores, use in their advertisements of furniture in the daily newspapers the same description, or one similar thereto, as that furnished in its invoices by respondent.

Some of the large department stores have adopted and follow the practice of requiring manufacturers of furniture to furnish them, before they purchase furniture, or upon invoices representing the purchase, a detailed and accurate description of its construction so as to avoid any confusion or mistake on the part of their representatives in marking or describing such furniture for its display or resale to the public.

The description furnished by respondent in catalogues, price lists, photographs, and illustrations performs in this way a constant and consistent service after the furniture leaves its possession, and until it reaches that of the ultimate purchaser, and probably such description continues to function thereafter, if, or when, such furniture so purchased is resold. This is especially true of the invoice. Its function in modern business has been extended by practice to include the communication of a description to the purchaser by and in accordance with which the furniture represented by such invoice should, or may be, offered for sale to the public.

PAR. 6. Manufacturers of furniture in various parts of the United States, including competitors of respondent, at Jamestown, N. Y., Evansville and Shelbyville, Ind., Sheboygan, Wis., St. Louis, Mo., and other centers of the industry generally describe and have described since early in 1926, and some of them for many years theretofore, furniture made from plywood and veneered according to the method of construction followed by respondent, as mahogany veneer, or walnut veneer, or mahogany veneer and gumwood, or walnut veneer and gumwood, either in catalogues, price lists, photographs, illustrations, or letter quotations transmitted to dealers, or in invoices furnished by them to purchasers of its products.

Other competitors of respondent have specified in their descriptions of furniture offered for sale, and now specify, the wood or woods of which said product is composed, including its basic or central layer, called the core.

PAR. 7. As a result of the practice of respondent in describing such veneered furniture as mahogany or walnut, or mahogany and gumwood, or walnut and gumwood, and of the practice of its competitors in describing truthfully furniture of similar construction as mahogany veneered or walnut veneered, or mahogany veneered and gumwood, or walnut veneered and gumwood, together with the practice of retail dealers in following the descriptions of the respondent and other manufacturers in their representations to the public, furniture of respondent consisting of mahogany, or walnut, veneered on different woods, has been offered for sale, and is being offered for sale, in department stores in the large cities of the United States and by a substantial proportion of the retail furniture dealers as mahogany, mahogany and gumwood, and walnut and gumwood, without describing it as veneered and disclosing the relatively small amount of mahogany, or walnut, used therein, in competition with veneered furniture truthfully described as mahogany veneered, or walnut veneered, and also in competition with furniture of other competitors consisting entirely of mahogany or walnut truthfully described.

PAR. 8. The description by respondent in its catalogues, price lists, photographs, illustrations, and invoices of its furniture as set out in paragraph 3 as mahogany, walnut, mahogany and gumwood, and walnut and gumwood, or by a designation of the wood or woods composing the veneered surface of the broad or flat parts, and the legs, posts, and stretchers, without disclosure of the veneered construction and the relatively small proportion of the designated mahogany or walnut used therein, has had, and has the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent, and purchasers and prospective purchasers of the dealers in furniture to whom respondent has sold and is selling its furniture, and the natural and probable effect of such practice, will be to mislead and deceive them, into the purchase of such furniture in the erroneous belief that it consists entirely of mahogany or walnut, or of the designated wood or woods, and is not of the construction commonly known as veneered.

CONCLUSION

The practice of respondent, Berkey & Gay Furniture Co., under the conditions and circumstances described in the foregoing findings as to the facts is an unfair method of competition in interstate commerce and constitutes a violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondent, Berkey & Gay Furniture Co., its answer thereto, testimony, and documentary evidence, brief and argument of counsel, and the Federal Trade Commission having made its report stating its findings as to the facts with its conclusion that Berkey & Gay Furniture Co. has been and is violating 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 respondent, Berkey & Gay Furniture Co., its officers, agents and employees, cease and desist from:

(1) Selling or offering for sale in interstate commerce furniture made with broad or flat parts of mahogany, or walnut, as the case may be, which have been veneered on other different wood or woods, unless such furniture be described, labeled, or designated as "veneered".

(2) Using the word "mahogany" or the word "walnut" in advertisements, catalogues, price lists, invoices, or otherwise in connection with the sale or offering for sale in interstate commerce of furniture made with broad or flat parts of mahogany, or walnut, as the case may be, which have been veneered on other different wood or woods, unless accompanied by the word or term "veneered".

It is further ordered, That respondent, Berkey & Gay Furniture Co. shall within 60 days from and after notice hereof, file with the Commission a report in writing stating the manner and form in which it has complied with the terms of this order.

MEMORANDA

The Commission as of the same date, promulgated findings and orders against 24 other Grand Rapids furniture manufacturers (against whom complaints issued as of July 27, 1926) as noted below, involving sale of veneered furniture under misleading designations or descriptions, and substantially similar to those in the *Berkey & Gay case* above, except for the absence of a finding as to the amount of the particular respondent's business with small town dealers, and except as noted in the statement following, covering such findings and orders.[1]

Appearances in these cases were: *Mr. James M. Brinson* for the Commission; *Knappen, Uhl & Bryant* and *Mr. Francis D. Campau*, of Grand Rapids, Mich., for the various respondents.

The statement referred to follows:

STOW & DAVIS FURNITURE CO., Docket 1397. High-grade office furniture, including matched equipment particularly for exclusive offices, as mahogany or walnut, said furniture being respectively made and sold as described in paragraphs 2 and 3 of the findings, reproduced below:

PAR. 2. In the course of its business it has been and is the practice of respondent to manufacture the broad and flat parts of its furniture from plywood composed of layers of various woods, such as chestnut, birch, and basswood veneered with walnut or mahogany. Normally its furniture consists of five layers called plies, although for such pieces of furniture as directors' tables or other heavy pieces of furniture seven or more plies may be used. The central layer of the plywood, usually known as the core, consists of narrow widths of chestnut, basswood, or similar wood joined together edgewise with glue. The layer or ply directly adjacent to the core, designated cross band, is usually composed of birch or similar wood one-twentieth of an inch in thickness. The outer layer of that part of the furniture exposed to view when placed in the generally accepted position for use consists of a veneer of mahogany or walnut, one twenty-eighth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, standards, mirror frames, moldings, and chairs, which commonly consist of solid mahogany or walnut.

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[1] Possibly the following variations in the different cases should be noted, the findings and orders in all other respects (except as set forth) being apparently substantially identical in form and substance:

The findings in the *Berkey & Gay case* above (par. 3), to the effect that following the issuance of the complaint, respondent began, in its price lists, illustrative plates, display cards, and other literature for dealers, but not in invoices, to describe its furniture concerned as veneered (though failing to indicate the name of the woods composing the veneered product, or relatively small amount of mahogany or walnut used in its construction), and to the effect that such respondent while selling only to wholesale and retail dealers, has made a practice of advertising in magazines, journals and trade papers of general circulation among the purchasing public in the various States, and of employing the challenged method of describing its furniture in said advertising, are, with one exception, not found in the other cases.

The exception referred to is that of the Imperial Furniture Co., in which it was also found that, following issuance of complaint, respondent commenced in its catalogues, but not in its invoices, to describe its furniture as veneered, and that it was respondent's practice, while selling its furniture only to wholesale and retail dealers, to advertise in magazines, journals and trade papers of general circulation among the purchasing public in the various States, in which advertising, it failed to disclose the relatively small amount of mahogany or walnut used in the broad or flat parts of its furniture.

PAR. 3. It has been and is the practice of respondent to distribute among, or furnish to, wholesale and retail dealers in furniture, catalogues, price lists, photographs, illustrations, and invoices, in which it has described and describes its furniture constructed as stated in paragraph 2 as mahogany or walnut, according to the particular wood composing the solid parts of the furniture and the exposed exterior ply of the broad or flat parts. Respondent has described and describes in its price lists certain director's tables as made in part of veneers or of plywood, although in its invoices of furniture sold there is no disclosure of veneered construction nor indication of the relatively small amount of mahogany or walnut in the furniture or parts thereof described as mahogany or walnut.

THE GUNN FURNITURE CO., Docket 1398. Sectional bookcases, desks, and tables as genuine mahogany, mahogany or walnut, said furniture being respectively made and sold as described in paragraphs 2 and 3 of the findings, reproduced below:

PAR. 2. In the course of its business it has been and is the practice of respondent to manufacture its furniture from plywood composed of layers of birch, gum, poplar, chestnut, or wood of similar grade, attached with glue. Upon one or both of the outer layers, usually called plies, depending upon whether or not exposed, there is glued a veneer of mahogany or walnut, usually one twenty-eighth of an inch in thickness. This plywood is so constructed that the grain of one layer of wood runs in opposite direction to that of the grain of the adjacent layer or layers of wood. The broad and flat parts of its furniture, such as table tops; tops, ends, and fronts of bookcases and desks are generally composed of five plies. The central layer of the plywood which may be termed the basic layer is known and described as the core, usually consisting of narrow widths of lumber joined together edgewise. The layer or ply directly adjacent to the core, designated the crossband, is usually one-twentieth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, and standards, which commonly consist of solid mahogany or walnut.

The finding in the *Berkey & Gay case* (par. 4) to the effect that the practice of retail dealers as there specified, of exposing furniture purchased from respondent or competitors, for sale on their floors, tagged in accordance with the description given in catalogues, price lists, or invoices, also "prevails in Boston, New York, Philadelphia, St. Louis, and Minneapolis, and large department stores in such cities follow this system," etc., takes the form, in some of the cases, of setting forth that a "similar practice prevails in Boston, New York, Philadelphia, St. Louis, and Minneapolis, among retail dealers in furniture, including some of the largest department stores in such cities".

The finding in the *Berkey & Gay case* (par. 7), to the effect that as a result of the condemned practice "furniture of respondent consisting of mahogany, or walnut, veneered on different woods, has been offered for sale and is being offered for sale, in department stores in the large cities of the United States and by a substantial proportion of the retail furniture dealers as mahogany, mahogany or gumwood, and walnut and gumwood, without describing it as veneered and disclosing the relatively small amount of mahogany, or walnut, used therein", etc., takes the form in some of the cases of a finding that as a result of such practice, the furniture in question has been and is being offered for sale, "in department stores in the large cities of the United States, and by retail furniture dealers, as mahogany or walnut without describing it as veneered", etc., as above set forth, or has been so offered by such department stores and "by the retail furniture dealers" as mahogany, etc., as hereinabove set forth.

PAR. 3. It has been and is the practice of respondent to distribute among, or furnish to, wholesale and retail dealers in furniture, catalogues, price lists, photographs, and illustrations, in which it has described and describes its sectional bookcases constructed as stated in paragraph 2 as genuine mahogany, and when sold to so describe it in its invoices, and its desks and tables as mahogany or walnut as the case may be, without disclosing in connection therewith the veneered construction, or the relatively small amount of walnut or mahogany used in ends, tops, and fronts of bookcases, desks, and tables, or in the broad or flat parts thereof. In other words, its furniture consisting of solid mahogany or walnut legs, posts, stretchers, and rails, with broad or flat parts veneered with mahogany or walnut, where exposed to view, is described as genuine mahogany, or mahogany, or walnut.

JOHN WIDDICOMB CO., Docket 1400. Bedroom furniture as mahogany or walnut.

Said furniture is made from—

Plywood composed of layers of chestnut, birch or woods of similar grade attached with glue. Upon one or both of the outer layers, usually called plies depending upon whether or not exposed, there is glued a veneer of mahogany or walnut usually one twenty-eighth of an inch in thickness. This plywood is so constructed that the grain of one layer of wood runs in opposite direction from the grain of the adjacent layer or layers of wood. The flat and broad parts of its furniture, such as table tops; tops, ends, and fronts of cabinet pieces are generally composed of five plies. The central layer of the plywood, which may be termed the basic layer, is known and described as the core, usually consisting of narrow widths of chestnut joined together edgewise. The layer or ply directly adjacent to the core, designated crossband, generally consists of birch or similar wood one-twentieth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, standards, mirror frames, moldings, and chairs, which commonly consist of solid mahogany or walnut.

And is described in catalogues, price lists, photographs, illustrations, and invoices distributed among or furnished to wholesale and retail furniture dealers as mahogany or walnut.

In other words its furniture consisting of solid mahogany or walnut legs, posts, stretchers, and rails with broad or flat parts veneered with mahogany or walnut, on a different wood or woods where exposed to view, is described as mahogany or walnut.

LUCE FURNITURE CO. AND THE FURNITURE SHOPS, INC.,[2] Docket 1401. Dining room, bedroom, library, living room, and hall furniture as mahogany, walnut, mahogany and gumwood, or walnut and gumwood.

Said furniture is made as described in paragraph 2 of the findings, reproduced below:

PAR. 2. In the course of their business it was the practice of respondents, and since February 1, 1926, has been, and now is, the practice of The Luce Furniture

[2] Predecessors of Luce Furniture Shops. See paragraph 2.

Shops to manufacture furniture from plywood composed of layers of various woods, attached with glue. Usually such plywood consists of five layers, although it has been and is sometimes constructed with additional layers, when its intended use so requires. The largest amount of lumber in such plywood, whether five or more layers of wood, consists normally of the central or basic layer, called the core, composed of narrow widths of gumwood, chestnut or similar woods joined together edgewise by glue. Upon both of the flat surfaces of this core is a so-called crossband usually of birch or similar wood one-twentieth of an inch in thickness attached thereto by glue. Upon the outer layers of this composition depending upon exposure to view there are glued veneers of mahogany or walnut one twenty-eighth of an inch in thickness. Plywood, or veneered construction, is rarely used by respondents in legs, posts, rails, standards, mirror frames, moldings, and chairs, which commonly consist of solid mahogany, solid walnut or solid gumwood.

And is described in catalogues, prices lists, photographs, and illustrations distributed among or supplied to wholesale and retail furniture dealers, and in invoices, as mahogany or walnut, etc., as set forth above.

In other words, their furniture consisting of solid mahogany, or walnut, or gumwood legs, posts, stretchers and rails, with broad or flat parts veneered with mahogany or walnut on different wood or woods, where exposed to view, is described as mahogany or walnut, as well as mahogany and gumwood, or walnut and gumwood.

CENTURY FURNITURE CO., Docket 1402. Library, living room and dining room furniture, as mahogany or walnut, made from plywood composed of layers of mahogany, maple, and other woods, attached with glue as set forth in the *Widdicomb case*, above (p. 237, except for use of maple or mahogany, instead of chestnut, for core), and described as above, in catalogues, etc., distributed among or supplied to, wholesale and retail furniture dealers, and in invoices.

DAVID UHL, trading under the firm name and style—Grand Rapids Fancy Furniture Co., Docket 1403. Household furniture, including desks, piano benches and music cabinets, as mahogany or walnut,[a] said furniture being respectively made and sold as described in paragraphs 2 and 3 of the findings, reproduced below:

PAR. 2. In the course of his business, it has been and is the practice of respondent to manufacture his furniture from plywood, composed of layers of various woods attached with glue, and upon one or both of the outer layers, depending upon whether or not exposed to view when the piece of furniture is placed in the generally accepted position for use, there is glued a veneer of mahogany or walnut, usually one twenty-eighth of an inch in thickness. This plywood, however, has been and is used only in construction of the broad and flat parts of the furniture, such as table tops; tops, ends, and fronts of cabinet pieces and legs, posts, rails, standards, and moldings consist usually of solid

[a] See paragraph 3.

wood. The thick center layer of plywood used in construction of the broad and flat parts of such furniture, known as the core, is composed of narrow widths of chestnut, gum, or similar wood, joined edgewise with the grain of alternate widths reversed and held together with glue. The layer or ply attached to the broad surface of the core, called cross band, on which the mahogany or walnut veneer is glued, is made of veneers of birch or similar wood one-twentieth of an inch in thickness.

PAR. 3. It has been and is the practice of respondent to distribute among, or furnish to, dealers in furniture catalogues, price lists, and invoices in which he has described and describes his furniture as mahogany or walnut, when its broad or flat parts are made of plywood, as described in paragraph 2, veneered with mahogany or walnut, and the so-called solid parts made of mahogany or walnut. In his catalogue this respondent states that, "all medium-priced goods described as mahogany or walnut are veneered mahogany and walnut fronts and imitation ends and all goods, unless designated as solid wood, are veneered fronts and ends". This specification of veneered construction, however, respondent fails to include in his invoices to dealers, which as found in paragraph 5 hereof serves as a guide to the dealers for description of the furniture.

VALLEY CITY DESK CO., Docket 1404. Office furniture as mahogany or walnut, said furniture being respectively made and sold as described in paragraphs 2 and 3 of the findings, reproduced below:

PAR. 2. In the course of its business it has been and is the practice of respondent to manufacture its furniture from plywood composed of layers of gumwood, poplar, chestnut or wood of similar grade, attached with glue. This plywood is so constructed that the grain of one layer of wood runs in opposite direction from the grain of the adjacent layer or layers of wood. Usually the flat and broad parts of its furniture, such as table tops; tops, ends and fronts of cabinet pieces are composed of five plies. The central layer, which may be termed the basic layer, is known and described as the core, which itself consists of narrow widths of lumber joined together edgewise.

Plywood consisting of more than three layers of wood, such as five plies, contains so-called cross bands usually one-twentieth of an inch in thickness, the grain of which runs in opposite direction to that of the layer of wood composing the so-called cores. Upon one or both of the outer plies, depending upon whether or not exposed, there is glued a veneer of walnut or mahogany usually one twenty-eighth of an inch in thickness.

PAR. 3. It has been and is the practice of respondent to distribute among, or furnish to, wholesale and retail dealers in furniture, catalogues, price lists, photographs and illustrations, and invoices, in which it has described and describes its furniture constructed as stated in paragraph 2, as mahogany or walnut without disclosure of the veneered construction or of the relatively small amount of mahogany or walnut used therein.

FOOTE-REYNOLDS CO.,[4] Docket 1405. Beds as mahogany, walnut, mahogany and gumwood, or walnut and gumwood, made as set forth in the preceding case, and described in catalogues, price lists, photographs, illustrations and invoices distributed among or furnished to wholesale and retail furniture dealers, as mahogany or walnut, or mahogany and—

[4] Name changed to Kindel Furniture Co.

gumwood, or walnut and gumwood, depending upon whether or not the legs, posts, and stretchers of its products consist of walnut, mahogany or gumwood. In other words, its furniture consisting of solid mahogany or walnut legs, posts, stretchers and rails with its broad or flat parts so veneered with mahogany or walnut, where exposed to view, is described as walnut or mahogany. When the broad and flat parts are veneered with walnut or mahogany, and the legs, posts, rails and stretchers are composed of gumwood, the furniture so constructed is described by respondent as mahogany and gumwood, or walnut and gumwood.

PRITCHETT-POWERS CO., Docket 1406. Living room, library, and hall furniture as combination mahogany and gumwood, combination walnut and gumwood, mahogany and gumwood, and walnut and gumwood, and made as set forth in paragraph 2 of the findings below:

PAR. 2. In the course of its business it has been and is the practice of respondent to manufacture the broad and flat parts of its furniture from plywood composed of layers of gumwood, chestnut or wood of similar grade attached with glue. Upon one or both of the outer layers, usually called plies depending upon whether or not exposed, there is glued a veneer of mahogany or walnut, usually one twenty-eighth of an inch in thickness. This plywood is so constructed that the grain of one layer of wood runs in opposite direction to that of the grain of the adjacent layer or layers of wood. The broad and flat parts of its furniture, such as table tops; tops, ends and fronts of cabinet pieces are generally composed of five plies. The central layer of the plywood which may be termed the basic layer is known and described as the core, usually consisting of narrow widths of lumber joined together edgewise. The layer or ply directly adjacent to the core, designated the cross band, is usually one-twentieth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, standards, mirror frames, moldings and chairs, which commonly consist of solid mahogany, walnut or gumwood.

And described in catalogues, price lists, photographs, illustrations, and invoices, distributed among or furnished to wholesale and retail furniture dealers—

as combination mahogany and gumwood, combination walnut and gumwood, mahogany and gumwood and walnut and gumwood, and when sold [so described] in its invoices. In other words, its furniture consisting of solid mahogany or walnut legs, posts, stretchers, and rails with broad and flat parts veneered with mahogany or walnut, where exposed to view, is described as combination mahogany and gumwood, combination walnut and gumwood, mahogany and gumwood and walnut and gumwood.

JOHNSON FURNITURE CO. AND JOHNSON-HANDLEY-JOHNSON CO.,[6] Docket 1407. Bedroom, dining room, and library furniture as mahogany or genuine mahogany, and walnut or genuine walnut.

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[6] All the stock of the last-named respondent is owned by certain stockholders of the first company and the two companies, with the same place of business, officers, directors, and management are operated as a single business unit.

Said furniture is made from " plywood composed of layers of gum, poplar, birch, or woods of similar grade, attached with glue," etc., as set forth in the preceding case (but with solid mahogany or walnut legs, posts, etc.[6]), and, as also then set forth, is described in their catalogues, etc., distributed or furnished to wholesale and retail furniture dealers and in their invoices as stated in the first paragraph hereof.

GRAND RAPIDS CHAIR CO., Docket 1408. Dining room, library, and hall furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood.

Such furniture is made from plywood, as set forth in the *Valley City Desk case*, above (p. 239), except that—

The respondent uses for interior construction, such as the bottom, sides and backs of dressers, walnut or mahogany, sometimes solid and sometimes laminated, and uses walnut, mahogany or gumwood for legs, posts, rails, standards, mirror frames, moldings and chairs. Chairs and certain parts of its furniture, such as moldings, mirror frames, legs, posts, rails and standards usually consist of solid wood, unless the design requires lumber of greater thickness than two inches, in which case these parts of the pieces of furniture are made from two or more layers of wood glued together.

And described in catalogues, etc., supplied to wholesale and retail furniture dealers as set forth in the first paragraph hereof, depending upon composition of the legs, posts, rails, and stretchers of the product (i. e., whether solid mahogany, walnut, or gumwood) and the veneer used on the broad or flat parts.

HEKMAN FURNITURE CO., Docket 1409. Living room and hall furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood.

Said furniture is made as set forth in paragraph 2 of the findings below:

PAR. 2. In the course of its business it has been, and is, the practice of respondent to manufacture the broad and flat parts of its furniture from plywood consisting of several layers, usually five, of various woods attached with glue. The principal part of such plywood in size and thickness consists of the so-called core, which is formed from narrow widths of chestnut or wood of similar grade and quality, glued together edgewise, and amounts to approximately five-sixths of the entire thickness of the panel. There is glued to the broad surface of the core so-called cross bands of birch, or wood of similar grade and quality, with grain running in opposite direction to course of the grain in the core and usually one-twentieth of an inch in thickness. Such

[6] While the complaint alleges use of gumwood also for the legs, etc., the improper designations charged appear to relate only to that furniture in which mahogany or walnut was so used.

of these broad and flat parts of furniture so constructed as will be, or are, exposed to view when placed in the generally accepted position for its use, are veneered with a layer of mahogany or walnut, normally one twenty-eighth of an inch in thickness. Respondent manufactures other parts or pieces of its furniture, such as legs, posts, rails, standards, mirror frames, moldings and some of its chairs of the same kind of wood throughout the structure, consisting commonly of walnut, mahogany or gumwood.

And described in catalogues, price lists, photographs, illustrations, and invoices distributed among or supplied to wholesale and retail furniture dealers—

As mahogany or walnut, when its broad and flat parts are veneered with mahogany or walnut, with solid mahogany or walnut legs, posts, rails, standards, mirror frames, moldings and chairs, and as mahogany and gumwood, or walnut and gumwood, when the broad and flat parts are so veneered and the so-called solid parts consist of gumwood.

Wagemaker Co., Docket 1411. Office desks and filing cabinets as mahogany or walnut, mahogany and gumwood, or walnut and gumwood, said furniture being respectively made and sold as described in paragraphs 2 and 3 below:

Par. 2. In the course of its business it has been, and is, the practice of respondent to manufacture the broad and flat parts of its furniture from plywood composed of layers of various woods. Commonly drawer fronts, legs, rails, and stretchers of its furniture consist of solid wood. The various layers of plywood used in the broad or flat parts of its furniture are composed of gumwood, chestnut, or wood of similar grade or quality with mahogany or walnut veneers one twenty-eighth of an inch in thickness, as an exterior ply or exposed parts of its furniture, except that solid parts, such as legs, posts, rails, standards and moldings, consist usually of gumwood, oak, mahogany or walnut.

Par. 3. It has been, and is, the practice of respondent to distribute among, or furnish to, dealers in furniture, catalogues, price lists, photographs, illustrations and invoices in which it has described and describes its furniture constructed as set out in paragraph 2 as mahogany, or walnut, or mahogany and gumwood, or walnut and gumwood, depending upon the veneer used on the broad or flat parts and the wood or woods composing the solid parts.

Robert W. Irwin Co., Docket 1412. Dining room, library and bedroom furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood, made as set forth in the *Johnson Furniture case* above (see p. 240) and described in catalogues, etc., distributed among wholesale and retail furniture dealers, and in invoices, as above set forth, depending upon the composition of the solid posts, stretchers and rails (i. e., whether mahogany, walnut, or gumwood), and the veneer used upon the broad or flat parts.

Standardized Furniture Co., Docket 1413. Dining room, living room, and bedroom furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood, made as set forth in the *Grand*

Rapids Chair case above (p. 241, except that flat and broad parts of respondent's furniture such as table tops, ends and fronts of cabinet pieces, usually composed of 5 plies, sometimes consist of 3, 7, 9 and even 11 plies), and described in catalogues, etc., distributed among wholesale and retail furniture dealers, and in invoices, as above set forth, depending upon the composition of the solid legs, etc., and veneer used on the broad or flat parts exposed to view.

H. E. Shaw Furniture Co., Docket 1414. Dining room furniture and house desks as mahogany or walnut, mahogany and gumwood or walnut and gumwood, made as set forth in the *Valley City Desk case* above (p. 239) and described in catalogues, etc., distributed to wholesale and retail furniture dealers and invoices, as above set forth, depending upon the composition of the solid legs, etc., of the products, and the veneer used upon the broad and flat parts thereof, where exposed to view.

Widdicomb Furniture Co., Docket 1415. Bedroom furniture as mahogany or walnut, or mahogany and gumwood, or walnut and gumwood, made as set forth in the *Grand Rapids Chair case* above (p. 241), and described in catalogues, etc., furnished to retail and wholesale furniture dealers and in invoices, as above set forth, depending upon the composition of the legs, etc., and the veneer used upon the broad or flat parts where exposed to view.

Imperial Furniture Co., Docket 1416.[7] Dining room furniture as mahogany or walnut, or mahogany and gumwood, or walnut and gumwood, made as set forth in the *Grand Rapids Chair case* above (except that flat and broad parts such as table tops, etc., usually composed of 5 plies, sometimes, for special purposes, consists of 3, 7, 9, and even 11 plies; see p. 241), and described in catalogues, etc., furnished to wholesale and retail furniture dealers, and in invoices, as above set forth, depending upon the composition of the legs, etc., and the veneer employed upon the broad or flat parts where exposed to view.

Williams-Kimp Furniture Co., Docket 1417. Dining room and living room furniture as mahogany or walnut, made as set forth in the *Johnson Furniture Co. case* above (except that the woods named as constituting the plywood were gumwood, chestnut or woods of similar grade instead of "gum, poplar, birch or wood of

[7] One of the findings in this case recites that in 1927, or since the issuance of the complaint in the case, respondent commenced in its catalogues to describe its furniture as veneer, but that it is still its practice to furnish invoices describing the same as mahogany or walnut, etc., without any disclosure of the furniture's veneered composition, or the relatively small amount of mahogany or walnut therein used.

similar grade"; see p. 240), and described in catalogues, etc., sent to wholesale and retail furniture dealers and in invoices, as above set forth. (The legs, etc., being usually solid mahogany or walnut.)

PAALMAN FURNITURE Co., Docket 1418. Tea wagons, dinner wagons, magazine stands, and ends, occasional, nested and tilt-top tables as mahogany or walnut, mahogany and gumwood, or walnut and gumwood.

Such furniture is manufactured by respondent—

From plywood composed of layers of gumwood, chestnut, or other wood of similar grade, attached with glue. This plywood is so constructed that the grain of one layer of wood runs in opposite direction from the grain of the adjacent layer or layers of wood. Usually the flat and broad parts of its furniture, such as table tops; tops, ends, and fronts of cabinet pieces are composed of five plies. The central layer, which may be termed the basic layer, is known and described as the core, which itself consists of narrow widths of lumber joined together edgewise. Plywood consisting of more than three layers of wood, such as five plies, contains so-called cross bands usually one-twentieth of an inch in thickness, the grain of which runs in opposite direction to that of the layer of wood composing the so-called core. Upon one or both of the outer plies, depending upon whether or not exposed, there is glued a veneer of mahogany or walnut, usually one twenty-eighth of an inch in thickness. Plywood or veneered construction is rarely used by respondent in legs, posts, rails, standards, and moldings, which commonly consist of solid mahogany or walnut, although gumwood is sometimes used for such purposes.

And is described in catalogues, etc., sent to wholesale and retail furniture dealers and in invoices, as above set forth, depending upon the composition of the legs, etc., and the veneer employed upon the broad or flat parts where exposed to view.

In other words, its furniture consisting of solid mahogany or walnut legs, posts, stretchers and rails with its broad or flat parts veneered with mahogany or walnut, where exposed to view, is described as mahogany or walnut. When the broad and flat parts are veneered with walnut or mahogany, and the legs, posts, rails and stretchers are composed of gumwood, the furniture so constructed is described by respondent as mahogany and gumwood, or walnut and gumwood.

THE CABINET SHOPS, Docket 1419. Dining-room furniture as walnut, made as set forth in the *Valley City Desk case* above (except that the instant case involves only walnut, and not mahogany; see p. 239), and so described in catalogues, etc., supplied to wholesale and retail furniture dealers, and in invoices, as above set forth, without disclosure of the veneered construction thereof or relatively small amount of walnut used therein.

FURNITURE STUDIOS, INC., Docket 1420. Living room and hall furniture as maple or walnut, or walnut decorated, or Georgian walnut decorated, made as set forth in the *Valley City Desk case* (except that no mahogany veneer was used, and a maple as well as walnut veneer was employed; see p. 239) and described in catalogues, etc., distributed to wholesale and retail furniture dealers, and in invoices, as above set forth, without disclosure of its veneered construction or the relatively small amount of walnut or maple used therein.

THE MACEY CO., Docket 1421. Sectional bookcases and office furniture as mahogany or walnut, or genuine mahogany or genuine walnut, or as combination mahogany and gumwood, etc., as set forth below.

Such furniture is made as to the broad and flat parts thereof such as—

Tops of desks and tops, ends, and fronts of cabinet pieces from panels of plywood, which vary in thickness from 1 inch to 1⅝ inches. These panels consist of layers of gumwood, chestnut, or other wood of similar grade, attached with glue. Upon the outer layer, where exposed to view in the generally accepted position for use, there is glued a veneer of walnut or mahogany one twenty-eighth of an inch in thickness. There are in such panels either three or five layers, including the outer ply or veneer. Solid woods, such as mahogany, walnut, and gumwood are used in the construction of legs, posts, stretchers, or those parts of the furniture usually known or described as solid parts.

And is described in catalogues, etc., distributed among and furnished to wholesale and retail furniture dealers, and in invoices—

As mahogany or walnut, or genuine mahogany, or genuine walnut, where the broad or flat parts consist of plywood [as above described] veneered with mahogany or walnut, and the legs, posts, stretchers, and rails are made of mahogany or walnut, or as "combination mahogany and gumwood" with "all panels" as "genuine mahogany," or "combination walnut and gumwood" with "all panels" as "genuine walnut" where the posts, legs, and stretchers are made from gumwood and the main body of the structure consists of such plywood veneered with mahogany or walnut.

GRAND RAPIDS FURNITURE CO., Docket 1422. Dining room and living room furniture as mahogany or walnut, mahogany and gumwood, or walnut and gumwood, made as set forth in the *Grand Rapids Chair Co. case* above (except that the plywood in the instant case is composed of layers of chestnut, birch, or other woods of similar grade instead of gumwood, poplar, chestnut or other woods of similar grade; see p. 241) and described in catalogues, etc., distributed among or furnished to wholesale and retail furniture dealers, and in invoices, as above set forth, depending upon whether the usually solid parts such as legs, posts, and stretchers consist of mahogany, walnut, or gumwood.

IN THE MATTER OF

SHOWERS BROTHERS COMPANY

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

Docket 1450. Complaint, Apr. 5, 1927—Decision, Sept. 25, 1928

Where the words "mahogany" and "walnut" signified and meant and had for many years been understood by the trade and purchasing public as signifying and meaning that furniture so designated was composed entirely, both as to exposed surface and parts thereof, of the aforesaid woods, either solid or laminated; and thereafter a corporation engaged in the manufacture, chiefly, of dining room and bedroom suites, kitchen tables and radio cabinets of "laminated" or "built-up" wood of three or five ply construction, with basic layer or core and one or more successive adjacent layers of gumwood, chestnutwood, beechwood, or other similar wood, and outer layers of mahogany or walnut one twenty-eighth of an inch thick, and with legs, posts, stretchers, mirror frames, and chair rungs of gum or other similar woods, and three-ply drawer bottoms, and in the sale thereof to wholesale and retail dealers (who displayed its catalogues, pamphlets, circulars, and other trade literature to the purchasing public, and advertised, and tagged the furniture on their floors in accordance with the manufacturer's description in catalogues, price lists, circulars, or invoices), in competition with manuufacturers of furniture and novelties of mahogany or walnut entirely, of furniture thereof combined with other woods, and of furniture of mahogany or walnut veneered on other wood, and variously so designated and described by them in catalogues, price lists, and invoices, together with name of the wood or woods composing the legs, posts, or other solid parts of said veneered furniture,

(*a*) Conspicuously designated its furniture by such terms as walnut, mahogany, combination walnut, combination mahogany, combination blended mahogany, or combination blended walnut, and also as laminated or veneered, or of plywood construction, without indicating the composition thereof or the relatively small amount of mahogany or walnut used therein, in catalogues, pamphlets and other trade literature furnished its customers; and

(*b*) Described said furniture as American walnut or mahogany in its invoices to purchasers, without disclosing, or suggesting its veneered construction, involving no mahogany or walnut except on the outer or exposed ply of tops, ends, and broad or flat surfaces;

With the result that said furniture was offered and sold by retailers without disclosing the veneered character thereof and the relatively small amount of mahogany or walnut used therein, in competition with veneered furniture, and with furniture entirely of mahogany or walnut, truthfully described, and with the capacity and tendency to mislead and deceive purchasers and prospective purchasers of it and of its customer dealers into the purchase thereof as and for furniture entirely of mahogany or walnut, or of the designated wood or woods, and not veneered:

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

Mr. James M. Brinson for the Commission.
Mr. Jess B. Fields, of Bloomington, Ind., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Indiana corporation engaged in the manufacture of furniture consisting chiefly of dining-room suites, bedroom suites, kitchen cabinets and radio cabinets, and in the sale thereof to wholesale and retail dealers in several different States, and with office and principal place of business in Bloomington, Ind., and with factories in said city and also in Bloomfield, Ind., and Burlington, Iowa, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in its catalogues, pamphlets, circulars, and other trade literature sent to its aforesaid customers and prospective customers and by them displayed to the purchasing public in connection with the offer and sale of respondent's said furniture, and in advertising in trade papers designated and described certain articles of furniture offered and sold by it, composed of gum, chestnut, beechwood, or other woods of similar grade and quality, with tops, sides, and ends and in some instances drawer bottoms veneered with mahogany or walnut about one twenty-eighth of an inch thick "as composed of 'walnut', 'mahogany', 'combination walnut,' 'combination mahogany', 'combination blended walnut', or 'combination blended mahogany', and [by] similar terms embodying the words 'mahogany' and 'walnut' said terms being written in conspicuous type as captions appearing directly above the pictures of the said articles, and as particular descriptions of sundry items thereof"; respondent further in its said catalogues and other literature, describing certain articles as being equipped with drawers with mahogany bottoms.

The use, as alleged, "by respondent in its said catalogues and other trade literature of the terms 'walnut', 'mahogany', 'combination walnut', 'combination mahogany', 'combination blended walnut', 'combination blended mahogany' and similar terms embodying the words 'mahogany' and 'walnut,' to describe its said furniture * * * is deceptive, and, when used by said dealers in the course of offering for sale and selling said furniture to their customers among the consuming public * * * has the capacity and tendency to mislead said customers into the belief that said furniture is composed wholly of mahogany or walnut as the case may be, with certain surfaces veneered with a layer of the same wood, or that said furniture is furniture, certain parts of which are composed wholly of mahogany or walnut and the remaining portions of woods other than mahogany or walnut", respondent thereby placing in the hands of said dealer an instrument and means whereby they may commit a fraud upon a substantial portion of the consuming public.

Said acts and practices of respondent, as charged, tend to divert trade from and otherwise to injure competitors who sell and distribute in interstate commerce furniture composed wholly of mahogany or walnut, with layers of mahogany or walnut veneered upon certain surfaces, and who so designate and describe their said furniture, and competitors who sell and distribute in interstate commerce furniture composed in part of mahogany or walnut and in part of other woods and who so designate and describe the same; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the Showers Brothers Co., hereinafter called the respondent, 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, a stipulation of the facts for the purpose of the proceeding was made, all other testimony and evidence, briefs and argument, waived and it was agreed by and between respondent and counsel for the Commission, that the Commission may proceed, without further processes or formalities, all of which were waived, so far as consistent with the law and the rules of the Commission, to enter its order disposing of the proceeding; thereafter it came on regularly for decision before the Commission on such complaint, answer and stipulation and the Commission having duly considered the same, now makes this its report in writing and states its findings as to the facts, with its conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Showers Brothers Co., has been for several years last past, and now is, a corporation organized and existing under and by virtue of the laws of the State of Indiana, with office and principal place of business at Bloomington in said State, and other offices and places of business at Bloomfield, Ind., and Burlington, Iowa. It has been for several years last past, and now, is, engaged in the manufacture of furniture consisting chiefly of dining-room and bedroom suites, kitchen tables and radio cabinets, and the sale and transportation of such products to wholesale and retail dealers in the various States of the United States and the District of Columbia, in competition with individuals, partnerships, associations, and corporations also engaged in the sale and distribution of furniture in commerce among the various States of the United States.

Par. 2. In the course of its business it has been, and is, the practice of respondent to manufacture its furniture from so-called "laminated" or "built-up" wood, either of three or five ply construction. The five-ply wood used by respondent in the construction of its furniture consists of a basic layer, called the core, composed of gumwood, chestnutwood, beechwood, or other hardwood of similar grade or quality with two inner plies of the same or similar woods; one attached by glue to the upper and the other to the lower surface of the said basic layer, and two outer or exterior surface plies likewise attached by glue, of the approximate thickness of one twenty-eighth of an inch, one or both, consisting of mahogany or walnut as the case might be, depending upon the position for which the piece of furniture was, or is, designed, in actual use. The three-ply wood used in the construction of furniture by respondent has been and is composed of a basic layer or core of the same or similar woods used as stated for the core of five-ply wood, with a lower and upper ply attached thereto by glue, of the approximate thickness of one twenty-eighth of an inch, the upper ply of walnut or mahogany, as the case might be, and the lower of wood of the grade or quality of that used for the core. Legs, posts, stretchers, frames of mirrors, rungs of chairs, are, and for many years have been, made from gum, chestnut, beechwood or other hardwood of similar grade or quality. The bottoms of drawers in the furniture of respondent consist of three-ply wood, constructed as hereinbefore described.

Par. 3. In the course of its business it has been for many years heretofore, and now is, the practice of respondent from time to time to transmit to customers and prospective customers in the several States of the United States, pamphlets, circulars, and other trade literature containing written descriptions and pictures of the furniture respondent has offered for sale and sold or offers for sale and sells, and to cause to be published in trade papers having wide circulation in the various States of the United States, advertisements of its furniture in which respondent has represented to the trade and the public the style and appearance of furniture offered for sale and the materials from which it was or is constructed. Customers of respondent, Showers Brothers Co., that is to say—the wholesale and retail dealers in furniture, in the course of offering for sale and selling the furniture of respondent, display to the purchasing public the said catalogues, pamphlets, circulars, and other trade literature prepared by respondent and advertise said furniture as shown by respondent, Showers Brothers Co., in their catalogues, pamphlets, circulars, and other trade literature. Retail dealers in furniture, or a large proportion of them, follow the practice of describing furniture offered for sale in advertisements and on tags attached to the furniture on the floor of their places of business by designating the wood or woods of which the furniture is composed, as described or designated by the manufacturer of the furniture in catalogues, price lists, circulars, or invoices.

PAR. 4. In the catalogues, pamphlets, and other trade literature which respondent has furnished customers and which they display to the purchasing public as aforesaid, respondent Showers Brothers Co., until some time during the month of May, 1927, generally designated and described articles of furniture constructed and composed as stated in paragraph 2 hereof, as consisting of walnut, mahogany, combination walnut, combination mahogany, combination blended mahogany or combination blended walnut and similar terms embodying the words mahogany and walnut, said terms being written in conspicuous type as captions appearing practically above the pictures of the said articles and as particular descriptions of sundry items thereof.

For several years heretofore respondent has also designated articles of furniture made from plywood as laminated or veneered, or as consisting of plywood construction without, however, indicating the composition of the plywood or the relatively small amount of mahogany or walnut used therein.

In its invoices to purchasers, representing sales of its furniture, respondent neither now nor at any time heretofore has disclosed, indicated, or suggested veneered construction of its furniture, but has described as American walnut or mahogany furniture in the construction of which no mahogany or walnut has been used, except on the outer or exposed ply of the tops, ends, or broad or flat surfaces. The core, inner plies, legs, posts, stretchers, and rungs of chairs in furniture so described have consisted of other woods than walnut or mahogany, such as gumwood, chestnut, beechwood, poplar, or hardwoods of similar grade or quality.

PAR. 5. The words "mahogany" and "walnut" when used to designate or describe furniture, or any part thereof signify and mean, and have been for many years, and now are, understood by the trade and the purchasing public to signify and mean furniture in which the parts as well as and including the surface thereof, exposed to view when the piece of furniture is placed in the generally accepted position for use consist, or are composed entirely of mahogany or walnut, either in solid or laminated condition.

PAR. 6. There have been for many years last past, and now are, manufacturers of furniture selling in interstate commerce, dining room, bed room, living room, hall and library furniture, as well as novelties consisting entirely of mahogany or walnut, solid or laminated, and designating and describing it as mahogany or walnut as the case may be; and others so selling furniture consisting of mahogany or walnut combined with other woods and so designating and describing it; and still other manufacturers selling in interstate commerce furniture consisting of mahogany or walnut veneered on other wood and designating and describing it as mahogany or walnut veneered, with the name of the wood or woods composing the legs, posts, or other solid parts thereof in catalogues, price lists, and invoices.

PAR. 7. As a result of the practice of respondent in describing its veneered furniture as mahogany or walnut, combination mahogany, combination walnut, combination blended mahogany, or combination blended walnut, or similar terms embodying the terms, mahogany or walnut, and of the practice of its competitors in describing truthfully furniture of similar construction as mahogany veneer or walnut veneer, together with the practice of dealers in following the description of the respondent and other manufacturers in their representations to the public, such veneered furniture of respondent has been offered for sale and is being offered for sale by the retail furniture dealers, without describing it as veneered and disclosing the relatively small amount of mahogany or walnut used therein, in competition with veneered furniture and with furniture consisting entirely of mahogany, or walnut truthfully described.

PAR. 8. The description by respondent in its catalogues, price lists, photographs, illustrations, and invoices of its furniture, as set out in paragraph 3, as mahogany, or walnut, or by a designation of the wood or woods composing the veneered surface of the broad or flat parts and the legs, posts, and stretchers, without disclosure of the veneered construction and the relatively small proportion of the designated mahogany, or walnut, used therein, has had, and has, the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent, and purchasers and prospective purchasers of the dealers in furniture to whom respondent has sold and is selling its furniture, and the natural and probable effect of such practice, will be to mislead and deceive them, into the purchase of such furniture in the erroneous belief that it consists entirely of mahogany or walnut, or of the designated wood or woods, and is not of the construction commonly known as veneered.

CONCLUSION

The practice of respondent, Showers Brothers Co., under the conditions and circumstances described in the foregoing findings as to the facts is an unfair method of competition in interstate commerce and constitutes a violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard on complaint issued and served upon respondent, Showers Brothers Co., its answer thereto, and a stipulation as to the facts by and between counsel for the Commission and respondent, in courses of formal hearing to take testimony, and in lieu thereof, all other testimony and evidence, briefs and argument, having been waived, and it having been expressly stipulated and agreed by and between said counsel that the Commission may proceed to enter its order disposing of the proceeding, and the Commission having thereupon made its report in writing, stating its findings as to the facts and its conclusion that respondent, Showers Brothers Co., has been and is violating 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 now ordered, That respondent, Showers Brothers Co., its officers, agents, and employees, cease and desist from:

(1) Selling or offering for sale in interstate commerce furniture made with broad or flat parts of mahogany, or walnut, as the case may be, which have been veneered on other different wood or woods,

unless such furniture be described, labeled or designated as "veneered."

(2) Using the word "mahogany" or the word "walnut" in advertisements, catalogues, price lists, invoices, or otherwise in connection with the sale or offering for sale in interstate commerce of furniture made with broad or flat parts of mahogany, or walnut, as the case may be, which have been veneered on other different wood or woods, unless accompanied by the word or term "veneered."

It is further ordered, That respondent, Showers Brothers Co., shall, within 60 days from and after service upon it of this order, file with the Commission a report in writing stating the manner and form in which it has complied with its terms.

IN THE MATTER OF

JOSEPH C. MARGULIAS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF CHESTER HAIR WORKS

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

Docket 1493. Complaint, Feb. 3, 1928—Decision, Oct. 15, 1928

Where an individual engaged in the purchase, preparation, cleaning, and packing of horse, cattle, and hog hair, and tampico and sisal, substitutes therefor, and in the sale thereof to furniture and bedding manufacturers, offered and sold animal hair intermingled with the aforesaid or other substitutes, as and for curled hair, in price lists and otherwise; with the capacity and tendency to mislead and deceive the aforesaid manufacturers into purchasing such product as and for curled hair, and with the result of furnishing them with the means of misleading and deceiving dealers in articles composed in whole or in part of such product, and of furnishing said dealers a means for similarly misleading and deceiving their customers into purchasing said articles as and for those containing only natural animal hair and with the further tendency and capacity to divert trade from competitors engaged in the sale of hair, hair substitutes, or combinations thereof, and truthfully labeling, advertising, and otherwise offering and selling their products:

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

Mr. James M. Brinson for the Commission.

Wolf, Block, Schorr & Solis-Cohen, of Philadelphia, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the purchase, preparation, cleaning and packing of horse, cattle, and hog hair and of hair substitutes, known as tampico and sisal, and in the sale thereof to furniture and bedding manufacturers in the various States, and with principal office and place of business in Chester, Pa., with misrepresenting product and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth in advertisements, price lists, and otherwise offers and sells as and for "curled hair," a product consisting of hair intermingled with a substantial proportion of tampico, sisal or other hair substitutes containing no hair whatever.

Said false descriptions or designation by respondent of his said product has had and has the capacity and tendency to mislead and deceive, by inducing the purchase thereof as and for a product consisting entirely of natural hair, i. e., hair developed or grown on the bodies of various animals, removed therefrom and prepared for the uses above set forth, as commonly understood from the term " curled hair " as applied to material for bedding and furniture, and the sale of the aforesaid product as " curled hair " with invoices so representing and describing the same "has furnished and furnishes manufacturers of furniture and bedding and dealers or others through whom their products have been and are marketed and distributed with the means whereby they can and do mislead and deceive and have misled and deceived the purchasing public into the belief that furniture and bedding in which the product of respondent has been used contains only natural animal hair and the said practices of respondent have had the capacity and tendency to divert and have diverted trade to respondent from competitors truthfully describing their products "; whether hair, hair substitutes, or combinations thereof; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondent, Joseph C. Margulias, doing business under the trade name and style of Chester Hair Works, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered his appearance and filed answer, hearings were had, testimony taken, and evidence received before an examiner of the Federal Trade Commission theretofore duly appointed for such purpose, and thereupon a stipulation having been made by and between the attorneys for the Commission and the respondent waiving brief and oral arguments and agreeing that the Commission may forthwith file its report stating its findings as to the facts and its conclusion, and issue such order as it may deem meet and proper, and this proceeding having come on for final decision, and the Commission having considered the record and being now advised in the premises, files this, its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph C. Margulias, is now and has been, for several years last past engaged, at Chester, Pa., under the trade name and style of Chester Hair Works, in the business of purchasing, preparing, cleaning, and packing horse, cattle, and hog hair and substitutes for hair, known as tampico and sisal, and their sale to manufacturers of furniture and bedding in the various States of the United States. Respondent causes said products so sold by him to be transported from his place of business in Chester, Pa., to the purchasers thereof in States other than Pennsylvania and in so carrying on said business respondent is, and throughout the course and conduct thereof has been, engaged in interstate commerce, and in direct competition with many other individuals, partnerships, and corporations similarly engaged in the preparation and sale of hair, hair substitutes, or combinations thereof, in interstate commerce, between and among the several States of the United States.

PAR. 2. In the course and conduct of said business it has been, for several years last past, and now is, the practice of respondent to offer for sale, in price lists and otherwise, and to sell as and for curled hair, a product consisting of animal hair intermingled with tampico, sisal or other substitutes for hair.

PAR. 3. The word "hair" when applied to material for bedding or furniture, signifies and means, and is understood to signify and mean, animal hair.

PAR. 4. The sale by respondent to furniture and bedding manufacturs of a product consisting of animal hair mixed with tampico or other substitutes for hair, as and for curled hair, has had and has the capacity and tendency to mislead and deceive said manufacturers into purchasing such product as and for curled hair.

PAR. 5. The offering for sale and sale by respondent to furniture and bedding manufacturers of a product consisting of animal hair mixed with tampico or other substitutes for hair, as and for curled hair, and so representing such product in price lists and in invoices furnishes said manufacturers with the means whereby they can mislead and deceive dealers handling articles comprised in whole or in part of respondent's product and furnishes such dealers with the means by which they in turn can mislead and deceive their customers into purchasing said manufactured articles in and by reason of the erroneous belief that such articles in which the product of respondent has been used contains exclusively only natural animal hair.

PAR. 6. There are now and for several years last past have been, a considerable number of competitors of respondent who are engaged in the sale of hair, hair substitutes, or combinations thereof, in interstate commerce, who truthfully label, advertise, and otherwise offer for sale and sell their products. The sale by respondent to furniture and bedding manufacturers of a product consisting of animal hair mixed with tampico and other substitutes for hair, as and for curled hair has the tendency and capacity to divert trade to him from competitors truthfully describing their products.

CONCLUSION

The practice of respondent, Joseph C. Margulias, doing business as Chester Hair Works, under the conditions and circumstances described in the foregoing findings as to the facts is an unfair method of competition in interstate commerce and constitutes a violation of the provisions of an act of Congress approved September 26, 1914. entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes ".

ORDER TO CEASE AND DESIST

This proceeding having been duly heard upon the complaint of the Commission, and the answer of respondent, and the Commission having made its findings as to the facts and its conclusion that respondent, Joseph C. Margulias, doing business under the trade name and style of Chester Hair Works has been and is violating 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 respondent, Joseph C. Margulias, doing business under the trade name and style of Chester Hair Works, or otherwise, cease and desist from directly or indirectly using the word " hair " to designate or describe any product offered for sale or sold by him in interstate commerce, which consists of hair combined or intermingled with tampico, sisal or other substitutes for hair, unless accompanied by word or words aptly and truthfully describing the other material or materials of which the product is in part composed.

It is ordered further, That respondent, Joseph C. Margulias, shall, within 60 days from and after 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 therewith.

IN THE MATTER OF

SHANGHAI LACE CORPORATION

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

Docket 1269. Complaint, Jan. 28, 1925—Decision, Nov. 12, 1928

Where hand-made crochet lace superior to and of greater value and reputation than lace made elsewhere, had long been made in Ireland and imported into the United States, and the words "Irish lace" or "Irish crochet" had come to be understood by the trade and public as meaning a superior crochet lace made in Ireland; and thereafter a corporation engaged in the importation of lace made in China exclusively and very closely resembling in pattern, design, and general appearance the aforesaid lace, and in the sale thereof to dealers, and to garment manufacturers for trimming, designated and described said lace in advertisements in trade journals, in circulars and in other trade literature, and in invoices, and orally to vendees, as "Irish," "Irish Insertion Shanghai," "Irish Square Medallion," "Irish Shanghai Picot," "Irish Swatow Insertion," and "Irish Picot"; with the capacity and tendency to mislead and deceive retail and manufacturer vendees into believing said lace to have been made in Ireland, and with the result that garments trimmed therewith were by the aforesaid manufacturers and by their retail dealer customers described as trimmed with Irish lace, and many of the consuming public were thereby induced to purchase the same as and for garments so trimmed, and with the effect of diverting business from and otherwise injuring competitors importing lace there made and correctly designating and describing the same as "Irish lace" and "Irish crochet," and competitors dealing in laces made elsewhere and correctly describing and designating the same, and with the tendency so to do:

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

Mr. A. R. Brindley and *Mr. Wm. A. Sweet* for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in importing from China lace there made, and in the sale thereof to garment manufacturers in various States for use by said manufacturers as trimming and decoration upon garments made and sold by them to retailers in various States, for resale to the consuming public, and with principal office and place of business in New York City, with misrepresenting product and advertising falsely or misleadingly in regard thereto in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, dealing as above set forth in lace made in China and closely resembling in pattern, design, and general appearance, the long popular, more expensive and superior genuine Irish lace, i. e., lace made in Ireland, designates its said lace as "Irish Picot," "Irish Edge," "Real Irish Edge," and by other similar designations containing the word "Irish," and so offers and sells the same under said names and designations and upon its price lists, circulars, invoices, and other trade stationery and literature.[1]

Said designating and naming of its lace by respondent and the use by it of such names and designations upon its price lists, circulars, invoices, and other trade stationery and literature, "places in the hands of respondent's aforesaid vendees the means of committing a fraud upon retail dealers and eventually upon the consuming public by enabling said vendees to represent and sell said garments in and upon which said lace is used by them" to retailers as and for garments trimmed and decorated with Irish lace, and many of said vendees, as alleged, do in fact represent said lace to retailers as Irish lace and cause a substantial number of such retailers and eventually many of the consuming public to purchase garments trimmed and decorated therewith as and for garments trimmed and decorated with Irish lace, and said acts and practices, as charged, tend to and do divert business from and otherwise injure competitors who sell lace made in and imported to the United States from Ireland, and who correctly name and designate said lace "Irish lace"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon the respondent, Shanghai Lace Corporation, charging it with the use of unfair methods of competition in

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[1] The allegations more particularly relating to the Irish lace and respondent's lace, as set forth in the complaint, are as follows:

"For many years lace made in Ireland has enjoyed a widespread popularity and demand among manufacturers, tradesmen and the consuming public throughout the United States, and is considered by said manufacturers, tradesmen and the consuming public to be lace of high quality, fine workmanship, and other desirable characteristics. Said lace is hereinafter called Irish lace.

"Aforesaid lace dealt in by respondent closely resembles Irish lace in pattern, design, and general appearance, but is inferior thereto in quality and value and for many years has been and now is sold at prices much less than the prices at which Irish lace is sold."

interstate commerce in violation of the provisions of section 5 of said act.

Respondent having entered its appearance and filed its answer herein, hearings were held and evidence was introduced on behalf of the Commission and of the respondent before a trial examiner of the Commission theretofore duly appointed. The trial examiner filed his report upon the facts and no exceptions were taken thereto. A brief was filed on behalf of the Commission. No brief was filed or oral argument made on behalf of the respondent.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Shanghai Lace Corporation, is a corporation organized under the laws of the State of New York, with its principal office and place of business in the city of New York in said State. On January 28, 1925, the date of issuance of the complaint herein, and for approximately four years prior to that date the respondent was engaged in importing from China lace made in that country, and in the sale of said lace, at wholesale, to manufacturers of garments and dealers in lace, located at places in various States of the United States other than the State of New York. It caused said lace when so sold, to be transported from its said place of business in the said State of New York into and through other States of the United States to purchasers thereof at their respective locations. In the course and conduct of its said business, respondent was in competition with other corporations, partnerships, and individuals engaged in the sale of lace, in commerce, between and among various States of the United States.

PAR. 2. The respondent imported and sold only lace made in China. In the course and conduct of its said business, as set forth in paragraph 1 hereof, it designated and described said lace in advertisements in trade journals, in circulars and other trade literature circulated throughout various States of the United States, in invoices, and orally to its vendees as " Irish ", " Irish Insertion Shanghai ", " Irish Square Medallion ", " Irish Shanghai Picot ", " Irish Swatow Insertion ", and " Irish Picot ".

PAR. 3. The making of hand-made crochet lace was begun in Ireland in about the year 1847. For more than fifty years prior to the introduction of crocheted laces from China, in about the year 1917, into the United States, said lace has been and still is imported into, and sold in, the United States, under the designation "Irish lace" or "Irish crochet". Said lace is superior to, and has greater value and reputation than the crocheted lace made in other countries. The crocheted lace imported from China and sold by respondent very closely resembles in pattern, design, and general appearance the crocheted lace made in Ireland. The word "crochet", when applied to lace is descriptive of a type of lace and is understood by the trade and consuming public to mean a lace made by hand by means of a crochet needle. The word "Irish", when applied to lace is a word descriptive of, and indicating the place of origin of said lace. The words "Irish lace" or "Irish crochet" are understood by the purchasing public to designate a crocheted lace made in Ireland, and of a superior quality of crocheted lace.

PAR. 4. The words "Irish", "Irish Insertion Shanghai", "Irish Square Medallion", "Irish Shanghai Picot", "Irish Swatow Insertion" and "Irish Picot" used by the respondent as set forth herein, to designate and describe lace made in China, are false and misleading and have the tendency and capacity to mislead and deceive retail dealers and manufacturers of garments trimmed with said lace, vendees of respondent, into the belief that said lace was made in Ireland.

Manufacturers of garments, vendees of respondent, use the lace purchased from respondent as trimming upon garments, and thereafter sell said garments to retail dealers located throughout various States of the United States; said retail dealers in turn sell said garments to the consuming public. The use by the respondent, of the word "Irish" in the designation and description of its said lace, as set forth in paragraph 2 hereof, induces manufacturers purchasing said lace and using the same on garments, as aforesaid, to represent to retail dealers, who in turn represent to the consuming public, that said garments are trimmed with Irish lace, thereby inducing many of the consuming public to purchase said garments in the erroneous belief that they are trimmed with lace which was actually made in Ireland.

PAR. 5. There are among the competitors of the respondent referred to in paragraph 1 hereof, many who sell lace made in, and imported to the United States from Ireland, and who correctly designate and describe said lace as "Irish lace" and "Irish crochet", as well as those who sell laces made elsewhere and who correctly describe and designate same. The above alleged acts and practices of respondent tend to, and do, divert business from and otherwise injure said competitors.

CONCLUSION

The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce with 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 ".

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 thereto, the testimony and evidence and the brief and argument of counsel for the Commission and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes ",

It is now ordered, That respondent Shanghai Lace Corporation, its officers, agents, representatives, servants, and employees do cease and desist:

(1) From selling, advertising, or offering for sale in commerce among the several States of the United States lace made in China or elsewhere than in Ireland under the titles, names, or designations: "Irish," "Irish Insertion Shanghai," "Irish Square Medallion," "Irish Shanghai Picot," "Irish Swatow Insertion," and "Irish Picot."

(2) From selling, advertising, or offering for sale in commerce among the several States of the United States lace made in China or elsewhere than in Ireland under a title, name, or designation which includes the word " Irish " or any other title, name, or designation suggestive of Ireland as the place of manufacture of such lace.

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

MEMORANDA

The Commission, as of the same date, also made similar findings and orders in three other cases[3] (except for the fact that in the case

[3] In which complaints issued as of Jan. 30, 1925.

of the last two, the lace in question was wound on cards bearing the words "Made in China"), as follows:

ABRAHAM D. SUTTON ET AL. DOING BUSINESS AS A. D. SUTTON & SONS. (Docket 1273.) Reespondents, with principal place of business in New York City, and doing business as set forth in the case reported in full above, designated and described its lace, as therein set forth, as "Irish Crochet," "Irish Edge," "Irish Insertion," "Irish Shamrock Edge," "Fancy Irish Picot," "Irish Crochet Tatting," "Swatow Irish," "Siccawei Irish" and "Shanghai Irish."

ALFRED KOHLBERG, INC. (Docket 1274.) Respondent, a New York corporation, with principal office and place of business in New York City, and doing business as set forth in the case reported in full above, designated and described its lace (wound on cards bearing the words "Made in China") as "Chinese Irish Lace," "Irish Crochet Lace," "Siccawei Irish Crochet," "Swataw Irish Crochet," "Swatow Irish Picot," "Siccawei Irish Picot" and "Shanghai Irish Picot."

ABRAHAM LIAN ET AL., NOW DOING BUSINESS AS LIAN BROTHERS AND MARABAK BROTHERS.[8] (Docket 1275.) Respondents, with principal office and place of business in New York City, and doing business as set forth in the case reported in full above, designated and described their lace (wound on cards bearing the words "Made in China"), as "Irish," "Chinese Irish," "Shanghai Irish" and "Swatow Irish."

[8] The eight individuals joined as respondents, at time of complaint, did business as Lian & Marabak.

IN THE MATTER OF

REGENT TAILORS, INC., DUNDEE WOOLEN MILLS CO., DUNDEE TAILORING CO., MAX GREENGARD, AND DAVID GREENGARD

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

Docket 1494. Complaint, Feb. 4, 1928—Decision, Nov. 21, 1928

Where a corporation engaged in the manufacture of men's made to order clothing and in the sale thereof to retail stores (of which some were owned in whole or in part by its president and secretary or by a corporation officered by them, and which displayed samples of suitings in their places of business, took and transmitted the measurements of the ultimate consumer, and, upon the return of the suit made up by such first named corporation, delivered the same to him); the corporation officered as above set forth; a subsidiary corporation named Dundee Woolen Mills Co.; and the aforesaid president and secretary; in competition in the manufacture and sale of men's clothing with concerns making cloth into men's clothing without employing the words "woolen mills" or "mills" as a part of their corporate, firm, or trade names, and with others using such words and in fact manufacturing woolen cloth from the raw material and selling the same and/or clothing made therefrom;

Displayed, used, and sanctioned, or brought about the display and use, through their request, consent and authority, of the words "Dundee Woolen Mills," by their aforesaid retail store customers as a part of their business, trade or corporate names, and on their signs, business stationery, billheads, circulars, labels, newspapers, and other advertising matter, in connection with the offer and sale to the public of men's made to order clothing by the aforesaid first named corporation, notwithstanding the fact that none of the aforesaid corporations or individuals owned, controlled or operated a woolen mill or mills manufacturing fabrics from which men's clothes were made, but that orders received by said first named corporation were filled by it from fabrics procured by purchase in the open market or otherwise from producers thereof, and made at mills owned or controlled by concerns other than the aforesaid corporations and individuals;

With the capacity and tendency to mislead a substantial portion of the purchasing public into believing the ultimate purchaser of the clothing was dealing directly with a concern owning, controlling, or operating a mill or mills converting raw materials into the fabrics of such clothing, and receiving the benefit in prices and quality incident to the passing of such clothing directly from the maker of the fabric to the wearer of the clothing, without the intervention of other persons:

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

Mr. M. A. Morrison for the Commission.
Samuels, Lawton & Wittelle, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, Regent Tailors, Inc., Dundee Woolen Mills Co., and Dundee Tailoring Co., Illinois corporations with principal places of business in Chicago, and respondents Max Greengard and David Greengard, also with principal places of business in said city, with adopting and using misleading trade or corporate name and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent Regent Tailors, Inc., as alleged, is engaged in the manufacture of men's clothes and sale thereof at wholesale and retail, carrying on its business under and in the corporate name of respondent Dundee Woolen Mills Co., or under the trade name Dundee Woolen Mills, and selling its said clothing to a large number of retailers throughout the several States.[1] Respondent Dundee Woolen Mills Co. is dominated and controlled by respondents Greengard, who use the same solely as a subsidiary to the other respondents and who are president and secretary of said first-named respondent corporation Regent Tailors, Inc., and of respondent Dundee Tailoring Co., used solely as a subsidiary to respondent Regent Tailors, Inc., and, like the Dundee Woolen Mills Co., in aid of the business activities herein concerned, and, as with the Regent Tailors, Inc., controlled and dominated by said individuals.

Respondent Regent Tailors, Inc., as charged, engaged, controlled, and dominated as above set forth, for the purpose of inducing the purchasing public to believe that its business is conducted by a

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[1] The business of respondent Regent Tailors, Inc., is further described in the complaint as follows:

"Respondent, Regent Tailors, Inc., in the conduct of its said business, has furnished the fabrics and necessary materials therefor and has made and manufactured therefrom men's clothing and has supplied the same and caused the same to be transported to said several retail stores of the several kinds above set out, to be therein offered for sale and sold to the public in and under the corporate name or trade name above alleged, namely, Dundee Woolen Mills, and continues so to do; said clothing being so made and manufactured at said city of Chicago in the State of Illinois and transported into and through the several States of the United States to said several retail stores so located in the several States of the United States, said clothing being so offered for sale and sold to the public in said several retail stores. In all of said business respondent, Regent Tailors, Inc., has been and is in competition with many other corporations, firms or persons engaged in making or manufacturing men's clothing and in offering the same for sale and selling and distributing the same in interstate commerce in and among the several States of the United States."

woolen mills company which produces the fabrics composing the men's clothing herein concerned, conducts its said business solely under the corporate name of Dundee Woolen Mills Co., or trade name Dundee Woolen Mills, and authorizes and induces its retail dealer vendees to conduct their business also under said corporate name or trade name, respondent, in further aid of its said purpose, procuring and exercising control, "through the ownership, or part ownership of such retail dealers by persons who are financially, or by other means, interested in respondent, Regent Tailors, Inc., over many retail stores and shops in various towns and cities throughout the United States, in each of which is conducted a retail business in the said men's clothing so manufactured and sold by said respondent, said retail business being conducted under and in said trade name of Dundee Woolen Mills"; notwithstanding the fact that no respondent has owned or operated or owns or operates a woolen mill (to wit, "a structure provided with machinery and appliances to change the form of raw or unworked wool into cloth or other fabrics") making fabrics from which men's clothing is made, but that said clothing is made solely from fabrics manufactured in mills owned by concerns or persons other than any respondent herein, and procured by said respondent Regent Tailors, Inc., by purchase in the open market or otherwise, from the producers thereof or dealers therein.

Respondent Regent Tailors, Inc., further, as charged, in the course of its said business publishes and causes and induces its aforesaid retail dealer vendees "to publish advertisements in newspapers and trade journals of general circulation, and makes use of and causes said retail dealers to make use of, office stationery, price lists, catalogues, sample books and other printed matter, in which said corporate name of Dundee Woolen Mills Co. and said trade-name of Dundee Woolen Mills are used by respondent, Regent Tailors, Inc., and by said retail dealers in said men's clothing, to designate the producer and seller of said men's clothing".

The use by respondents, as alleged, "of said corporate name of 'Dundee Woolen Mills Co.' and of said trade-name, 'Dundee Woolen Mills' in the manners and forms as above set forth, and the use thereof as above set forth by and in connection with said retail stores, has the tendency and capacity to deceive and mislead the purchasing public into the belief that the purchaser of said clothes at retail is dealing directly with a corporation, firm or person who owns or operates a mill or mills in which raw materials are converted into the fabrics from which such clothing was manufactured, and that such retail purchaser is, therefore and thereby, receiving the benefit in prices and quality of goods that is incident to the passing of said clothing directly and without the intervention of other persons, from the maker of such fabric to the wearer of such clothing".

Said acts and things done by respondents, and each of them, as charged, constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress, approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission issued and served a complaint upon the respondents, Regent Tailors, Inc., Dundee Woolen Mills Co., Dundee Tailoring Co., Max Greengard, and David Greengard, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act.

The respondents having entered their appearance and filed answer herein and having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission may take such agreed statements of facts as the facts in this case, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed further upon said agreed statement of facts to make its report in this proceeding, stating its findings as to the facts and its conclusions, and entering its order disposing of the proceeding; thereupon this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent Regent Tailors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal place of business located in the city of Chicago, in said State. It is now and for more than one year last past has been engaged in the manufacture of men's made-to-order clothing and in the sale and distribution thereof in commerce between and among various States of the United States, causing said clothing when sold to be shipped from its place of business located in the State of Illinois to purchasers thereof located in States of the United States other than the State of Illinois. Its president and secretary are, respectively, respondents David Greengard and Max Greengard.

PAR. 2. Respondent Regent Tailors, Inc., maintains and operates a department of its business in which department respondent's made-to-order clothing is made. The large volume of its sales is made to retail stores located throughout various states of the United States who resell to ultimate consumers. Some of said retail stores, customers of respondent, are owned in whole or in part by respondents Max Greengard and David Greengard. Other of said retail stores are owned in whole or in part by respondent Dundee Tailoring Co., an Illinois corporation, located in the city of Chicago, State of Illinois. Respondent Max Greengard is president and respondent David Greengard secretary of said Dundee Tailoring Co. Still others of said retail stores, customers of respondent Regent Tailors, Inc., are neither owned in whole or in part by said respondent Regent Tailors, Inc., or by parties owning or controlling said Regent Tailors, Inc., or by respondents Max Greengard and David Greengard.

PAR. 3. All of said retail stores, customers of respondent Regent Tailors, Inc., cause to be displayed in their places of business samples of suitings, materials, and cloth from which the ultimate consumer may select clothes to be made to measure. Said retail stores take the measure of the ultimate consumer, fill in the order blank and mail same to respondent Regent Tailors, Inc., where the suit is tailored from the instructions on the aforesaid order blank. After the suit is tailored, it is returned to the retail dealer from which it originated, who delivers it to the ultimate consumer ordering same. All of said retail stores, customers of respondent Regent Tailors, Inc., use and display as a part of their business, trade or corporate name, and on signs, business stationery, billheads, circulars, labels, newspaper and other advertising matter, in connection with offering for sale and selling to the public of men's made-to-order clothing, as aforesaid, the name Dundee Woolen Mills. The said name Dundee Woolen Mills is now and at all times herein mentioned has been owned or controlled by respondent Regent Tailors, Inc., or by persons who own or control respondent Regent Tailors, Inc., or by other respondents herein.

PAR. 4. All of said retail stores using the name Dundee Woolen Mills, in connection with the offering for sale and sale of made-to-order clothing made by respondent, Regent Tailors, Inc., as aforesaid, use the name Dundee Woolen Mills at the instance and request and by permission, consent and authority of respondent Regent

Tailors, Inc., or by persons who own or control respondent Regent Tailors, Inc., or by other respondents herein.

PAR. 5. No respondent herein has owned, controlled, or operated or now owns, controls, or operates a woolen mill or woolen mills or any mill in which fabrics are manufactured out of which men's clothes are made. Respondent Regent Tailors, Inc., in the course of its business, as aforesaid, now fills and for more than one year last past has filled orders for the sale of men's clothing to the public made from cloth manufactured or fabricated by mills or factories which it neither owns, controls, nor operates. Men's clothing made by Regent Tailors, Inc., and sold to the public, as herein set forth, is made and manufactured solely from fabrics manufactured in mills owned or controlled by corporations, firms, or persons other than respondents herein, which fabrics are procured by respondent Regent Tailors, Inc., by purchase in the open market, or otherwise, from producers of such fabrics or dealers therein.

PAR. 6. " Woolen Mills " as the term is generally understood in the trade and by a substantial portion of the purchasing public is a manufacturing plant where raw wool is converted by various steps and processes of manufacture into the finished materials, such as cloth known as woolen and worsteds.

PAR. 7. The use by respondents herein of the name Dundee Woolen Mills carrying the word "mills" in connection with advertising, offering for sale, and selling men's clothing to the purchasing public, as hereinbefore set out, has the capacity and tendency to mislead a substantial portion of the purchasing public into the belief that the ultimate purchaser of said clothes is dealing directly with a corporation, firm, or person who owns, controls, or operates a mill or mills in which raw materials are converted into the fabrics from which such clothing is manufactured and that such ultimate purchaser is receiving the benefit in prices and quality of goods that is incident to the passing of said clothing directly and without the intervention of other persons from the maker of such fabrics to the wearer of such clothing.

PAR. 8. Respondents herein in the course and conduct of their respective business, as hereinbefore set out, are now and for more than one year last past have been engaged in competition with other persons, partnerships, and corporations engaged in the manufacture and sale of men's clothing in interstate commerce. Among the competitors of respondents referred to herein are many who convert cloth into men's clothing, which they sell in interstate commerce and who do not use the words " woolen mills " or the word " mills " as a part of their corporate or firm or trade name. There are also among respondents' competitors others who use the words " woolen mills " and the word " mills " as a part of their corporate, firm, and trade name who do in truth and in fact manufacture woolen cloth from the raw material which said cloth they sell in interstate commerce and some of them also manufacture from said cloth men's clothing which they sell in interstate commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint of the Commission, the answer of respondents, and an agreed statement of facts in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and the Commission having made its findings as to the facts and its conclusion that respondents have been and are using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes ",

It is now ordered, That respondents Regent Tailors, Inc., a corporation; Dundee Woolen Mills Co., a corporation; Dundee Tailoring Co., a corporation; and Max Greengard and David Greengard, officers of such corporations, and their officers, directors, agents, representatives, and employees shall, each and all, jointly, separately and severally, in connection with advertising, offering for sale and selling men's clothing in commerce among the several States of the United States, cease and desist:

(1) From carrying on business under a name which includes the word " mills " in combination with the words " Dundee Woolen ", or under any other name which includes the words " mill " or " mills ", and from making representations through store signs, circulars, newspaper or other advertisements in any manner whatsoever designed to promote or affect interstate commerce, that respondents

herein, jointly, severally and separately, own or control a woolen mill or mills.

(2) From authorizing, inducing, or otherwise procuring retail stores or others engaged in selling men's clothing made by respondent Regent Tailors, Inc., or any other respondent herein to advertise, offer for sale or sell or carry on business under a name which includes the word "Mills" in combination with the words "Dundee Woolen" or any other name which includes the words "mills" or "mill".

It is further ordered, That the said respondents, within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

JAMES S. KIRK & COMPANY

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

Docket 1110. Complaint, Jan. 9, 1924—Decision, Dec. 12, 1928

Where the words "Castile Soap" had long since come to mean a hard soap produced from oil or fat derived solely from olives, without the addition or admixture of any artificial perfume or substance as a filler or builder, to be so recognized in pharmacopeias in England and the United States, in dictionaries, in treatises on materia medica, and in other authorities, to be so known by physicians, druggists, soap manufacturers and dealers and a substantial part of the public, and as a very mild neutral soap, especially adapted for sensitive skins and universally recommended by authorities above and beyond all other soaps as a baby soap, to be synonymous in common usage with the term "olive oil" soap, and to denote the best known toilet soap in the world; and thereafter a corporation engaged in the manufacture of various soaps and soap products including toilet soaps, and in the sale thereof to wholesale and retail dealers in the various States and in foreign countries,

Designated, labeled, and stamped some 20 brands of its soap varying as to fatty composition from no olive oil to 90 per cent olive oil and with unknown proportions in a few cases (and sold by reason of less expensive ingredients at lower prices than castile soaps), with various combinations of the word "Castile" and/or olive oil, such as "Oreno Olive Oil Castile", "Oreno Genuine Olive Oil Castile", "Baby Bath Castile" (together with the words "Olive Oil Soap", "made with pure olive oil", and a picture of a mother bathing a baby), "Nursery Olive Oil Castile", "Lady Fair Castile", "Crown Castile", "White Hardwater Castile", "Coco Castile", "Coco Strip Castile", "Kirk's Olive—trade mark registered", etc., and advertised its said brands under the aforesaid and similar designations and descriptions, and as "real milled olive oil castile soap of the highest quality", etc., and the first two as "ideal for the nursery, hospital, and general toilet uses" by reason of their "purity" and not surpassed "by castile soaps manufactured in America or abroad", and the "Baby Bath Castile" as "Made especially for use in the nursery" and "A pure soap for tender skins", without disclosing at all in some cases and equally conspicuously in other cases, along with the aforesaid designations, etc., the absence of olive oil, or presence of other fatty ingredients, as the case might be;

With the tendency and capacity to deceive members of the public into believing the aforesaid soaps to be castile and olive oil soaps, composed entirely as to their fatty composition of fat derived from olives, and with the effect of deceiving physicians, pharmacists and other members of the public into purchasing and using the aforesaid soaps for the purpose, among others, of compounding medical prescriptions and in connection with the care of babies, in place of castile or olive oil soap, and of diverting business from and otherwise injuring and prejudicing competitors making and selling soap manufactured as to its oil or fatty composition only of the oil or fat derived from olives and properly representing the same as castile soap and as olive oil soap, and with the tendency so to do:

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

Mr. Edward E. Reardon for the Commission.

Cutting, Moore & Sidley, of Chicago, Ill., and *Mr. Henry Ward Beer*, of New York City, for respondent.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture of soaps and allied products and in the sale thereof to wholesale and retail dealers at points in the various States, and with principal place of business in Chicago, with naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than four years last past has named, branded, labeled, advertised, and sold as castile soap seven separate kinds of soap made by it containing no olive oil whatsoever (in addition to several brands containing various percentages of olive oil), to wit, "the 'Kirk's Cocoa Hard Winter Castile', the 'Bengal Castile', the 'Kirk's Cocoa Strip Castile', the 'Peerless Cocoa Castile', the 'Cocoa Castile', the 'Crown Castile' and the 'Floating Castile' brands of soap", with the capacity and tendency to mislead and deceive the trade and public into the erroneous belief that said soaps are genuine castile soap, i. e., soaps having olive oil exclusively as their oil ingredient, and to purchase its said soaps in such belief, and to cause the trade and public in the United States to purchase such soaps, less costly on account of the substantially cheaper oils and fats used by respondent as olive oil substitutes, as and for genuine castile soap in preference to the necessarily more costly genuine article, dealt in by its importing or manufacturing and selling competitors and long esteemed by reason of its olive oil content and otherwise, and its qualities, for infants, the sick, use in medicinal preparations and other purposes, by dealers in soap, the public, the medical profession and the drug trade, by whom it has long been and now is prescribed and recommended; all to the prejudice of the public and respondent's competitors.[1]

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, James S. Kirk & Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, hearings were had and evidence was thereupon introducted on behalf of the Commission and the respondent before an examiner of the Federal Trade Commission duly appointed.

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

FINDINGS AS TO THE FACTS

Paragraph 1. The respondent, James S. Kirk & Co., is, and has been for more than ten years prior to the date of service of the complaint herein, a corporation duly organized under the laws of the State of Illinois, having at all said times its factory and principal place of business in the city of Chicago in said State.

Par. 2. The respondent is and has been since March 28, 1906, engaged in the manufacture of various soaps and soap products, including toilet soaps, and during said times has been and still is engaged in the sale of its said soap and soap products, including toilet soaps, to various individuals, firms, and corporations, wholesale and retail dealers therein, located in the District of Columbia and in

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[1] Allegations of the complaint more particularly relating to the history and standing of genuine castile soap, as set forth therein, follow:

"Genuine castile soap, so named from Castile, a geographical division of Spain, the place of its first manufacture, is a hard soap the oil ingredient of which always has been and now is olive oil to the exclusion of all other oils and fats. Said soap has for many years been distributed in commerce, and has been in general use by the public throughout the United States. Because of the qualities of olive oil as a soap material and for other reasons said soap has long been and now is considered by manufacturers of and dealers in soap, and by the public generally, as an excellent soap, free from substances harmful to the human skin or delicate fabrics, of undoubted excellence and possessing desirable qualities not contained in other soaps. By the medical profession and the drug trade said soap has long been and now is considered and held to have the qualities requisite and desirable for the cleansing, bathing of infants, and of sick or ailing persons, and for use in medicinal preparations, and said soap has long been and now is prescribed and recommended by said profession and said trade for said purposes."

various States of the United States of America, other than in the State of Illinois, and in foreign countries and has caused, and still causes, its said soaps and soap products including the soaps specifically mentioned in paragraphs 15 and 16 hereof when so sold by it to be transported, in commerce, from its said factory and place of business in the city of Chicago, Ill., to, into, and through said other States and the District of Columbia and to foreign countries to the said individuals, firms, and corporations, wholesale and retail dealers therein, to whom the same were sold by respondent.

PAR. 3. During the times above mentioned and referred to, other individuals, firms, and corporations, located in the various States of the United States and in foreign countries, have been engaged in the manufacture and in the sale of various soaps and soap products, including toilet soaps, which they have sold and still sell to individuals, firms, and corporations, wholesale and retail dealers therein, located in the various States of the United States and in the District of Columbia and in foreign countries. The respondent during the aforesaid times was, and still is, in competition in commerce in the sale of its said soaps and soap products, including toilet soaps, with said other individuals, firms, and corporations.

PAR. 4. From the end of the twelfth century to the early part of the nineteenth century soap was made in various localities in southern Europe of olive oil, alone, as to its fatty composition and such soap was known to commerce in many instances by the name of the city or place of its production.

The names of several of these cities or localities came into common usage to designate or describe the soap produced in those places and these names became synonymous terms, as they referred in each case to soap made of olive oil.

At some time prior to the year 1622 the term, "Castile soap", was used in England to designate a soap composed of olive oil and made in that part of the kingdom of Spain known as Castile, and the term, "Castile soap", then came into common usage in England in association with an olive oil soap, as shown in various publications such as, amongst others, language dictionaries, pharmacopeias, and medical treatises. The term, "Castile soap", has remained ever since in current public use.

PAR. 5. Castile soap is a hard soap produced from oil or fat which is derived solely from olives and without the addition or mixture of any artificial perfume, or any substance as a filler or builder. It derives its odor solely from the olive oil constituent in its composition.

Castile soap is produced by the saponification of olive oil by the use of an alkaline salt. Caustic soda (sodium hydroxide) is the saponifying agent most commonly used in modern times in conjunction with olive oil to produce Castile soap.

PAR. 6. The term " Castile soap", was first used in association with soap made of olive oil in Castile, Spain. The term became in common usage synonymous with the term, " olive oil soap ", and the terms, " Castile soap ", and " olive oil soap ", are and have always been synonymous terms. For more than forty years the term, " Castile soap ", has been used and is still used in the United States to designate and describe soap made of olive oil, to the exclusion of other oil or fat, regardless of the place where the soap was produced.

PAR. 7. The term " Castile soap " and " olive oil soap ", used either alone or conjunctively to designate or describe a soap, imply and mean to a substantial part of the public in the United States that the soap referred to is made of oil or fat derived from olives and from no other source.

PAR. 8. The term " Castile soap " has been used synonymously with the term " Sapo " in Pharmacopeias in England and in the United States for approximately 150 years and it is so used at the present time in the Pharmacopeia of the United States to indicate or to refer to the official soap of the Pharmacopeia and the said term " Castile soap " is and has been synonymous with the term " Sapo Durus " in the Pharmacopeia of the British Empire.

The earliest Pharmacopeia published in the United States was the Pharmacopeia of the Massachusetts Medical Society, published in the year 1808 at Boston. It was based on the Pharmacopeia of Edinburgh College, Scotland, and under the title, " Sapo ", was listed the following:

Soap, prepared with oil of olives and soda, called Castile soap.

Intermittently in the Pharmacopeias of the British Empire such as the Edinburgh, London, and Dublin Pharmacopeias, as well as in the Pharmacopeias published in the United States, the synonym, " Castile soap ", for the official hard soap, " Sapo " or " Sapo Durus ", has been omitted through inadvertence or otherwise, but, during the time the synonym " Castile soap " has been so omitted, semi-official publications called, Dispensatories, etc., have been published by learned authors and based upon the Pharmacopeias and these semi-official publications have usually referred to the official hard soap of the Pharmacopeias as Castile soap.

A publication entitled " The Extra Pharmacopeia ", published in London, 17th edition, 1921, as well as the publication entitled " The British Pharmaceutical Codex ", published by the Pharmaceutical

Press, London, 1923, refer to the " Sapo Durus " or hard soap of the British Pharmacopeia as Castile soap made with sodium hydroxide and olive oil.

During the entire history of the Pharmacopeias of the British Empire and of the United States the composition of the official hard soap has been of olive oil and soda and it has been known by the public of the United States, including physicians and druggists and by manufacturers of and wholesale and retail dealers in soap as Castile soap during all said time.

• The earliest Pharmacopeias of the United States and Great Britain recognized as the official hard soap for Pharmacopeial or medical use the Castile soap contemporaneously in general commercial use and the later Pharmacopeias, including the current Pharmacopeias of the United States and the Pharmacopeia of the British Empire specify the same soap, of the same composition, as the official soap for such uses and purposes, only adding in connection therewith certain specifications or tests, obviously to the end that the soap for such special uses or purposes shall be under the control of a uniform standard.

PAR. 9. Castile soap is and has been for centuries the best known toilet soap in the world.

The composition of Castile soap, as an olive oil soap, is and has been known to a substantial number of the public in North America and in the United States since before the time the Government of the United States was established.

Dictionaries of the English language, including those published in the earliest times in England and in the United States, down to and including the present time have defined and described Castile soap and its composition, generally, as a superior kind of refined soap of olive oil and soda, originally made in Castile, Spain.

Members of the public in the United States have resorted to and consulted, and still consult such dictionaries and have accepted and still accept the above definition of Castile soap and its composition.

In medical dictionaries and treatises on materia medica, in chemical dictionaries, dictionaries of terms used in architecture, among others, as well as in textbooks on pharmacology and therapeutics, the term " Castile soap " has been practically unanimously defined as meaning a soap made of olive oil and soda.

PAR. 10. Some of the component elements of various oils or fats are not found in other oils or fats, and even when some of the component elements of certain oils or fats are present in other oils or fats they are found in widely differing proportions and the use of various oils or fats in the manufacture of soap results in the production of soaps not only differing structurally from each other but of soaps having different qualities and attributes.

PAR. 11. Olive oil is and always has been an important article in the economy of the food and wealth of many nations. For centuries past, even to Biblical times olive oil has been considered and still continues to be considered by the public and by soap manufacturers one of the principal sources of the oil or fatty substances for the manufacture of soap with qualities preeminent in a toilet soap, in a soap for medicinal use and for various uses in the arts and sciences.

This oil forms a very mild, neutral soap, specially adapted for sensitive skins, such as those of very young children, and on this account and on account of the known history of the oil and its reputation, as above stated, both the oil and the soap made from it are universally recommended in the writings of authorities on infant hygiene to be used beginning with the very first bath given newly-born infants immediately after birth.

PAR. 12. Castile soap has always been known and continues to be known, above and beyond all other soaps, as a baby soap to members of the general public, including physicians, nurses, pharmacists, and druggists, and those connected with the departments of municipal and State governments and the Federal Government in charge of the hygiene of maternity and infant care, including authors of literature circulated in enormous quantities by such departments among the mothers and prospective mothers of children throughout the various States, and writers, generally, on the subject of infant care.

During a recent period of approximately 5 years, only, over 100,000,000 copies of booklets entitled "The Child", "The Baby and You"; "Mother's Manual"; "Infant Care", and others similarly entitled, have been distributed throughout the United States recommending the use of Castile soap, and the authors and writers of these booklets have known and understood at all times that Castile soap was a definite and distinct soap made of no other oil or fat than olive oil.

PAR. 13. Soaps branded or labeled "Castile soap" having on the soap or the wrappers of the soap the word "Baby", and sometimes the picture of a baby in a bath basin or tray, as a part of the name or description of the soap, or some word or words suggesting a baby, such as "Nursery Olive Oil Castile", "Stork Castile", and "Tiny Tot Castile", are and have been made and sold throughout the United States by the respondent and other manufacturers.

The respondent and other manufacturers and dealers, generally, have represented such soaps, on the wrappers or on the soap itself and in advertisements in newspapers and elsewhere to be made of olive oil, often by the use of the phrase "olive oil soap".

PAR. 14. Soaps that have been sold as Castile soap to purchasers among the public for use or consumption, including those sold as Baby Castile soap, have been displayed for sale to the public by manufacturers, including respondent, and by wholesale and retail dealers, and sold, in plain bars of various sizes and in small cakes, both as unwrapped soaps, and as wrapped soaps inclosed in paper or foil wrappers and in nearly all instances in the sale of Castile soap where any statement or indication of the composition of the soap has been made or displayed, beyond what is conveyed in the word "Castile", the ingredient indicated or referred to has been olive oil.

PAR. 15. Among the soaps referred to in paragraph 2 hereof that respondent is and has been making and selling in commerce are the following brands that respondent is and has been making and selling as Castile soap: 1. Oreno Olive Oil Castile. This soap was first made and sold by respondent on or before January, 1918, and its manufacture and sale by respondent has been continuous from that time to the present time. It is and has been sold in long 4-pound bars, unwrapped, and on the bars is stamped in four different places along its length, the words "Oreno Olive Oil Castile" surrounded by the representation of a wreath. This soap is illustrated in the latest catalogue of its toilet soaps, printed, published, and in use by purchasers and by the respondent since January, 1918. The only description of the soap or its composition contained in the catalogue is the statement under the illustration of the soap, "Oreno Olive Oil Castile. Made in Chicago, U. S. A., from Genuine Olive Oil."

This soap as to its fatty composition is made of tallow, cocoanut oil and olive oil, the percentages of which are unknown.

2. Oreno Genuine Olive Oil Castile. A wrapped soap, first made and sold by respondent in 1908, the manufacture and sale of which by the respondent has been continuous from that time to the present time.

From the time this soap was first made and sold until 1923, there was stamped on the soap the following: "No. 158—Oreno Genuine Olive Oil Castile—Kirk".

Since 1923 there has been stamped on this soap, in addition to the above, the following:

Contains 90 per cent olive oil and 10 per cent choice selected coconut oil.—James S. Kirk & Co., Chicago, Ill., U. S. A.

This soap is made as to its fatty composition of 90 per cent olive oil and 10 per cent coconut oil.

In respondent's said catalogue only the two soaps above mentioned are illustrated on a certain page under the following statement: "The purity of these soaps makes them ideal for the nursery, hospital, and general toilet uses. No Castile soaps manufactured abroad or in America can surpass those illustrated on this page."

3. Baby Bath Castile. A wrapped soap packed in a display box. On the wrapper of the soap just above the representation of a baby in a tray are the words "Baby Bath Castile," and underneath the representation of the baby on the lower edge of each cake of soap is the phrase "Olive Oil Soap". In the respondent's said catalogue this soap is illustrated in its display box. On the inside of the raised cover of the display box is a printed label, on which the name "Baby Bath Castile" is printed in large type. Immediately under that the phrase "Olive Oil Soap" is printed in large type and in letters of a different color. Underneath these words there is the picture of a mother washing a baby in a small tub.

In addition to the above, the statement is made in the said catalogue as follows:

Made especially for use in the nursery. A pure soap for tender skins.

There was no further statement of the composition of this soap on its wrappers or in the said catalogue.

On a box-end label of the soap there was the further statement as follows:

Made with pure olive oil. A neutral soap soothing to the skin.

Respondent's Baby Bath Castile Soap has been and is composed, as to its fatty composition, substantially of 55 per cent of tallow, 10 per cent of coconut oil, and 35 per cent of olive oil.

Respondent began making and selling this soap in 1915 and the manufacture and sale of the soap with the above representations has been continuous until February, 1926. Since February, 1926, in connection with the sale of this soap there has been printed on one of the vertical sides of the wrapped soap the following words in small type, "Contains Olive Oil, Cocoa Oil, and Refined Tallow".

4. Olive Oil Castile. An unwrapped soap, first made and sold by respondent on or before January, 1918, and its manufacture and sale by respondent has been continuous from that time to the present time.

The words "Olive Oil Castile" were stamped on the soap.

In the above-mentioned catalogue of the respondent an illustration of the soap is shown stamped as above. Above the representation of the soap in the catalogue is the statement, "Large White Cakes of Milled Olive Oil Soap" and below it is the statement, "No. 580—Olive Oil Castile, White Milled, 12 cakes in box unwrapped".

This soap as to its fatty composition contains 80 per cent of tallow, 10 per cent of coconut oil and 10 per cent of olive oil.

5. Nursery Olive Oil Castile. A wrapped soap first made during or before 1919 by respondent for distribution to the public by one of its customers. The representations regarding this soap, were stamped on the soap and printed on its wrappers, and were as follows: "Nursery Olive Oil Castile made in U.S.A. United Drug Co., Boston, U. S. A."

The manufacture and sale of this soap by respondent and its distribution as above stated has been continuous from the above mentioned time to the present time.

The fatty composition of this soap contains 90 per cent of olive oil and 10 per cent of coconut oil.

6. Field's Olive Oil Castile. A wrapped soap, first made by respondent and sold by it at some time unstated prior to May 5, 1927, to a large retail dealer for distribution to the public. It is still being made and sold by respondent and said dealer. The above name of this soap is printed on its wrappers.

The soap is made partly of olive oil and partly of some other oil or oils or fats. The percentages of olive oil and of the other oil or oils or fats, or their names, used in making the soap were not disclosed by respondent to the said retail dealer and are unknown, as well as the name or names of the other oils or fats that were used besides olive oil.

7. Glendora Castile Soap. An unwrapped soap, on the bars of which are stamped, only, "Glendora 90 per cent Olive Oil".

It was first made and sold as Castile soap by respondent in 1925, and its manufacture and sale by respondent has been continuous from that time to the present time. This soap was made by respondent for use and distribution by a corporation operating a chain of retail drug stores.

The fatty composition of Glendora Castile Soap is and has been 90 per cent of olive oil and 10 per cent of other oil or oils or fats, the names and percentages of which were not disclosed by respondent to the said retail distributor and are unknown.

8. Harmony Olive Oil Castile. A wrapped soap on which was printed the above name of the soap. This soap was first made by respondent during or before 1919, and its manufacture and sale by respondent has been continuous from that time to the present time. It is composed as to its fatty composition 60 per cent of tallow, 10 per cent of coconut oil, and 30 per cent of olive oil.

9. Lady Fair Castile. A wrapped soap. The name only was printed on the wrapper.

This soap was first made by respondent for a manufacturing and wholesale druggist distributor for distribution to the public by it through a large chain of retail drug stores during or before 1919, and its manufacture and said sale by respondent has been continuous from that time to the present time. It is and has been composed as to its fatty ingredients of 88 per cent tallow, 10 per cent of coconut oil, and 2 per cent of olive oil.

10. Wash Rag Castile. A soap wrapped with a wash rag with a paper label around the wash rag on which only the words "Olive Oil Castile" were printed. In respondent's 1918 catalogue, above mentioned, above the illustration of this soap, is printed: "This is a real milled olive oil castile soap of the highest quality." Underneath the illustration is printed: "No. 425 Olive Oil, Wash Rag Castile."

This respondent's soap, as to its fatty composition, was composed of 60 per cent tallow, 10 per cent coconut oil, and 30 per cent olive oil. The manufacture and sale of this soap by respondent has been continuous from or before January, 1918, to the present time.

11. Wash Rag Castile. A soap wrapped in a wash rag with a paper label around the wash rag on which only the words "Crown Castile Soap—Strictly Pure" were printed.

In respondent's said catalogue alongside the illustration of the soap is printed: "No. 307—Wash Rag Castile, 12 in box."

This soap was first made in 1900. Its manufacture and sale by respondent has been continuous from that time to the present time. Since December, 1926, a box-end label was used on the box in which this soap was packed on which was printed: "Crown—Wash Rag Castile—made from Pure Cocoa oil and Refined Tallow," and on the label around the Soap was printed "Kirk's Crown Castile Soap—Strictly Pure—Made from Pure Cocoa Oil and Refined Tallow."

This soap as to its fatty composition was composed of coconut oil and tallow, the percentages of which in the composition of the soap were not stated and are unknown.

12. Crown Castile. An unwrapped soap, first made and sold in 1900, and its manufacture and sale by respondent has been continuous from that time to the present time. On each cake of the soap the words "Crown Castile" are shown in respondent's said catalogue, stamped and surrounded by the illustration of a wreath.

In respondent's said catalogue alongside the illustration of this soap, packed in a box, is printed: "No. 100—Crown Castile, white or mottled."

This soap was composed as to its fatty composition of coconut oil and tallow the percentages of which are not stated and are unknown.

13. White Hardwater Castile. An unwrapped soap, first made and sold during or before January, 1918, and its manufacture and sale has been continuous from that time to the present time. This soap is illustrated in respondent's said 1918 catalogue on page 48. The illustration of the soap in the catalogue shows the words "White Hardwater Castile" only, on the cake of soap.

In the index to the said catalogue is the following:

Coconut Oil Soaps.. Page 46–48

This soap was made as to its fatty composition 100 per cent of coconut oil.

14. White Castile. An unwrapped soap first made and sold during or before January, 1918, and its manufacture and sale by respondent has been continuous from that time to the present time. This soap was illustrated in respondent's said 1918 catalogue on page 48. The illustration of the soap in the catalogue shows the words "White Castile" only on the cake of soap.

In the index to the said catalogue is the following:

Coconut Oil.. Page 46–48

This soap was made as to its fatty composition partly of tallow and partly of coconut oil. The percentages of coconut oil and tallow were not stated and are unknown.

15. King White Genuine Cocoa Hardwater Castile. An unwrapped soap, first made and sold during or before January, 1918, and its manufacture and sale by respondent has been continuous from that time to the present time. This soap is illustrated in respondent's said 1918 catalogue on page 48. The illustration of the soap in the catalogue shows the words "King White Genuine Cocoa Hardwater Castile" only on the cake of soap.

In the index to the said catalogue is the following:

Coconut Oil Soaps.. Pages 46–48

This soap was made as to its fatty composition 100 per cent of coconut oil.

16. Queen Pink Genuine Cocoa Hardwater Castile. An unwrapped soap, first made and sold during or before January, 1918, and its manufacture and sale by respondent has been continuous

from that time to the present time. This soap is illustrated in respondent's said 1918 catalogue on page 48. The illustration of the soap in the catalogue shows the words "Queen Pink Genuine Cocoa Hardwater Castile" only on the cake of soap.

In the index to the said catalogue is the following:

Coconut Oil Soaps .... Pages 46-48

This soap was made as to its fatty composition 100 per cent of coconut oil.

17. Carlo Hardwater Castile. An unwrapped soap first made during or before January, 1918, and its manufacture and sale by the respondent has been continuous from that time to the present time. This soap is illustrated in respondent's said 1918 catalogue on page 47. The illustration of the soap in the catalogue shows the words "Carlo Hardwater Castile" only on the cake of soap.

In the index to the said catalogue is the following:

Coconut Oil Soaps .... Pages 46-48

This soap was made as to its fatty composition 100 per cent of coconut oil.

18. Bengal Castile. An unwrapped soap, first made in 1890. The soap is shown illustrated in the respondent's said 1918 catalogue. It had the words "Bengal Castile" only stamped on one side of the soap and on the reverse side "J. S. Kirk & Co., Chicago."

Box labels for use on boxes containing this soap were used for a long unstated period on which were printed: "Made from Pure Cochin Coco Oil." It was made as to its fatty composition 100 per cent of coconut oil.

The manufacture of this soap was discontinued in 1925.

19. Coco Castile. An unwrapped soap. First made and sold by respondent in 1905. This soap is illustrated in respondent's said 1918 catalogue with the words, only, "Coco Castile" on the cake of soap.

After February, 1926, there was stamped on the reverse side of the soap the additional words "Made only from selected coconut oil," with the name and address of respondent. This soap as to its fatty composition was composed 100 per cent of coconut oil. The manufacture of this soap was discontinued some time in 1926.

20. Peerless Cocoa Castile. An unwrapped soap first made and sold by respondent in 1905. This soap is illustrated in respondent's said 1918 catalogue on page 48. The illustration of the soap in the catalogue shows the words, only, "Peerless Cocoa Castile, Jas. S. Kirk & Co." stamped on the soap.

This soap was made, as to its fatty composition 100 per cent of coconut oil. The manufacture and sale of this soap was discontinued in 1920.

21. Kirk's Cocoa Strip Castile. An unwrapped long bar of soap. This soap is shown illustrated in respondent's said catalogue, marked off in four equal sections, with the above name stamped across it, one word of the name appearing on each successive section.

The above was the inscription on this soap until February, 1926, since when there have been also stamped on the soap on the reverse side of each section the words "Made only from selected cocoanut oil—Jas. S. Kirk & Co., Chicago, Ill., U. S. A."

This soap is made as to its fatty composition 100 per cent of coconut oil. It was first made in 1908, and its manufacture and sale by respondent has been continuous from that time to the present time.

22. Kirk's Floating Castile. An unwrapped soap, first made and sold by respondent in 1918, on which only the above name was stamped on the cake of soap until February, 1926, since when to the present time in addition to the words "Floating Castile" there are also stamped in smaller letters, "Made from Coconut Oil and refined tallow—Jas. S. Kirk & Co., Chicago, U. S. A."

This soap is composed as to its fatty composition of tallow and coconut oil, the percentages of which were not stated and are unknown.

Par 16. Among the soaps referred to in paragraph 2 hereof that respondent is and has been making and selling in commerce, the respondent made, sold, and causes to be sold since on or about January, 1918, a wrapped toilet soap, on the wrappers of which as shown in an illustration of the soap in respondent's said 1918 catalogue are only the words "Kirk Olive—trade-mark registered."

This soap contains 60 per cent of tallow, 10 per cent of coconut oil, 15 per cent of palm oil, and 15 per cent of olive oil.

Par. 17. Olive oil is and has been more costly to use as an ingredient entering into the fatty composition of Castile soap than tallow or coconut oil of which, or of combinations of which, the soaps of respondent mentioned in paragraph 15 hereof, were and are partly or wholly made.

Par. 18. The word "Cocoa" which has been and is being used by respondent as part of the brand name or description of some of its soaps which respondent sold and is selling as Castile soap describes or indicates an ingredient known as cocoa or chocolate.

Par. 19. The use by respondent of the word "Castile" either alone or in association with the word "olive", or the words "olive oil", or "olive oil soap", or with any other word or words in the name or description of soaps made partly or wholly of oil or fat other than derived from olives, and selling or causing the same to be sold by respondent, as set forth herein, has the tendency and capacity to deceive members of the public into the belief that such soaps, as to their fatty composition, were and are made, respectively, of oil or fat derived only from olives and that such soaps were and are, respectively, Castile soap.

PAR. 20. The use by respondent of the phrase "olive oil soap" in labeling, branding, or otherwise describing soap not made, as to its fatty composition, wholly of oil or fat derived from olives, and offering such soap for sale and selling or causing the same to be sold has the tendency and capacity to deceive members of the public into the belief that such soap is made from oil or fat derived from olives and from no other source.

PAR. 21. The use by respondent, either alone or together, of the word "olive" or the words "olive oil" in labeling, branding, or otherwise describing soap made partly of oil or fat derived from olives and partly of other oil or fat and offering such soap for sale and selling or causing the same to be sold as herein set forth without stating, immediately in conjunction with, or in association with, said word or words, and in a manner equally conspicuous with and similar in all respects to that in which said word or words are used, the name or names of the other oils or fats in the composition of the soap or that such soap is not made wholly of oil or fat derived from olives has the tendency and capacity to deceive members of the public into the belief that such soap was and is composed, as to its fatty composition, exclusively of oil or fat derived from olives.

PAR. 22. Relying upon the representations of respondent in the labeling, branding, and description of its soaps sold and caused to be sold by respondent as and for Castile soap and olive oil soap, as set forth above, and because respondent is and has been enabled to offer for sale and has offered and sold its said soaps at a lower price by reason of their composition than the prices at which respondent's competitors can offer and sell and have offered and sold Castile soap, members of the public, including physicians, pharmacists, druggists, and others have been deceived into purchasing and using respondent's said soaps instead of and in place of Castile soap or olive oil soap, among other purposes for use in the compounding of medical prescriptions and for use in connection with the care of babies.

PAR. 23. There are among the competitors of respondent referred to herein many who make and sell soap made, as to its oil or fatty composition, only of oil or fat derived from olives and who properly represent their said soap as Castile soap and as olive oil soap, and respondent's acts and practices as above set forth tend to and do divert business from such competitors and otherwise injure and prejudice them.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent above named, James S. Kirk & Co., its agents, representatives, and employees, do cease and desist:

1. From the use of the word " Castile " and the words or phrase "Olive Oil Soap" either alone or in conjunction or in association with any other word or words, which are the name of, or are descriptive or suggestive of, an oil or fat, in labeling, branding, or otherwise describing soap offered for sale or sold in commerce, the oil or fatty composition of which is not wholly derived from olives.

2. From the use of the word " Olive" or any representation indicating an olive oil source, either alone or in conjunction or in association with any other word or words, as the name of, or as descriptive of, soap, in labeling, branding, or otherwise describing soap offered for sale or sold in commerce, the oil or fatty composition of which is not wholly derived from olives:

Provided, that, when the oil or fatty composition of a soap is composed of two or more oils or fats, and the oil or fat from olives is included therein in such proportion that the soap so composed is, in its detergent or other qualities, substantially affected or qualified by the ingredient derived from olives, the word " Olive " or any representation indicating an olive oil source shall not be used in labeling, branding, or otherwise describing such soap—

Unless the name or names of each and every other oil or fat ingredient therein is used in each and every instance immediately in conjunction or association with the word "Olive" or with said representation indicating an olive oil source, and in a manner equally conspicuous with and similar in all respects to that in which the word "Olive" or said representation is so used; or,

Unless the word "Olive" or said representation indicating an olive oil source is immediately accompanied by some other word or words, letter or letters, displayed in type equally conspicuous with the word "Olive", or said representation, and in a manner clearly to indicate that the soap is not made wholly from oil or fat derived from olives, or that will otherwise indicate clearly that the soap is composed in part of oil or fat other than that derived from olives.

It is further ordered, That the respondent, James S. Kirk & Co., shall within 60 days after the service on it 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 above order to cease and desist.

Dissent by Commissioner Humphrey

I can not agree that the facts in this case warrant the issuance of an order. In my judgment there is no evidence to sustain the contention that castile soap in the United States means soap made exclusively of olive oil. I agree with the trial examiner, who ought to have a better understanding of this case and especially of the evidence, than anyone else. He says:

For 70 years in the United States it has been the ordinary, usual, and general custom of all manufacturers of soap to use in the castile soap made and sold by them oils or fats other than olive oil, and there *is no evidence whatever* that there has been a soap called "Castile" made in the United States for toilet and general household purposes which was made exclusively of olive oil as its fat or oil ingredient. There have been throughout the whole of this period castile soaps made from coconut oil exclusively—tallow and coconut oil—tallow, coconut oil, and olive oil—coconut oil and olive oil—and various admixtures of these oils or fats. (See Note 4.) (T. E. Rec. pp. 18, 19.) (Italics supplied.)

The definitions quoted from the Pharmacopeia and encyclopedias, which define castile soap as indicating a pure olive oil product, refer to it only as a medicine and not as a soap in the general acceptance of that word.

Take again, the statement in the findings of fact to the effect that—

Dictionaries of the English language, including those published in the earliest times in England and in the United States, down to and including the present time have defined and described Castile soap and its composition, generally, as a superior kind of refined soap of olive oil and soda, originally made in Castile, Spain.

This is not a fact, and I am perplexed to understand how the majority ever made this finding. Webster's New International Dictionary, which is universally regarded as high authority, if not of the highest, in the courts of the United States, gives the following definition:

Castile soap: A kind of fine, hard, white, or mottled soap, made from olive oil, sometimes with added coconut oil, also any soap imitating it.

An examination of the dictionaries and encyclopedias will show the error of this finding. The Bureau of Standards has decided that Castile soap does not mean soap made exclusively of olive oil, and so has the Treasury Department on several occasions; and so has the Customs Court of Appeals.

If we are to adopt the rule announced in the Philippine mahogany cases (Indiana Quartered Oak[2]) that "*any evidence*" is sufficient to sustain an order, the American business man has no security against an unprincipled or prejudiced competitor. In my opinion there is no substantial, competent evidence in this case sufficient to sustain the findings, for, as the trial examiner points out, for more than 70 years the public has understood Castile soap to mean just what Webster's dictionary says it means.

Again I call attention to the findings of "fact", Nos. 19, 20, and 21, in which a finding is made to the effect that the practices of the respondent have a "tendency and capacity to deceive" the public. In my judgment that is not a finding of fact but a question for the court.

This case is a contest between the foreign and the domestic manufacturer. This ruling of the Commission, if sustained, will be a great blow to domestic industry and a great help to foreign industry.

I want to register my protest at the way in which this case was conducted. About a thousand witnesses from all walks of life were permitted to testify as to whether the use of the word "Castile" when applied to a soap not made exclusively of olive oil, had the tendency to deceive the public. I do not believe that such evidence was competent under any circumstances. I do not believe men and women from all classes can qualify as "experts on deception." Even admitted that they could, this piling up of cumulative evidence is an inexcusable outrage on the public. If this was competent testimony, there certainly could be a sufficient number of people

[2] Indiana Quartered Oak Co. *v.* Federal Trade Commission, 26 Fed. (2d) 340.

found in Washington City of average intelligence who know what the words "Castile soap" mean, without going elsewhere. The attorneys and the trial examiner traveled throughout the country for the purpose of taking the testimony of such witnesses. About 700 such were subpœnaed to testify at Spokane. What justification can there be for such performances? This action shows an ignorance and a disregard of the public interest that is deplorable. I hope that if this case is appealed, the court may find it advisable in the public interest to place its disapproval upon this so-called "expert testimony". This class of testimony has caused the Federal Trade Commission to waste hundreds of thousands of dollars.

Statement by Chairman Myers

I have voted for an order in this case because I believe the record shows that the public has a well-defined conception of Castile soap as a superior soap for surgical use and for bathing infants and that this conception is based on medical advice and pharmacopœia definitions all to the effect that it is a pure olive-oil soap.

Either this is the test of Castile soap, or there is none, since respondent's contention that Castile soap means merely a "pure" soap is too broad to permit of identification. There is a popular brand of soap advertised to be 99.94 per cent pure, and if it measures up to this claim it would be a Castile soap under respondent's theory, although I am sure it does not conform to anyone's notion of Castile soap.

There is no issue in the Commission concerning the manner in which the proof was taken in this case, so far as I am aware. It is hard to say which is the greater offender, the Commission or the respondent, in the amount of unnecessary proof taken. The strictures of the dissenting member are directed to a course pursued at a time when the trial staff was not under its present competent direction. It should be noted that the dissenting commissioner voted against the present chief counsel who has done so much to remedy the conditions of which complaint is now made.

IN THE MATTER OF

BERNARD-HEWITT & COMPANY

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

Docket 1543. Complaint, Oct. 30, 1928—Decision, Dec. 17, 1928

Where a corporation engaged in the sale by mail of sundry articles of merchandise direct to the consumer; in its catalogues describing such articles, and the prices thereof,

(*a*) Represented as silk articles and materials containing no silk (material derived from the cocoon of the silkworm), but of less value than silk, though resembling the same in general appearance, applying such designations as "Silk", "Art Silk", "New Silk", "Silkoline", "Tussah Silk", "Silk Faille Poplin", "Pongee", "Cotton Pongee", "French Rayon Art. Silk Lace Net Dress with Mercerized Pongee Slip", etc., to such articles as rayon hosiery, cotton coverings of comforters, suits and dress materials composed only partly of silk, and cotton fabrics and cotton and rayon dresses, and designating or describing rayon and cotton hats as of "Genuine Silk Bengaline", and "Silk Sport", and dresses made of rayon and cotton, and of material other than silk as "Beautiful satin party dress", "Misses sparkling party dresses", and "Rayon Art. Silk Dress", and Neutrisilk", "Fashioned from figured Neutrisilk, a beautiful new material which has the lustre and wearing qualities of genuine silk", respectively;

(*b*) Represented garments composed of wool, cotton, and silk as "All Wool", "Wool" and "Wool Tweed" and sweaters composed entirely of cotton as "Wool Mixed Slipon Sweaters", "Part Wool";

(*c*) Represented shoes composed of materials other than alligator leather as "Alligator Dress Oxford", "Fine Grade Tan Alligator Leather with Blond Trimming"; and

(*d*) Represented watches composed of materials other than silver and of less value, though resembling silver in general appearance, as "Silverine" and "Nickle Silverine";

With the effect of misleading many of the consuming public into purchasing merchandise from it relying on the truth of such representations and with the capacity and tendency so to do, and with the effect of diverting business from and otherwise injuring and prejudicing competitors conducting their businesses without in anywise misrepresenting to purchasers and prospective purchasers the nature, character and value of the merchandise offered and sold by them, and with the tendency so to do:

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

Mr. William T. Kelley for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the sale, by mail, of various kinds of merchandise direct to consumers in the various States, and with principal office and place of business in Chicago, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as alleged, for about two years last past, made many false and misleading statements and representations concerning the nature, character, and value of articles depicted and described in its catalogues and the materials whereof composed, designating various articles and fabrics not composed of silk, a material derived from the cocoon of the silkworm, but of less value than silk though resembling the same in general appearance, as silk, as follows:

Hosiery composed wholly of rayon as "Silk", "Art Silk", and "New Silk";

Coverings of comforters composed wholly of cotton as "Silkoline";

Suits, dresses, and dress materials composed partly of silk and partly of cotton as "Silk", "Tussah Silk", and "Silk Faille Poplin";

Fabrics composed wholly of cotton as "Pongee" and "Cotton Pongee";

Dresses composed partly of rayon and partly of cotton as "French Rayon Art. Silk Lace Net Dress with Mercerized Pongee Slip", "An exclusive Bernard-Hewitt creation of fine quality French Rayon Art. Silk Lace Net. Beautiful Lace is fashioned of Lustrous Mercerized Pongee Slip of harmonizing color";

Hats composed partly of rayon and partly of cotton as "Chic, new and pretty Gypsy Hat of Genuine Silk Bengaline" and "Silk Sport Hat";

Dresses composed partly of rayon and partly of cotton as "Beautiful satin party dress", "Misses' sparkling party dresses" and "Rayon Art. Silk Dress";

Dresses made of materials other than silk as "Neutrisilk", "Fashioned from figured Neutrisilk, a beautiful new material which has the luster and wearing qualities of genuine silk".

Respondent further, as charged, misrepresented certain other articles as follows:

Garments, composed of wool, cotton, and silk as "All Wool" "Wool", and "Wool Tweed".

Sweaters composed entirely of cotton as "Wool Mixed Slipon Sweaters", "Part Wool";

Women's shoes made of imitation alligator hide as "Alligator Dress Oxford", "Fine Grade Tan Alligator Leather with Blond Trimming";

Watches composed wholly of material other than silver, and of much less value, though resembling silver in general appearance as silver, through use of such words and terms as "Silvereen" and "Nickle Silvereen"; and

Made numerous other false and misleading statements and representations of similar tenor concerning many of the articles dealt in by it.

Such false and misleading representations as charged have the capacity and tendency to and the effect of misleading many of the consuming public residing in various States into purchasing merchandise from it on account of their belief in the truth of such representations, and the further tendency to divert and effect of diverting business from and otherwise injuring and prejudicing competitors similarly engaged, without in anywise misrepresenting to purchasers and to prospective purchasers the nature, character, and value of their merchandise; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

Respondent having entered its appearance herein, and having made, executed, and filed an agreed statement of facts in which it is stiplated and agreed by the respondent that the Federal Trade Commission may take such agreed statement of facts as the facts in this case, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto and that the Commission may proceed further upon said agreed statement of facts to make its report in this proceeding, stating its findings as to the facts and its conclusions, and entering its order disposing of the proceeding; thereupon this proceeding came on for decision and the Commission having duly considered the record, and being duly advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Chicago, in said State. It is engaged in selling direct to the consumer by mail, as hereinafter more fully set out, articles of merchandise of sundry sorts and kinds to said purchasers thereof residing respectively at points in various States of the United States. It causes said merchandise when so sold to be transported from its said place of business in the city of Chicago, Ill., into and through other States of the United States to said vendees at their respective points of residence. In the course and conduct of its said business respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and transportation of sundry articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. Respondent obtains orders for and makes sales of its said merchandise through and by means of certain catalogues issued by respondent in which catalogues respondent's said articles of merchandise are depicted and described, and the prices thereof set forth. Respondent sends and supplies said catalogues to customers and prospective customers among the consuming public to be used by them, and said catalogues are used by them in and about ordering and purchasing respondent's said merchandise.

PAR. 3. In its said catalogues referred to in paragraph 2 hereof respondent causes to be set forth many false and misleading statements and representations concerning the nature, character, and value of sundry of respondent's said articles of merchandise depicted and described in said catalogues and concerning the materials whereof said articles are made and composed, which statements and representations hold out said merchandise to be of a greater and higher value and quality than the actual value and quality thereof. Among said statements and representations are the following:

(*a*) That certain hosiery offered for sale and sold by the respondent as aforesaid is composed of silk, a material derived from the cocoon of the silkworm when in truth and in fact said hosiery is composed wholly of rayon. Said hosiery is of less value than silk and resembles same in general appearance. Respondent makes said representations by the use of the words and terms "Silk", "Art Silk", and "New Silk" in describing said hosiery.

(*b*) That the coverings of certain comforters offered for sale and sold by respondent are composed of silk, a material derived from the cocoon of the silkworm when in truth and in fact the coverings of said comforters are composed wholly of cotton. Said cotton coverings are of less value than silk and resemble same in general appearance. Respondent makes said representation by the use of the term "Silkoline" in describing said comforter coverings.

(*c*) That certain suits, dresses, and dress material offered for sale and sold by respondent are composed of silk, a material derived from the cocoon of the silkworm when in truth and in fact said suits, dresses, and dress materials are composed partly of silk and partly of cotton. Said cotton and silk merchandise are of much less value than silk and resemble same in general appearance. Respondent makes said representations by use of the words and terms "Silk", "Tussah Silk", and "Silk Faille Poplin".

(*d*) That certain fabrics offered for sale and sold by respondent are composed of pongee, a silk fabric derived from the cocoon of the silkworm, when in truth and in fact said fabrics are composed wholly of cotton. Said fabrics are of much less value than silk and resemble same in general appearance. Respondent makes said representations by the use of the words and terms "Pongee" and "Cotton Pongee".

(*e*) That certain dresses offered for sale and sold by the respondent are composed of silk, a material derived from the cocoon of the silkworm, when in truth and in fact said dresses are composed partly of rayon and partly of cotton. Said cotton and rayon merchandise are of much less value than silk and resemble same in general appearance. Respondent makes said representations by the use of the words and terms "French Rayon Art. Silk Lace Net Dress with Mercerized Pongee Slip", "An exclusive Bernard-Hewitt creation of fine quality French Rayon Art. Silk Lace Net. Beautiful lace is fashioned of lustrous Mercerized Pongee Slip of harmonizing color.";

(*f*) That certain hats offered for sale and sold by respondent are composed of silk, a material derived from the cocoon of the silkworm, when in truth and in fact said hats are composed partly of rayon and partly of cotton. Said materials other than silk are of much less value than silk and resemble same in general appearance. Respondent makes said representations by use of the words and terms "Chic, new and pretty Gypsy Hat of Genuine Silk Bengaline" and "Silk Sport Hat".

(*g*) That certain dresses offered for sale and sold by the respondent are composed of satin, a silk material derived from the cocoon of the silkworm, when in truth and in fact said dresses are composed partly of rayon and partly of cotton. Said materials other than silk are of much less value than silk and resemble same in general appearance. Respondent makes said representations by the use of the words and terms "Beautiful satin party dress", "Misses sparkling party dresses", and "Rayon Art. Silk Dress" in describing said dresses.

(*h*) That certain dresses offered for sale and sold by respondent are composed of silk when in truth and in fact said dresses are made of material or materials other than silk. Said materials other than silk are of much less value than silk and resemble same in general appearance. Respondent makes said representations by use of the term "Neutrisilk". "Fashioned from figured Neutrisilk, a beautiful new material which has the luster and wearing qualities of genuine silk."

(*i*) That certain garments offered for sale and sold by respondent are composed entirely of wool when in truth and in fact said garments are composed of wool, cotton and silk. Respondent makes said representations by the use of the words and terms "All Wool", "Wool", and "Wool Tweed".

(*j*) That certain sweaters offered for sale and sold by respondent are wool mixed, when in truth and in fact said sweaters are composed entirely of cotton. Respondent makes said representations by use of the words and terms "Wool Mixed Slipon Sweaters", "Part Wool".

(*k*) That certain women's shoes offered for sale and sold by respondent are composed of alligator leather, when in truth and in fact said shoes are composed of material or materials other than alligator leather. Respondent makes said representations by the use of the words and terms "Alligator Dress Oxford", "Fine Grade Tan Alligator Leather with Blond Trimming" in describing said shoes.

(*l*) That certain watches offered for sale and sold by respondent are composed of silver, when in truth and in fact said watches are composed wholly of materials other than silver. Said materials other than silver are of much less value than silver and resemble same in general appearance. Respondent makes said representations by use of the words and terms "Silverine" and "Nickle Silverine".

PAR. 4. Each of the false and misleading representations made by respondent as set forth in paragraph 3 hereof, has the capacity and tendency to and does mislead many of the consuming public residing in various States of the United States to purchase merchandise from the respondent in and on account of their belief in the truth of such representation.

PAR. 5. There are among competitors of respondent, referred to in paragraph 1 hereof, including competitors who are engaged in selling direct to the consumer by mail in like manner as respondent, many who offer for sale and sell merchandise of the same and general kind and character as that offered for sale and sold by respondent, and who in no wise misrepresent to purchasers and prospective purchasers the nature, character, and value of the merchandise offered for sale and sold by said competitors, and respondent's above alleged acts and practices tend to and do divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint of the Commission and an agreed statement of facts in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and the Commission having made its findings as to the facts with its conclusion that respondent has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled " An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes ",

It is now ordered, That respondent Bernard-Hewitt & Co., its officers, agents, employees, and representatives cease and desist, in connection with the sale or offering for sale of merchandise in interstate commerce, from:

(*a*) Using the words " Silk ", " Satin ", " Pongee ", " Cotton Pongee ", " Tussah Silk ", " Art Silk ", " New Silk ", " Silkoline ", " Silk Faille Poplin ", " French Rayon Art. Silk ", " Mercerized Pongee ", " Silk Bengaline " or " Neutrisilk " or any of them, alone, or in combination with any other word or words to represent, describe or advertise hosiery, covering of comforters, dresses, suits, hats, or other articles of wearing apparel, or fabrics, which are composed wholly of a material or materials other than silk, the product of the cocoon of the silkworm.

(*b*) Using the word "Silk" alone, or in combination with any other word or words to represent, describe, or advertise dresses, or other articles of wearing apparel, or fabrics, which are composed in part of silk and in part of cotton, or in part of silk and in part of rayon, or in part of silk and in part of other material or materials, unless the word "Silk" is accompanied by a word or words, equally conspicuous with it in character or type, clearly indicating that such dresses, articles of wearing apparel, or fabrics, are composed in part of a material or materials other than silk, the product of the cocoon of the silkworm.

(*c*) Using the words "Wool Mixed" or the word "Wool", or either of them, alone, or in combination with any other word or words to represent, describe or advertise sweaters, or other articles of wearing apparel, or fabrics, which are composed wholly of a material or materials other than wool.

(*d*) Using the words "All Wool", "Wool Tweed", or the word "Wool", or any of them, alone, or in combination with any other word or words to represent, describe, or advertise men's suits or other articles of wearing apparel, or fabrics, which are composed in part of wool and in part of cotton and silk, or in part of wool and in part of other material or materials, unless the word "Wool" is accompanied by a word or words, equally conspicuous with it in character or type, clearly indicating that such articles of wearing apparel, or fabrics, are composed in part of a material or materials other than wool.

(*e*) Using the words "Alligator Dress Oxford", "Fine Grade Tan Alligator Leather", or the word "Alligator", to represent, describe, or advertise women's shoes or other articles which are not made from the skins or hides of alligators.

(*f*) Using the word "Silverine" or the words "Nickle Silverine" to represent, describe, or advertise watches composed wholly of material or materials other than silver.

It is further ordered, That respondent, Bernard-Hewitt & 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.

IN THE MATTER OF

THE PROCTER & GAMBLE COMPANY AND THE PROCTER & GAMBLE DISTRIBUTING COMPANY

SUPPLEMENTAL REPORT, FINDINGS AS TO THE FACTS, AND ORDER PURSUANT TO MANDATE OF COURT

Docket 852—December 28, 1928

Original findings and order in Procter & Gamble Co. et al., 8 F. T. C. 148 et seq., relating to the sale of soap, soap powder, and soap chips containing no naphtha, but a petroleum distillate of kerosene amounting to one-half of 1 per cent by weight, in the case of the soap, and 1 per cent in the case of the powder, upon manufacture, and not sufficient in the case of any, substantially to enhance their value upon use by the public, and sold under brands, designations, and advertisements including and/or featuring the alleged naphtha content and the pretended merits of the products, by reason thereof, modified and supplemented, pursuant to court mandate and stipulations entered into subsequent and incidental thereto, and respondents required to cease and desist entirely from the use of the word naphtha or its equivalent in the brand name, description in advertising, or otherwise in offering for sale (1) soap products in the form of powder or chips, or (2) its "P & G the white naphtha soap", as made under the formula selected and submitted to the Commission, unless said soap shall have had incorporated therein, at time of manufacture, a quantity of naphtha equal to or in excess of 1.25 per cent by weight thereof; jurisdiction being retained over the proceeding to permit such changes in the order as changes in formula or method of manufacture may require or permit, while still insuring retention at time of sale to consumer, in naphtha named soaps and soap products sold by respondent in interstate commerce, of more than 1 per cent by weight of naphtha.

The above-entitled proceeding heretofore came on for hearing before the Federal Trade Commission, and the Commission, on August 6, 1924, made its findings as to the facts and conclusion, and caused its order to issue requiring the respondents above named, to cease and desist from the use of certain practices therein set out [1], whereupon the respondents applied to the United States Circuit Court of Appeals for the Sixth Circuit, to review such order, and said court, on January 5, 1926 [2], by its opinion and decree affirmed paragraph 1

[1] See case reported in 8 F. T. C. at 148, relating to and condemning the use of the words "P & G The White Naphtha Soap", "Star Naphtha Washing Powder", and "P & G The White Naphtha Soap Chips" as the designations and brands for soap, soap powder, and soap chips containing no naphtha but the petroleum distillate consisting of kerosene, and amounting, at time of manufacture, to one-half of 1 per cent, and 1 per cent, in the case of the first two products, subject to complete or partial loss by volatilization subsequent to manufacture and prior to sale in the normal course of trade, to the consuming public, and not present in any of the three in an amount substantially to enhance their value in cleansing power to the public; and also relating to and condemning advertisements stressing the supposed efficiency and time and strength saving qualities of the products in question by virtue of their naphtha content.

[2] Reported in 11 F. (2d) 47.

of said order and vacated paragraph 2 of said order [3] and remanded the cause to the Commission with instructions to take such further evidence as it may think necessary and pertinent and to make such further order, if it so desires, in reference thereto as it may conclude to be necessary and proper; and pursuant to such mandate, stipulations were made and entered into by and between counsel for the Commission and counsel for said respondents concerning facts not disclosed by the original record herein, which stipulations have been filed herein as a part of the record in this proceeding.

Thereupon this proceeding came on for further hearing upon the original record herein, and the stipulations as to facts not disclosed by such original record, and the Commission now being fully advised in the premises adopts and reaffirms its findings as to the facts made herein on August 6, 1924, except in so far as such findings may be modified by these findings, and makes the following additional findings as to the facts:

ADDITIONAL FINDINGS AS TO THE FACTS

1. The soap products heretofore manufactured and sold by respondents, under the brand names of "Star Naphtha Washing Powder" and "P & G The White Naphtha Soap Chips" do not contain naphtha to the amount of more than 1 per cent by weight thereof when such products reach the consuming public in the usual course of retail trade. That soap products in the form of powder or chips because of their nature, being composed of finely divided particles, will not retain a volatile ingredient such as naphtha to the extent of more than 1 per cent by weight thereof, up to the end of the period required for the distribution of such products to the ultimate users thereof in the usual and ordinary course of retail trade.

2. That at least 90 per cent of the bar laundry soap manufactured and sold by respondents under the brand name of "P & G The White Naphtha Soap" is distributed to the consuming public through retail dealers whose average sales approximate 17⅓ boxes of such soap per year each, or approximately 1 box every 21 days; that such soap is

[3] The original order (omitting period fixed for compliance) required respondents, their agents, etc., to cease and desist from—

1. Using the word "Naphtha", or its equivalent, in the brand name of any soap or soap product offered for sale or sold by respondents, or otherwise incidental to its advertisement and sale, if and when such soap or soap product contains the petroleum distillate known and sold as kerosene and the word "Naphtha" is so used to designate the addition of said kerosene to or its presence in such soap or soap product;

2. Using the word "Naphtha", or its equivalent, in the brand name of any soap or soap product offered for sale or sold by respondents, or otherwise incidental to its advertisement and sale, if and when such soap or soap product normally contains at the time of and upon its sale to the consuming public, no naphtha or naphtha in an amount of 1 per cent or less by weight thereof.

in the factories and warehouses of respondents, after being packed in boxes and before shipment, and in transit to warehouses of respondents or warehouses of wholesale dealers to whom it is sold, and in storage in such warehouses and in transit from such warehouses to retail dealers, for a period not exceeding 53 days. That the distribution of 90 per cent of the output of the soap so manufactured and sold by respondents, is deemed to be normal distribution of such soap in the usual course of retail trade.

3. That the normal rate of evaporation of naphtha put into "P & G The White Naphtha Soap" as now constituted, up to the end of the period required for its normal distribution in the usual course of retail trade, is 16.92 per cent, and if said soap as now constituted, has incorporated into it upon manufacture, a quantity of naphtha equal to 1.25 per cent by weight thereof, such soap will retain a quantity of such ingredient, exceeding 1 per cent of the weight thereof, up to the end of the period required for its distribution to the ultimate consumers in the usual course of retail trade.

4. That the bar laundry soap heretofore manufactured and sold by respondents under the brand name of "P & G The White Naphtha Soap", has not contained naphtha to the amount of more than 1 per cent by weight thereof, when such soap reached the consuming public in the usual course of retail trade.

CONCLUSION

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

SUPPLEMENTAL ORDER TO CEASE AND DESIST PURSUANT TO MANDATE OF COURT

This proceeding coming on for further hearing before the Federal Trade Commission, pursuant to the terms of the mandate of the United States Circuit Court of Appeals for the Sixth Circuit, issued on May 13, 1926, and the Commission having made its report in which it stated its findings as to the facts, and reached the conclusion that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", *Now, therefore, it is ordered*, That the respondents, the Procter & Gamble Co. and the Procter & Gamble Distributing Co., their respective officers, agents, representatives, servants, and employees, do cease and desist, in the course of 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, from:

1. Using the word "Naphtha", or its equivalent, in the brand name, or in describing in advertising or in otherwise offering for sale, of soap products in the form of powder or chips offered for sale or sold by respondents.

2. Using the word "Naphtha", or its equivalent, in the brand name, or in describing in advertising or in otherwise offering for sale, of its "P & G The White Naphtha Soap" as constituted and made under the same general formula as the soap from which samples were selected and submitted by respondents to the Commission for analysis on or about February 9, 1928, made into bars or cakes for household use offered for sale or sold by respondents, unless such soap has had incorporated therein, at the time of manufacture, a quantity of naphtha equal to or in excess of 1.25 per cent by weight thereof.

3. Since the evidence in this proceeding shows that the quantity of naphtha which must be put into bar soap at the time of manufacture in order that it may retain more than 1 per cent by weight at the time it is sold to the consumer varies with the composition, formula, and methods of manufacture of the soap, jurisdiction of this proceeding is retained in order that such change may be made in the terms of the order as changes in formula or methods of manufacture may require or permit while still insuring the retention, at the time of sale to the consumer, in naphtha-named soaps and soap products sold by the respondent in interstate commerce, of more than 1 per cent by weight of naphtha.

4. This order shall take effect upon service thereof, except that the respondents are allowed 60 days within which to use up labels and advertising matter now printed for use in connection with the sale or offering for sale of its naphtha-named soap powder and soap chips which may be violative of the provisions of this order.

It is further ordered, That the respondents file a report in writing with the Commission within 60 days after the date of service upon them of this order, setting forth in detail the manner and form in which they have complied with such order.

Syllabus

IN THE MATTER OF

MARSAY SCHOOL OF BEAUTY CULTURE, O. C. MILLER, A. J. WEBER AND IGNATIUS BARNARD

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

Docket 1504. Complaint, Mar. 16, 1928—Decision, Jan. 16, 1929

Where a corporation engaged in furnishing courses of instruction by mail in various branches of beauty culture to students throughout the United States, and in the sale to pupils of equipment, supplies, and cosmetics, and its president, manager, and principal stockholder; in advertising its aforesaid courses in magazines and other publications of general circulation, and in catalogues, pamphlets, circular letters, and other printed, written, or mimeographed matter mailed to prospective pupils,

(*a*) Invited them to write "for sample lessons of the wonderful Marsay Practice Method which turns out expert operators in a few months, at home in spare time", and advised those replying that it required "a year or less to prepare at home in spare time", and that a "Marsay Trained Beauty Culturist" could "earn a big salary as an all-around beauty operator", the fact being that the training and education offered would not make the pupil or graduate an "Expert Beauty Culturist or Expert Operator" or "all-around Beauty Culturist", and that such or similar terms and descriptions could not accurately and truthfully be applied to a graduate;

(*b*) Represented that an expert beauty culturist commanded from $50 to $100 a week, that the pupil could make from $10 to $20 a week while preparing, and, when a Marsay trained beauty culturist could earn a big salary, that plenty of positions were open, and invited the prospective pupil to get a "Marsay license—join the Great National Organization—make profits of $5,000 to $25,000 a year", the fact being that earnings or profits were grossly exaggerated, and that in "closed" States the graduate could earn nothing by reason of the fact of graduation, and was likely to receive, in other States, upon graduation, wages, commissions, or profits of less than $25 a week, and that amounts in excess thereof were unusual and improbable:

(*c*) Represented that its school afforded the only home training meeting the requirements of many State laws calling for a minimum of 625 hours of study and practice, and advised pupils in "closed" States that while they were not allowed to charge for practice work, there was no law against persons given treatment paying pupils such sums as they wished, the fact being that the laws of some twenty closed States prohibited, under penalty, the practice of beauty culture, whether for pay or not, except by a duly examined and licensed beauty culturist, and that, under the provisions thereof, a course in a nonresident school did not and could not, in and of itself, qualify the graduate for the State examination for beauty culturist, or for practice as an apprentice; and

(*d*) Falsely represented that a certain alleged professional expert beauty culturist of one of the large cities was a graduate of its school and was by the education so received, enabled to establish and maintain a highly successful and profitable business;

with the capacity and tendency to deceive the public and to induce persons to enroll as students of such school in reliance upon and by reason of their belief in the truth and accuracy of the representations in question:

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

Mr. Alfred M. Craven for the Commission.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Marsay School of Beauty Culture, an Illinois corporation with principal place of business in Chicago, engaged in the sale of courses of instruction by correspondence in the art, sciences, professions, or trades included by it under the term Beauty Culture,[1] together with "nine outfits" consisting of articles and appliances incidental and accessory to said course and to the acquirement of the art and use and practice thereof,[2] respondent O. C. Miller, respondent A. J. Weber, and respondent Ignatius Barnard, respectively, president, acting president and secretary, and treasurer of said respondent corporation, and actively engaged in the management and control of the business activities thereof, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth, in its advertisements of its said courses and articles and things incidental and accessory thereto, in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in the several States thereof and in catalogues, pamphlets, letters, circulars, and other forms of printed, written, or mimeographed matter, falsely and/or misleadingly represents that—

(1) It guarantees each pupil a beauty culture position and a 50 per cent increase in salary, the fact being that the purported guarantee is so adroitly worded as, while appearing upon a casual reading to constitute an unconditional guarantee as above set forth, it in fact

[1] Set forth in the complaint as including, among other things, the particular "services commonly known among women and girls as marcelling, permanent waving, water waving, paper curling, dyeing, rinses, make-up, hair dressing, shampooing, manicuring, facial and scalp treatments, and other arts intended to create, prolong, or restore youthful and attractive features and to give to one the physical conditions and outward appearance commonly thought of as embraced in the word 'beauty.'"

[2] Set forth in the complaint as including, among other things "a permanent waving machine, marcel iron, human hair for practice, a complete line of Marsay Harmonized Beauty Preparations, dozens of instruments, everything needed in the practice of said art, all complete, and without one cent of extra cost."

constitutes a mere guarantee to refund tuition of a pupil for whom no such position and increase shall be procured or who shall certify that the course has not benefited such pupil, said statement so denominated as a guarantee of a job and salary increase having the necessary tendency and capacity to deceive and mislead the public and prospective pupils into the erroneous belief that each pupil is guaranteed a desirable employment as an expert beauty culturist and being intended so to do.

(2) A pupil successfully taking its course thereby becomes an all-around beauty expert, capable of taking and qualifying in a fine position as such, further setting forth that there are thousands of jobs paying from $50 to $100 a week open to each pupil completing the course, and that thousands of such positions are advertised at big pay, offering 50 per cent to 65 per cent commission, the fact being that a pupil completing the course does not become such an expert, but must serve an apprenticeship under a person who is such an expert and lawfully entitled to carry on business as such, in order to become and qualify as such beauty expert, that said pupil completing said course can not secure a position as above set forth, but may hope to receive not more than $12 to $20 a week, and that there are not jobs in sufficient numbers available to enable more than a fraction of such pupils to obtain jobs as beauty experts or expert beauty culturists.

(3) The school guarantees each pupil a job and a 50 per cent increase in pay, the fact being that it neither procures such job for each pupil completing the course nor assists in so procuring such jobs, and that each pupil is not able to procure such a job, such jobs not being available and open to each such pupil.

(4) A pupil who has completed the course and accorded a Marsay license may safely count on making profits of $5,000 to $25,000 a year, the fact being that such a pupil may not safely count on any employment or profits and is likely, when engaged in business or employed, to receive wages or profits of less than $25 a week, a net revenue in excess thereof being unusual and improbable.

(5) The Marsay school is the only home training school enabling its graduates to meet the requirements of laws enacted by many States regulating the practice of beauty culture, the fact being that it does not meet such requirements, and pupils completing its course do not become qualified to meet such requirements, nor able by reason of said course to pass the State examinations and become entitled to practice the profession or art in question under the statutes and in the States concerned.

(6) More jobs are open to real experts than the school is able to furnish graduates for, setting forth further that every graduate is a real expert who can command and secure a job paying from $50 to $100 a week, the fact being that a graduate of respondent school is not by reason thereof a real expert in the profession or art concerned within the meaning of the terminology thereof or of the statutes regulating the practice thereof, nor qualified to accept and fill the employments asserted to be open to such real experts.

(7) A certain alleged professional beauty culture specialist, one Peggy Pratt, of Minneapolis, is a graduate of the school and was enabled by the education there received to establish and maintain a highly successful business as such expert, the fact being that the person in question is not a graduate thereof and did not receive her education therein.

The use by respondent school, under the control and management of respondent individuals, of the methods and practices as above alleged, and the promises, statements, and representations so made, as charged, "have the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief that said promises, statements, and representations are true, and that pupils of respondent school receive from such course of instruction the benefit and advantages that would inhere in or flow from such course of instruction, did respondent keep such promises, and were said statements and representations true in fact and in reality; and that, therefore, said respondent school offers to prospective pupils the best available opportunity for education and for an established gainful pursuit in life that is pleasant, of certain success, and highly profitable"; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes", the Federal Trade Commission on the 16th day of March, 1928, issued and thereafter served upon respondents named, Marsay School of Beauty Culture, O. C. Miller, A. J. Weber, and Ignatius Barnard, a complaint charging them with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act of Congress. The respondents, Marsay School of Beauty

Culture and A. J. Weber, having entered their appearances and filed their answer herein, a hearing was had and evidence was thereupon introduced and received on behalf of both the Commission and the respondents before an examiner of the Commission theretofore duly appointed. Thereafter this proceeding came on for decision upon the record and the brief of counsel for the Commission, no brief having been filed by counsel for the respondents, and the Commission having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Marsay School of Beauty Culture is a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in said State. Respondent A. J. Weber is now and has been since January 1, 1928, a principal stockholder in, and president and manager of said respondent. Respondents O. C. Miller and Ignatius Barnard do not have now, nor have they had since November, 1927, any interest in said corporation respondent by reason of ownership of stock therein or otherwise.

PAR. 2. Respondent corporation is now, and has since its incorporation in 1925, been engaged in the business of conducting a correspondence school at Chicago and furnishing by mail, instruction in beauty culture including marcelling, permanent waving, hairdressing, shampooing, manicuring, and facial and scalp treatments to students throughout the United States. It also sells and has since its incorporation sold to its students certain equipment and supplies and cosmetics. In the course and conduct of its business said corporation sells and delivers from time to time to its pupils the course consisting of 146 printed or mimeographed lessons containing the instruction, and also the equipment, supplies, and cosmetics above mentioned, and causes such lessons and articles of merchandise to be transported in interstate commerce to its several students, from its principal place of business into and through the several States of the United States, and delivered to such several pupils at their respective places of residence in the various States of the United States.

In the course and conduct of its business respondent corporation is in competition with other persons and corporations in the United States, engaged in furnishing instruction by correspondence in beauty culture and in sending and transporting lessons and other printed matter, and articles of merchandise, into and through the various States of the United States in interstate commerce.

PAR. 3. In all of its said business and for the purpose of inducing prospective pupils to enroll as such, and to purchase of it the courses of instruction and the articles and things above enumerated, said respondent corporation causes advertisements of its said school and courses of instruction to be inserted and made accessible to the public and prospective pupils in magazines, periodicals, and other publications of general circulation throughout the United States and also in catalogues, pamphlets, circular letters, and other forms of printed, written, or mimeographed matter, which are mailed to such prospective pupils.

PAR. 4. Since the month of January, 1927, respondent has advertised in numerous magazines circulating in every State of the United States as follows:

> Write to-day for sample lessons of the wonderful Marsay Practice Method, which turns out expert operators in a few months, at home in spare time! *Earn as you learn!* You can make from $10 to $20 a week even while learning.
>
> *$50 to $100 a week.* Plenty of positions now open.

In a catalogue which has since January 1, 1927, been sent by respondent to every person answering the foregoing advertisement the following representations are made:

> (*a*) $50 to $100 a week as an Expert Beauty Culturist. Requires a year or less to prepare at home in spare time. Pleasant work. Wonderful opportunities. Profits in business $4,000 to $10,000 a year.
>
> (*b*) When you are a Marsay-trained Beauty Culturist you can earn a big salary as an all-around Beauty Operator.
>
> (*c*) When you have finished my training, when you are a real Marsay Beauty Culturist, you will want and we will send you this handsome engrossed Diploma.
>
> (*d*) Many State laws require a minimum of 625 hours of study and practice. The Marsay School is the only home training in Beauty Culture which meets this requirement.
>
> (*e*) Get a Marsay License—Join the Great National Organization—make profits of $5,000 to $25,000 a year!

PAR. 5. The statutes of the State of Illinois and those of nineteen other States of the United States provide that it shall be unlawful for any person to practice or attempt to practice beauty culture without a certificate of registration as a registered beauty culturist issued by constituted authority upon an examination of the applicant, and that it shall be unlawful for any person to serve or attempt to serve as an apprentice under a registered beauty culturist without a certificate of registration as a registered apprentice, issued upon examination. Such laws further provide that no registered apprentice may independently practice beauty culture, but such registered apprentice may, under the immediate personal supervision of a registered beauty culturist, assist a registered beauty culturist in the practice of beauty culture. Such laws further provide that no person is qualified to receive a certificate of registration as a registered beauty culturist who has not studied beauty culture for one year as a registered apprentice under a beauty culturist registered under the laws of the State, or has not graduated from an approved resident school of beauty culture, having a minimum requirement of a course of study consisting of not less than 625 hours.

PAR. 6. The States above referred to in paragraph 5 hereof are termed by respondents' witnesses as "closed" States, and it is conceded in respondents' answer and is the fact, that in the "closed" States, graduates of correspondence schools are not allowed to participate in the examination for registration as a beauty culturist. The statements and representations set out in paragraph 4 hereof are circulated in and pupils solicited and enrolled in every State of the United States. The representation contained in subdivision (d) of paragraph 4 hereof is false and misleading in that the course of instruction furnished by respondent school, does not and can not meet the requirements of the State laws as claimed in said representation.

PAR. 7. The representation mentioned in paragraph 4 hereof as appearing in magazines of general circulation throughout the United States, and also the representations contained in subdivisions (a), (b), (c), and (e) of paragraph 4 are respectively false and misleading, in that, (a) the training and education received by a graduate of respondent school does not make her an "expert beauty culturist" or an "expert operator" or an "all-around beauty culturist," and such or similar terms and descriptions can not accurately and truthfully be applied to such graduates, and (b) the amounts directly or inferentially represented as probable earnings or profits to be realized by a graduate, are grossly exaggerated, the fact being that in the "closed" States such graduate can earn nothing by reason of such graduation, and in the States having no laws on the subject, such graduate when employed is likely to receive upon graduation wages, commissions, or profits less than $25 per week, an amount in excess of such sum being unusual and improbable.

PAR. 8. In a circular letter which has been sent and is now being sent by the respondents in the solicitation of persons residing in the "closed" States to enroll as pupils, respondents, after calling the addressee's attention to the fact that the law of her State requires that every beauty culturist must have a State license, states that its sudents, "while studying their training devote their time and efforts to showing women the correct methods of taking care of their skin and scalp, and showing them the correct kind of cosmetics to use.

For practice work, they are giving the various treatments to these women, and showing them how to continue the treatments in their own homes." * * * "Over 95 per cent of our students pay their way through school by their practice work alone. In your State you are not allowed to charge for practice work, and for this reason, we have worked a cosmetic-selling plan for the students in those States. While you are taking your training you can not charge your friends for the work you do. There is, of course, no law against their paying you what they wish, but you are to make no charge of your own whatsoever." Such statements and representations are unfair and misleading for the reason that the laws of the several "closed" States referred to prohibit under penal provisions the practice of beauty culture, except by a person licensed to practice beauty culure, regardless of whether the same be done for pay or without pay.

PAR. 9. Respondents also in the catalogue referred to in paragraph 4 hereof, advertise and represent that a certain alleged professional expert beauty culturist of Minneapolis, Minn., is a graduate of respondents' school, and was by the education so received enabled to establish and maintain a highly successful and profitable business, when in truth and in fact said person is not a graduate of respondents' school and did not receive her education therein.

PAR. 10. The false and misleading statements and representations set forth in paragraphs 4, 7, 8, and 9 hereof, and each of them, has the capacity and tendency to deceive the public and to induce persons to enroll as students of the respondent school in reliance upon and by reason of their belief in the truth and accuracy of such representations.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondents, Marsay School of Beauty Culture and A. J. Weber, the evidence introduced on behalf of the Commission and said respondents and briefs filed, and the Commission having made its findings as to the facts and its conclusion that said respondents, Marsay School of Beauty Culture and A. J. Weber, 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 power and duties, and for other purposes".

It is now ordered, That this proceeding as to the respondents, O. C. Miller and Ignatius Barnard be, and the same is hereby dismissed, for the reason that said respondents had, at the time of the issuance of the complaint herein, no interest in the respondent Marsay School of Beauty Culture either by way of ownership of stock or otherwise.

It is further ordered, That respondents, Marsay School of Beauty Culture, its officers, agents, and employees, and the respondent A. J. Weber, in offering for sale or selling courses of instruction or articles of merchandise in interstate commerce do cease and desist from—

(1) Representing in their advertising or otherwise to prospective pupils or to the public that the course of instruction and training furnished by respondent, Marsay School of Beauty Culture, enables a graduate to be an expert "beauty culturist", or an "all around beauty culturist", or an "expert operator", or using any equivalent term in describing the qualifications of graduates of said school.

(2) Making exaggerated statements either by way of advertisements or by circular letters, or otherwise, as to the earnings or profits to be derived by a graduate of said school in the practice of beauty culture.

(3) Representing to persons residing in States having laws regulating the practice of beauty culture, described in the record as "closed" States, that a graduate of the Marsay School of Beauty Culture can, by the reason of such graduation, be entitled to practice beauty culture or derive any earnings or profits from such practice.

(4) Representing in its advertising, literature, or otherwise to prospective pupils residing in said "closed" States that they may, while studying the course, practice beauty culture or give treatments in beauty culture.

(5) Representing that persons who are not in fact graduates of the Marsay School of Beauty Culture are such graduates.

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

IN THE MATTER OF

CHICAGO CORRESPONDENCE SCHOOL OF MUSIC AND J. PETER BERINGER

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

Docket 1506. Complaint, Mar. 23, 1928—Decision, Jan. 17, 1929

Where a corporation engaged in the sale of correspondence courses in instrumental music; and its president and manager; in their advertisements in magazines of general circulation and in the blanks, circular letters, and other printed or mimeographed matter sent to those making inquiry,

(*a*) Represented that the appropriate musical instrument was given to the student without compensation to the school or cost to the pupil, making such statements as "We will give you free a $20 quality Violin, Tenor Banjo", etc. "Our FREE distribution of 1,000 high-grade musical instruments is already started. Your chances to get one of them without a cent of cost depends upon how quickly you can decide and act", the fact being that the usual price of the various instruments, excepting the piano and organ, was included in and constituted a part of the specified selling price of the course; and

(*b*) Represented their courses as offered at a special price, lower than that regularly charged, making such statements as "VIOLIN FREE with complete course of 56 lessons. Regular price of course $42; now * * * $36"; the fact being that the purported reduced price was the usual charge;

With the capacity and tendency to deceive the public and to induce persons to enroll as students in reliance upon the truth and accuracy of the aforesaid representations:

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

Mr. Alfred M. Craven for the Commission.
Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Chicago Correspondence School of Music, Inc., an Illinois corporation engaged in furnishing courses of instruction in music, by correspondence, to persons or pupils at various places in the several States, and respondent J. Peter Beringer, its president, actively engaged in the management and control thereof, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent school, as charged, engaged as above set forth in furnishing written, mimeographed, or printed information and instruction in the particular art or upon the particular instrument chosen by the pupil, together with any one of the musical instruments open to the choice of the pupil,[1] as a part of the whole transaction and contract, in its advertisements of its courses and of the articles and musical instruments supplied as incidental and accessory thereto, in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in the several parts thereof, and in enrollment and other blanks, catalogues, pamphlets, letters, circulars, and other forms of printed, written, or mimeographed matter falsely and misleadingly promises, states and represents that—

(1) Its usual full cash tuition price for its course, together with the articles and musical instruments incidental thereto as chosen by the pupil, is a certain sum set out in its advertisements, enrollment blanks, or other printed matter, and that it is offering prospective pupils such course, articles, and instrument at a reduced and special price, a substantially lower figure likewise set out and specified as above set forth, the fact being that the pretended regular price is fictitious, and that the lower figure is its usual full selling price for the course, articles, and instruments to be chosen;

(2) Its pretended reduced price, as immediately above set forth, is offered to the public and to prospective pupils only for a certain limited time, as specifically set forth, the fact being that the pretended reduced price is its usual full price and that said time limit is fictitious;

(3) The musical instruments in question are given to the pupils freely and without any compensation to respondent school, and, conditioned on the prospective pupil contracting for the course within a certain specified time limit, as set out, respondent will include with such free instrument a beautiful carrying case therefor also without charge to the pupil or compensation to respondent, the fact being that such pretended time limit is fictitious and that said carrying case is incidental to the instrument and treated as a part of its ordinary equipment and that the usual and ordinary selling price for the instrument and case are at all times included in respondent's usual tuition or selling price for its course, and that said instrument and

[1] Violin, tenor banjo, Hawaiian guitar, banjo, cornet, ukulele, guitar, mandolin, or banjo mandolin.

case are furnished only to pupils who have enrolled and paid or agreed to pay respondents' price for its course, together with the articles and things and instrument and case incidental and accessory thereto.

The use by respondent school, under the control and management of respondent individual, as above set forth, of said trade practice and method of competition, to wit, the making of said false statements and representations, as charged, "has the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief" that such statements and representations are true, that respondent school is offering its course, together with the articles and things, and the musical instrument and carrying case, of the value of the pretended regular tuition or selling price, at and for a substantially lower figure, as specified, to the financial saving and advantage of the prospective pupil, in the amount of the pretended reduction, that the pretended reduced price and pretended gift of the case are offered only for a limited time, at specified prices, that respondent offers and gives the instruments and case to its pupils without cost to them or compensation to it, and that "therefore, respondents' said school, for the time so specified, and because of such pretended reduced or special tuition or selling price, and because such pupils receive said musical instruments without price or compensation to said respondent, and without cost or expense to such pupils, offers the best available opportunity to procure the education represented by said course of instruction and to procure said musical instruments and carrying cases."

Said acts and practices of respondents, as charged, "are all to the prejudice of the public and of competitors of respondents, Chicago Correspondence School of Music, Inc., and J. Peter Beringer, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 23d day of March, 1928, issued and thereafter served upon the respondents, Chicago Correspondence School of Music and J. Peter Beringer, a complaint charging them with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act of Congress. The respondents having entered their appearances and filed their answer herein, a hearing was had and evidence was thereupon introduced and received on behalf of both the Commission and the respondents before an examiner of the Commission theretofore duly appointed. Thereafter this proceeding came on for decision upon the record and the briefs of counsel for the Commission and counsel for the respondents, and the Commission having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Chicago Correspondence School of Music, is a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago, Ill. The respondent, J. Peter Beringer, is president of said corporation and is, and has been for a long period of time engaged in the management of said corporation. The business of said corporation consists in offering for sale and selling by correspondence courses of instruction in instrumental music such as violin, banjo, mandolin, guitar, piano, and organ. To all students enrolled by respondent, except those taking courses of instruction in piano and organ, there is furnished as a part of the course, if the student desires, the musical instrument upon which the instruction is furnished. The price of such instrument is included in the price specified and agreed upon as the price of the course of instruction. The school has students in practically every State of the United States.

PAR. 2. In the course and conduct of said business, respondent upon the enrollment of its students, causes to be transported by mail and otherwise the course of instruction in several printed or mimeographed lessons and the musical instrument accompanying the course, from Chicago, Ill., into and through States other than Illinois in interstate commerce to the several students at their respective points of location.

PAR. 3. Respondent corporation is in competition with other persons and corporations in the United States engaged in furnishing instruction by correspondence in instrumental music and in sending and transporting lessons and other printed matter into and through the various States of the United States in interstate commerce. Respondent corporation is also in competition with numerous manufacturers and dealers in musical instruments of the kind and character dealt in by respondent school, which manufacturers and dealers sell and transport such musical instruments between and among the various States of the United States in interstate commerce.

PAR. 4. In the course and conduct of its said business, respondent corporation for the purpose of inducing persons to enroll as pupils and to pay the tuition specified by the school and the price of the instruments included in such specified tuition, advertises in magazines of general circulation in the United States, and sends to persons answering said advertisements, blanks, circular letters, and other forms of printed or mimeographed matter.

PAR. 5. In such magazines, advertisements, circular letters, and other forms of advertising matter mentioned in paragraph 4, respondents advertise, state, and represent that the musical instrument, upon which the course of instruction is furnished, is given to the student freely and without price, or compensation to said respondent or cost or expense to such pupils. For example, respondents state in an advertisement which has been and is now extensively placed in magazines of national circulation as follows:

> Yes, we will give you free a $20 quality Violin, Tenor Banjo, Hawaiian Guitar, Banjo, Banjo-Guitar, Cornet, Guitar, Mandolin, or Banjo-Mandolin.

In a circular letter sent by respondents since October, 1927, to persons answering its magazine advertisements respondents state:

> Our FREE distribution of 1,000 high-grade musical instruments is already started. Your chances to get one of them without a cent of cost depends upon how quickly you can decide and act.

Said representation is false and misleading for the reason that the musical instrument is not furnished free to the student, but the ordinary and usual price thereof is included in and constitutes a part of the specified selling price of the course of instruction.

PAR. 6. In such magazines, advertisements, circular letters, and other forms of advertising matter mentioned in paragraph 4, respondents also advertise and represent that the course of instruction is being offered to the prospective student at a special price and a lower price than that usually and regularly charged by the respondent. For example, in the enrollment blank, which has been in use since October, 1927, and is still in use, and which is sent to every person answering the magazine advertising, respondent states:

> VIOLIN FREE with complete course of 56 lessons
> Regular price of course $42; NOW------------ $36

The same statement appears in said enrollment blank in reference to 10 musical instruments other than the violin, a certain amount being stated as the "regular" price and another lesser amount being stated as the price at which the course is offered. Said statements and representations are false and misleading in that said prices specified as "regular" prices have never been actually charged or obtained by the respondent, and the prices specified as the present selling prices are and have been the prices obtained by the respondent in the usual, ordinary, and regular course of business.

PAR. 7. The false and misleading representations set forth in paragraphs 5 and 6 hereof each has the capacity and tendency to deceive the public and to induce persons to enroll as students of respondent school in reliance upon the truth and accuracy of such representations.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That respondents, Chicago Correspondence School of Music, a corporation, its officers, agents, and employees and the respondent, J. Peter Beringer, in offering for sale or selling courses of instruction or articles of merchandise, in interstate commerce, do cease and desist from:

(1) Representing to prospective students or to the public that the usual or regular selling price of any course of instruction is greater than the price at which such course of instruction is usually offered for sale.

(2) Representing that any price of the course of instruction is a special price, reduced price, or price that is lower than the price ordinarily and usually received, when such is not the fact.

(3) Representing that any musical instrument or other article of merchandise is furnished free to students or prospective students when the price or value of such instrument or article of merchandise is included in the price specified as the price of the course of instruction.

It is further ordered, That the said respondents shall, within 30 days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

SAMUEL E. BERNSTEIN, INC.

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

Docket 1545. Complaint, Nov. 3, 1928—Decision, Jan. 28, 1929

Where silverware made in England had for many years long since past acquired a very considerable reputation for excellence in quality and come to be favorably, extensively, and distinctively known throughout the United States as a silverware of superior quality and the words "English Plate" had come to imply and indicate to the purchasing public thereof that silverware so marked was made in England and was of superior quality; and thereafter a corporation engaged in the purchase of domestic silver-plated ware made by the electroplating process, and in the sale thereof to wholesale and retail dealers in competition with manufacturers of plated ware and of solid or sterling silverware accurately and truthfully branded and marked, sold its aforesaid ware with the words "English Plate" stamped or impressed thereon, and, in smaller letters, the words "Made in U. S. A."; with the capacity and tendency to mislead and deceive the purchasing public by inducing the purchase by them of the aforesaid silverware as and for silverware made in England and of superiqr quality:

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

Mr. William T. Kelley for the Commission.
Eyre, Scott & Keel, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of silver-plated ware made by the electroplating process, to the wholesale and retail dealers in the various States, and with principal office and place of business in New York City, with misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent sold said ware with the words "English Plate" stamped thereon, and in much smaller letters the words "Made in U. S. A.," with the effect of misleading and deceiving the purchasing public into believing that the ware so marked was made in England (from which ware marked "English Plate" has long been imported) and is of superior quality, and into purchasing the same in such belief;[1] all to the prejudice of the public and of respondent's competitors, many of whom manufacture and/or sell in interstate commerce plated silverware and/or solid or sterling silverware, accurately and truthfully branded and marked.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

Respondent having entered its appearance and filed its answer herein, stating that it desired to waive hearing on the charges set forth in the complaint and not to contest the proceeding.

Thereupon this proceeding came on for decision, and the Federal Trade Commission having duly considered the record and having been fully advised in the premises, now makes this report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York, with its principal office and place of business in the city of New York, in said State. It is engaged in buying silver-plated ware made in the United States and in the sale thereof to wholesale and retail dealers located at points in various

[1] The complaint contains the following allegations relative to the manufacture of silver-plated ware by the electroplating process, and to English Plate made in England and the meaning which has become attached to the words "English Plate" in connection with silverware:

PAR. 2. The manufacturers of respondent's silver-plated ware use in the manufacture of same the electroplating process, which is the covering of a form of base metal with an adherent coating of silver by the electrolysis of silver salts. The plated silverware thus produced varies in quality and value according to the composition of the base metal, the workmanship upon its form and the decoration, the amount of fineness of the silver deposited upon it and left upon it after the finishing process, and the protection of the surfaces exposed to wear. There is no fixed standard for the composition of the base metal or for the fineness or quantity of silver to be applied generally or to wearing surfaces, so that the purchasing public is obliged to depend upon the reputation of the maker of such silver-plated ware, or upon the reputation of the trade name or brand attached thereto, or upon the representations of the maker or seller thereof, in purchasing said silver-plated ware, since the quality of the ware can not be determined except by laboratory tests.

PAR. 4. English Plate made in England has for many years long since past acquired a very considerable reputation for excellence in quality, as a result of which English Plate silverware became favorably, extensively, and distinctly known throughout the United States as silverware of superior quality. The words "English Plate." in connection with silverware, imply and indicate to the purchasing public of this country that silverware so marked was made in England and is of superior quality.

States of the United States, and causes said ware when so sold to be transported from its said place of business in the city and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other corporations, partnerships, and individuals engaged in the manufacture and/or sale and transportation of silver-plated ware and sterling silverware in interstate commerce between and among various States of the United States.

PAR. 2. The manufacturers of respondent's silver-plated ware use in the manufacture of same the electroplating process, which is the covering of a form of base metal with an adherent coating of silver by the electrolysis of silver salts. The plated silverware thus produced varies in quality and value according to the composition of the base metal, the workmanship upon its form and the decoration, the amount of fineness of the silver deposited upon it and left upon it after the finishing process, and the protection of the surfaces exposed to wear. There is no fixed standard for the composition of the base metal nor for the fineness or quantity of silver to be applied generally or to wearing surfaces, so that the purchasing public is obliged to depend upon the reputation of the maker of such silver-plated ware, or upon the reputation of the trade name or brand attached thereto, or upon the representations of the maker or seller thereof, in purchasing said silver-plated ware, since the quality of the ware can not be determined except by laboratory tests.

PAR. 3. Respondent in the course of its business, as set forth herein, has for more than one year last past and is now engaged in selling to wholesale and retail dealers located throughout the various States of the United States silver-plated ware stamped or impressed with the words "English Plate," "Made in U. S. A." The letters forming the words "Made in U. S. A." are smaller than the letters forming the words "English Plate." Such ware carrying the words "English Plate" upon it is ultimately offered for sale in that form to the consuming public.

PAR. 4. Silverware made in England has for many years long since past acquired a very considerable reputation for excellence in quality, as a result of which such silverware became favorably, extensively, and distinctly known throughout the United States as silverware of superior quality. The words "English Plate," in connection with silverware, imply and indicate to the purchasing public of this country that silverware so marked was made in England and is of superior quality.

PAR. 5. Silverware made in England has been for many years last past and is now imported into the United States.

PAR. 6. The use by the respondent of the words "English Plate" in connection with the sale of silver-plated ware, as set out herein, has the capacity and tendency to mislead and deceive the purchasing public by causing them to believe that the plated silverware sold by respondent and stamped "English Plate" was made in England and is of superior quality, and to purchase such plated silverware in that belief.

PAR. 7. There are among the competitors of respondent many who manufacture and sell in interstate commerce plated silverware and solid or sterling silverware accurately and truthfully branded and marked.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that 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, Samuel E. Bernstein, Inc., its officers, agents, and employees do cease and desist from the use of the word "English" in the designation of, or in the advertising, branding or labeling of silverware sold and distributed by it in interstate commerce unless said silverware be manufactured in England.

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

IN THE MATTER OF

OHIO LEATHER COMPANY

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

Docket 1378. Complaint, May 5, 1926—Decision, Feb. 11, 1929

Where the word "Kid" had for many years come to mean a leather made of goatskin; and thereafter a corporation engaged in the tanning of leather and in the sale thereof to shoe manufacturers, chiefly,

(*a*) Applied the trade name "Kaffor Kid" to a calfskin leather closely resembling kid and so invoiced the same and labeled the bundles thereof in which shipped; and

(*b*) Advertised its said leather under such name in trade periodicals of general circulation, and featured and employed the same in display signs and circular letters sent to retailers, together with the words, in smaller letters, "the distinctive calf leather" or the words "calf" or "calfskin" in much smaller letters;

With the result that shoes of said "Kaffor Kid" were purchased as and for kid shoes, preferred by certain classes to those of calfskin, manufacturers and retailers of shoes thereof adopted and employed said term in designating, advertising, and selling said shoes, and the former so billed the same, and, occasionally, as kid, trade was diverted from manufacturers of kid and calfskin leathers sold under their true names, there was a capacity and tendency to deceive the consuming public in respect of the composition of shoes made from said "Kaffor Kid", and there was placed in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer and sell shoes and other products made of the aforesaid leather as and for articles made of kid:

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

Mr. E. J. Hornibrook for the Commission.

Harrington, DeFord, Huxley & Smith, of Youngstown, Ohio, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Ohio corporation engaged in the manufacture of leather and sale thereof to manufacturers of shoes and other leather products at points in various States, and with principal office and place of business in Girard, Ohio, with naming product misleadingly, advertising falsely or misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about two years last past, has named a leather made by it from the hides of calves "Kaffor Kid", featured said name in its advertisements of such leather, under said name, in trade journals of general circulation among the shoe and leather goods trades throughout the United States and in certain sections thereof, so branded said leather, and sold the same, so named, branded, advertised, invoiced, and billed, to its aforesaid vendee manufacturers of shoes and other leather products, by whom said shoes and products are sold to wholesale and retail dealers in various States, named, designated, advertised, labeled, branded, and otherwise represented by many of said vendees manufacturers as "Kaffor Kid" products and made of "Kaffor Kid" and "kid", and resold by said vendee's wholesale dealer customers thus labeled and branded to reailers, and, by said retailers, still so labeled and branded, offered and sold to the consuming public; notwithstanding the fact that leather made from the skin of calves is not and never has been named, designated, and known as "Kid", but as calf and calfskin, and that kid has long since meant leather made from the skin of goats, preferred by many for shoes and other leather products to similar articles made of calf or calfskin, as above set forth.[1]

The use, as charged, of said name and designation "Kaffor Kid", as above set forth, "has the capacity and tendency to mislead and deceive many members of the shoe and leather-goods trades and many of the consuming public into the belief that respondent's said 'Kaffor Kid' leather is said leather known as 'kid', hereinbefore described, and to cause many of the trade and consuming public to purchase respondent's said leather and shoes and other leather products manufactured therefrom, in said belief", and further, respondent's "said acts and practices place in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer for sale and sell to the consuming public shoes and other leather products made of respondent's said 'Kaffor Kid' leather as and for articles made of said leather 'kid', hereinbefore de-

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[1] The allegations of the complaint relating to the meaning of the words 'kid', etc., as above set forth, are as follows:

"PAR. 4. Leather manufactured from the skins of goats is and for many years past has been named and designated and commonly and generally known to the trade and consuming public as 'kid'. Leather manufactured from the skins of calves is not now and never has been named, designated, and known as 'kid' and now is and for many years past has been named, designated, and commonly and generally known to the trade and consuming public as 'calf' and 'calfskin'.

"PAR. 5. There has been for many years and now is a large and widespread demand among the consuming public throughout the United States for shoes and other leather products made of said leather known as 'kid', hereinbefore described, and many of the consuming public throughout the United States prefer shoes and other leather products which are made of said 'kid' to similar [products] made of said leather known as 'calf' or 'calfskin', hereinbefore described."

scribed"; all to the prejudice of the public and of respondent's competitors, many of whom sell leather made from goatskins, rightfully and lawfully represented by them as "kid", and others of whom sell leather made from the skins of animals other than goats, without in any wise representing such leather as "kid".

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

Respondent having entered its appearance and filed answer to said complaint, hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent is incorporated under the laws of the State of Ohio, with its place of business at Girard in said State. It has an issued capital stock of 48,657 shares, representing a value of $1,599,400. Since 1901 respondent has been engaged in the manufacture or tanning of leather and in the sale thereof principally to manufacturers of shoes located in various States of the United States. When sales of its leather are made, the respondent causes it to be transported from its tannery in the city of Girard, Ohio, to, into and through other States of the United States to the purchasers thereof at their respective places of business.

In the course and conduct of its said business respondent is in competition in commerce with individuals, partnerships, and corporations engaged in the manufacture, sale, and transportation of leather made from calfskin and kidskin.

Par. 2. In 1922 respondent began the tannage of a calfskin, which it named and sold under the trade name "Kaffor Kid." The name or legend "Kaffor Kid" was originated by the respondent and copyrighted by it in the year 1922. This "Kaffor Kid" leather is sold almost exclusively to manufacturers of shoes, and since the year 1922 respondent has manufactured and sold to shoe manufacturers $2,893,903 worth of such leather—this represents but 22 per cent of respondent's tanning business.

"Kaffor Kid" leather is manufactured by respondent under what is known among tanners of leather as the chrome process of tanning and also a secret tanning process of its own. By the use of said process respondent produces a leather that when made into shoes strongly resembles kid leather.

"Kaffor Kid" leather is produced from light calfskin or deacons, that is to say, from the skins of calves which are killed when about a week old and never more than 10 days old. Only milk-fed calves are used, never calves that are old enough to subsist on grass.

The calfskins used by respondent in making "Kaffor Kid" come from dairy countries and are imported into the United States from the countries of Lithuania, Russia, Scandinavian countries, and some other European countries. "Kaffor Kid" leather is never made from kidskins or goatskins.

PAR. 3. Kid leather is of a finer texture than calf. It is lighter, the grain is smaller, and the leather made therefrom by tanning processes is softer and more pliable than calf leather generally, but under the process of tannage used by respondent upon the calfskins taken from the calf of 10 days or younger "Kaffor Kid" leather becomes soft and pliable and very closely resembles kid leather.

Respondent's "Kaffor Kid" leather, made in dark and morrow brown colors, is used in the manufacture of men's and women's shoes.

PAR. 4. Respondent ships its said leather to its customers in bundles of two dozen skins to a bundle and each bundle is stamped with the words "Ohio Kaffor Kid made exclusively by the Ohio Leather Co., Girard, Ohio, U. S. A.". There is no explanation on these bundles that "Kaffor Kid" is not made of kidskin. This leather is billed and invoiced to respondent's customers as "Kaffor Kid" without explanation on such bills and invoices that the same is made from calfskin.

The customers of respondent, that is to say, shoe manufacturers, bill the shoes made from "Kaffor Kid" leather to their retail customers as "Kaffor Kid" without explanation that the same is made from calfskin. There have been occasions where these shoes were billed to such retailers as kid. Shoe retailers in ordering shoes made from respondent's said leather from the manufacturers of shoes frequently specify "Kaffor Kid" shoes. Shoes made of "Kaffor Kid" are sold to retailers of shoes in many of the cities of consequence in the United States under the name of "Kaffor Kid" without explanation in writing that the same are made from calfskin.

At times the retailers stamp the words "Kaffor Kid" upon the cartons in which such shoes are contained and sold to their customers without explanation on such cartons that the said shoes are made from calfskin, and upon request of the retailers, manufacturers stamp the name "Kaffor Kid" on such cartons without explanation that the shoes contained therein are made of calfskin.

PAR. 5. Respondent advertises its leather as "Kaffor Kid" and has spent the sum of $90,535 in such advertising. It advertises in the Shoe & Leather Reporter of Boston, The Hide & Leather Magazine of Chicago, The Boot & Shoes Recorder of Boston, The Shoe Style Digest of Boston, and Shoe Retailer of Boston. These magazines are generally circulated in the leather trade of the United States and reach shoe manufacturers and retailers. Respondent uses display signs and furnishes retailers with the same upon which are featured in large letters the legend "Kaffor Kid" and in smaller letters the words "The distinctive calf leather" are printed. Four thousand of these cards were printed and distributed. Respondent also addresses circular letters to retailers in which the legend "Kaffor Kid" is used. In all of respondent's advertising of "Kaffor Kid" leather the word "calf" or the word "calfskin" appear in letters much smaller than the words "Kaffor Kid."

Manufacturers making shoes from "Kaffor Kid" leather advertise the same without reference to the fact that the same are made from calfskin. Some of such manufacturers sent circular letters to the consuming customers of retailers in which circulars "Kaffor Kid" shoes are mentioned without explanation that the same are made of calfskin.

Retailers advertise shoes made from respondent's said leather as "Kaffor Kid" without explanation that the same are made from calfskin.

PAR. 6. The value of calfskin and kidskin shoes now sold in the United States is about equal.

PAR. 7. The word "kid" as used in the shoe and leather trade and as commonly understood by the public has come to mean a leather made from the skin of a goat, old or young. It came to be applied to leather made from the skin of a goat or goat kid more than 30 years ago and prior to that time those who manufactured leather made from goatskins or kidskins called themselves morocco manufacturers and such leather was known as morocco leather. Eighty per cent of the true kidskin goes into the glove trade, 90 per cent of all kid shoes are made from the skin of old goats.

PAR. 8. The term "Kaffor Kid" or the coined word "Kaffor" were never applied to leather or shoes until adopted and used by the respondent in the said year 1922, and the term "Kaffor Kid" has been continuously used by respondent since said year in the designating, advertising, and selling of "Kaffor Kid" leather. Manufacturers of shoes from said leather have, since the adoption of said term by respondent, used the term "Kaffor Kid" in designating, advertising, and selling such shoes. Retail dealers of shoes made from "Kaffor Kid" leather have, since the adoption of the said term by respondent, frequently used the term "Kaffor Kid" in designating, advertising, and selling such shoes.

The said coined word "Kaffor" as applied to leather has no meaning. There is no such word in the dictionary or in the English language. There is a word spelled "Kaffir" meaning black. The term "Kaffor Kid", when applied to respondent's said leather, means kid leather to many of the consuming public.

PAR. 9. Respondent's said use of the term "Kaffor Kid", as applied to its said leather, suggested said use of said term to said manufacturers, and in turn the said use of said term by said manufacturers suggested said use of said term to said retailers.

PAR. 10. There is a preference for kid shoes, and people with tender feet and people who prefer stylish shoes generally prefer a shoe made of kid or goatskin as over and against a shoe made from calfskin. The said use of the term "Kaffor Kid" by retailers in the advertising and sale of said shoes enables them to dispose of shoes made of "Kaffor Kid" leather as and for shoes made of kid leather.

The use by respondent of the term "Kaffor Kid" on its said leather and its subsequent use by manufacturers and retailers of shoes diverts trade from those who are engaged in the manufacture of kid leather and those who are engaged in the manufacture of calfskin leather and selling the same under their true names.

PAR. 11. "Kaffor Kid" has a "soft kiddy appearance" and shoes made from "Kaffor Kid" and kid leather are sold by retailers at about the same price. Many of the purchasing public can not tell the difference between calf leather and kid leather when said leather is made into shoes. Many of the purchasing public can not tell the difference between "Kaffor Kid" leather and kid leather. Purchasers of shoes made from "Kaffor Kid" leather have been led to believe by the use of the term "Kaffor Kid" in the advertising and sale of such shoes that they were purchasing shoes made from kid leather.

PAR. 12. The coined word "Kaffor" associated with the word "Kid" as used by the respondent and subsequently used by the respondent's customers or the customers of respondent's customers does not enable the ultimate consumer to determine that the leather so named is a calfskin leather.

PAR. 13. The aforesaid use by respondent of the term "Kaffor Kid" and its subsequent use by the customers of the respondent and the customers of respondent's customers has the capacity and the tendency to deceive the consuming public into the belief that the shoes made from respondent's said "Kaffor Kid" leather are in fact kid leather.

PAR. 14. Respondent's said acts and practices place in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer for sale and sell to the consuming public shoes and other leather products made of respondent's said "Kaffor Kid" leather as and for articles made of kid leather.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That respondent Ohio Leather Co., its officers, agents, representatives, and employees, in connection with the advertising, offering for sale, and sale in commerce among the several States of the United States, of leather made from calfskins, or other leather not made from kid or goatskins, shall cease and desist:

1. From using the word "kid" alone or in combination with the word "Kaffor", or other word or words, as a trade or brand name for or as descriptive of any such leather.

2. From using the word "kid" alone or in combination with the word "Kaffor", or other word or words, on labels, letterheads, envelopes, or in the advertising or other designation, or description of any such leather.

It is further ordered, That the respondent, Ohio Leather 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.

IN THE MATTER OF

FARLEY HARVEY COMPANY

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

Docket 1544. Complaint, Nov. 3, 1928—Decision, Feb. 11, 1929

Where a corporation engaged in the sale of dry goods at wholesale, designated, tagged, and labeled a cloth or fabric composed of approximately 60 per cent cotton and 40 per cent silk, and resembling silk in texture and general appearance, "silk chiffon" and/or "chiffon" and so sold the same to retailers by whom said fabric, in accordance with its purpose and plan, was offered to the consuming public thus labeled and was so represented; with the capacity and tendency to mislead and deceive many of the consuming public into believing said cloth to be made entirely of silk and into purchasing the same in such belief, and with the effect of so doing, to the prejudice of the public and its competitors, many of whom manufacture and/or deal in similar or silk fabrics, as the case may be, accurately and truthfully labeled, advertised and branded:

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

Mr. Martin A. Morrison for the Commission.
Phipps, Durgin & Cook, of Boston, Mass., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Massachusetts corporation engaged in the sale of dry goods, including textile fabrics, at wholesale to retailers in various States, and with principal office and place of business in Boston, with naming product misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, tags, labels, and designates a cloth or fabric dealt in by it, composed of approximately 60 per cent cotton and 40 per cent silk and resembling silk in texture and general appearance, silk chiffon and/or chiffon, and so offers and sells the same to its aforesaid retail dealer customers, by whom said fabric, thus labeled, is offered, distributed, and sold, with respondent's knowledge and intent, to the consuming public throughout the United States and further, also in accordance with respondent's purpose and as a direct result of its use of the terms in question, as above set forth, represented and described as "silk chiffon" and/or "chiffon".

The use by respondent, as charged, of said terms "silk chiffon" and "chiffon", as above set forth, has the "capacity and tendency to and does mislead and deceive many of the consuming public residing in various States of the United States by causing them to believe that the said cloth or fabric so labeled, designated, and described was made entirely of silk and to purchase" the same in such belief; all the prejudice of the public and of respondent's competitors, many of whom manufacture and/or sell and ship in interstate commerce fabrics made of cotton and silk, and others of whom similarly manufacture and/or sell fabrics made of silk, respectively accurately and truthfully advertised and branded.[1]

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

Respondent having entered its appearance and filed its written return and answer to the complaint herein, admitted therein all allegations of such complaint, and alleged only the cessation of the methods of competition charged in said complaint after the issuance and service of said complaint. In said answer respondent consented that the Commission might proceed upon such complaint and respondent's said written return and answer to such complaint, to make full and final disposition of this case.

Thereafter, the chief counsel for the Commission filed in this case his written motion for the making of findings of fact by the Com-

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[1] The complaint respectively defines the words "silk chiffon" as generally understood by the trade and consuming public, as follows:

"PAR. 3. The word 'silk' is generally understood by the trade and the consuming public to mean a product made entirely from the cocoon of the silkworm, and when the said word 'silk' is applied to a fabric it is understood by the trade and the consuming public to mean that the fabric so labeled and branded is made entirely from silk derived from the cocoon of the silkworm.

"PAR. 4. 'Chiffon' is a kind of soft gauzy silk material. The word 'chiffon' is generally understood by the trade and the consuming public to mean a product made entirely from the cocoon of the silkworm, and when the said word 'chiffon' is applied to a fabric it is understood by the trade and the consuming public to mean that the fabric so labeled and branded is made entirely from silk derived from the cocoon of the silkworm."

mission, and the issuance of an order against respondent herein to cease and desist from the method of competition charged in said complaint, upon the pleadings herein, to wit, upon said complaint and answer and the admissions and consent contained in such answer.

Thereafter, in pursuance of an order made and entered by the Commission, the secretary of the Commission served upon respondent a copy of said written motion, together with notice that the Commission had made and entered an order setting such motion for hearing at the office of the Commission at Washington, D. C., at an hour and upon a day fixed in such order and set forth in such notice.

The respondent having failed to appear or otherwise contest such motion, at the day and hour fixed in such notice or at any other time, the Commission on and after such time so fixed, without argument or brief thereon, took said motion under consideration and advisement. The Commission being now fully advised in the premises, sustains such motion so filed herein by the chief counsel, and now makes this its report in writing, stating its findings as to the facts and its conclusion of law thereon, as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in the city of Boston, in said State. It is engaged in the business of selling dry goods, including textile fabrics, at wholesale to retail dealers residing respectively at points in various States of the United States. It causes said merchandise when so sold to be transported from its said place of business in the city of Boston, Mass., into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of its said business respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and transportation of similar merchandise in commerce between and among various States of the United States.

PAR. 2. Respondent, in the course of its said business, is now and for more than one year last past has been offering for sale and selling to retail dealers located throughout various States of the United States for resale to the purchasing public a cloth or fabric whose content is composed of approximately 60 per cent cotton and 40 per cent silk. Said cloth or fabric resembles silk in texture and general appearance. Said cloth or fabric has been and is tagged, labeled, and designated by respondent as silk chiffon and/or chiffon, under which names and/or name respondent offers for sale and sells and distributes the same to its aforesaid retail dealer customers. Said retail dealers thereafter offer for sale, distribute, and sell and deliver said cloth or fabric with said label silk chiffon and/or chiffon attached thereto to the consuming public throughout the United States; and also said retail dealers thereafter offer for sale, display, sell, and deliver such cloth or fabric with said silk chiffon and/or chiffon labels attached thereto to the consuming public throughout the United States, all of which is well-known to and in accordance with respondent's purpose and plan of distribution. Further, respondent's aforesaid customers represent and describe as silk chiffon and/or chiffon the cloth or fabric sold by it as aforesaid, all in accordance with respondent's purpose, and as a direct result of its use of the terms silk chiffon and chiffon in naming, describing, and representing its cloth or fabric as aforesaid.

PAR. 3. The word "silk" is generally understood by the trade and the consuming public to mean a product made entirely from the cocoon of the silkworm, and when the said word "silk" is applied to a fabric it is understood by the trade and the consuming public to mean that the fabric so labeled and branded is made entirely from silk derived from the cocoon of the silkworm.

PAR. 4. "Chiffon" is a kind of soft gauzy silk material. The word "chiffon" is generally understood by the trade and the consuming public to mean a product made entirely from the cocoon of the silkworm, and when the said word "chiffon" is applied to a fabric it is understood by the trade and the consuming public to mean that the fabric so labeled and branded is made entirely from silk derived from the cocoon of the silkworm.

PAR. 5. There are among competitors of respondent referred to herein many who manufacture and/or sell and ship in interstate commerce fabrics made of cotton and silk which fabrics are accurately and truthfully labeled, advertised, and branded. There are among competitors of respondent others who manufacture and/or sell and ship in interstate commerce fabrics made of silk, which fabrics are accurately and truthfully labeled, advertised, and branded.

PAR. 6. The use by the respondent of the terms "silk chiffon" and "chiffon", as set out in the complaint herein, has the capacity and tendency to and does mislead and deceive many of the consuming public residing in various States of the United States by causing them to believe that the said cloth or fabric so labeled, designated, and described was made entirely of silk and to purchase said cloth or fabric in that belief.

PAR. 7. The above alleged acts and practices of the respondent are all to the prejudice of the public and of competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the written return and answer to such complaint filed by respondent, a corporation, and upon the admissions made and consent given by respondent in such answer, and the Commission having accordingly made its report in writing stating its findings as to the facts and its conclusion of law thereon, that the acts and practices of respondent, Farley Harvey Co., alleged in the complaint herein and set forth in said findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, By the Federal Trade Commission that respondent, Farley Harvey Co., a corporation, its officers, agents, and employees, do cease and desist from:

(1) Selling or offering for sale in interstate commerce a cloth or fabric the content of which is composed of approximately 60 per cent cotton and 40 per cent silk, as or under the name or designation of "silk chiffon" and/or "chiffon", or bearing or accompanied with tags, labels, or other means of designation as or in or under the name or designation of "silk chiffon" and/or "chiffon".

(2) Selling or offering for sale in interstate commerce a cloth or fabric, as or under the name or designation of "silk chiffon" and/or "chiffon", or bearing or accompanied with tags, labels, or other

means of designation as or in or under the name or designation of "silk chiffon" and/or "chiffon", unless the content of such cloth or fabric shall be composed wholly of silk, to wit, of the material that is derived from the cocoon of the silkworm.

And it is further ordered, That respondent, Farley Harvey Co., shall within 60 days next after 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 such respondent has complied, and is complying, with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

LEON E. JACOBS AND MORRIS JACOBS, COPARTNERS, TRADING UNDER THE NAME & STYLE OF LEON E. JACOBS AND BROTHER

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

Docket 1553. Complaint, Jan. 2, 1929—Decision, Feb. 11, 1929

Where a new species of cotton cloth made in England and of distinctive appearance had come to be known in the United States as "English Broadcloth", to be very popular and in high repute, "English Broadcloth" shirts had come to be in great demand, and the words "Imported English" and "English" applied to said type of fabric had come to denote to the purchaser that the same was made in England, and, to a large proportion of retailers and a substantial portion of the consuming public, was of excellent quality and had a recognized value; and thereafter a firm engaged in the manufacture and sale of men's shirts, purchased a similar cloth manufactured by American manufacturers under the name "broadcloth", and sold shirts made thereof to their retail customer dealers as of "English Broadcloth" and labeled the same "Imported Knox English Broadcloth" and/or "English Broadcloth", with the capacity and tendency to deceive retail dealers and a substantial portion of the purchasing public into believing the aforesaid shirts to be made of material made in and imported from England:

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

Mr. William T. Kelley for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, individuals engaged as partners in the manufacture of cotton fabrics purchased from American mills, into men's shirts, and in the sale thereof to retailers throughout the various States, and with principal place of business in New York City, with misrepresenting product and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent sold as "English Broadcloth", shirts made of a cotton fabric manufactured by American mills, termed "broadcloth", and resembling English-made cotton fabric, there termed "taffeta poplin", but known in the United States as "English Broadcloth",[1] and labeled said shirts "Imported English Broadcloth", "Imported Knox English Broadcloth" and/or "English Broadcloth", thereby denoting to the purchaser that the fabric so named was made in England, the product of English mills and, to a large proportion of retailers and a substantial proportion of the consuming public, a reputation for excellence and quality and a recognized value; and with the capacity and tendency to deceive not only retailers but a substantial portion of the purchasing public as to the source of the material of which the shirts were made; all to the prejudice of the public and of respondents' competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents Leon E. Jacobs and Morris Jacobs, copartners, trading under the name and style of Leon E. Jacobs & Bro., charging them individually and as copartners with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents thereafter having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by the respondents and the Federal Trade Commission that the Federal Trade Commission shall take such agreed statement as the facts in this case and in lieu of testimony and proceed forthwith with said agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Leon E. Jacobs and Morris Jacobs, are copartners trading under the name and style of Leon E. Jacobs & Bro., with their principal office and place of business

[1] The history of the English fabric, and its importation and nomenclature in the United States, as alleged in paragraphs 2 to 5 of the complaint, are set forth in the corresponding paragraphs of the findings. See p. 339.

located in the city of New York, State of New York. Respondents for more than one year last past have been, and are now, engaged in the business of purchasing from American mills cotton fabrics and causing said fabrics to be made into men's shirts and in the sale of said shirts to retail dealers located throughout the various States of the United States. Respondents have caused, and now cause, the said shirts when so sold to be transported in interstate commerce from New York City to the purchasers thereof at various points in States of the United States other than the State of New York. In the course and conduct of their business, respondents have been, and are now, in competition with other individuals, partnerships, and corporations engaged in the manufacture and sale of men's shirts in interstate commerce.

PAR. 2. During the year 1919 certain American importers learned of a cotton fabric then being manufactured in England, which, by reason of its construction and the quality of the yarn used, possessed a distinctive appearance and was, in fact, a new species of cotton cloth. This cloth was made from the finest grade of Egyptian long staple cotton yarn, the counts running from 156 by 84 to 144 by 76, two-ply, both ways, 100 yarn, gassed and highly mercerized, weighing about 4½ pounds to the yard. This fabric possessed a fine, silky sheen, great durability, and resembled a fabric made of silk so closely that it was named by the English mills and dealers, "taffeta poplin."

PAR. 3. This new fabric the American importers bought, shipped over to the United States, and introduced the same to the manufacturers of shirts, who at once designated it as a "broadcloth," on account of the resemblance of this very superior cotton to a silk fabric which for a generation or more has been made in America and known as a "silk broadcloth."

PAR. 4. This new spieces of cotton cloth at once became known in the United States as "English Broadcloth." From the start it became very popular, the demand exceeded the supply, and between the last of 1919 and the first of 1921 a very high reputation was established for this cloth among the retail dealers in shirts throughout the States of the United States, and with the consumers, and "English Broadcloth" shirts came into great demand.

PAR. 5. The word "broadcloth" is not, in England, applied to any cotton fabric, but for centuries has been applied to a very fine woolen fabric of unusual width, from which men's dress suits and women's skirts and tailored suits are made, and, in the United States, the word "broadcloth" is also used to designate the same woolen fabric. The words "silk broadcloth" were used in the shirt industry to designate a fine fabric made of silk, and from which shirts were made, and after the introduction from England, in 1919, of the fine cotton fabric described in paragraph 2, the American mills manufactured a similar cotton cloth, which was known to the shirt manufacturers in the United States as "broadcloth." The American mills do not style or designate the cotton fabric produced by them "English Broadcloth."

PAR. 6. The respondents in the course and conduct of their business in interstate commerce, as set out in paragraph 1 hereof, purchased the cotton fabric termed "broadcloth" made by American mills and caused the same to be manufactured into shirts, which shirts they sold to retail dealers as shirts made of "English Broadcloth" and fixed or attached upon such shirts labels bearing the words "Imported Knox English Broadcloth" and/or "English Broadcloth."

PAR. 7. The words "Imported English" and the word "English" when applied to the type of cotton fabric described in paragraph 2 hereof denotes to the purchaser that the fabric was made in England, is the product of English mills and among a large proportion of retailers and a substantial portion of the consuming public of the United States the words "Imported English" and the word "English" when applied to the type of cotton fabric, described in paragraph 2 hereof, has acquired a reputation for excellence and quality and has a recognized value.

PAR. 8. The words "Imported English" and the word "English" as applied to the cotton fabric, described in paragraph 2 hereof, are understood by the retail trade and the purchasing public to signify and represent that shirts so labeled are made from a material which is made in and imported from England.

PAR. 9. The label "Imported English Broadcloth" and the label "English Broadcloth" used by the respondents as aforesaid are false, the cloth of which the shirts are made, not being made in England and not being a product of English mills, and are calculated to deceive not only the retail dealers, but a substantial portion of the purchasing public into the belief that shirts so labeled are made of material imported from England.

CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of 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 and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondents have violated the provisions of an act of 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, Leon E. Jacobs and Morris Jacobs, do cease and desist from using the words "English Broadcloth" or the words "Imported English Broadcloth" as a label or brand or otherwise in connection with the advertising, offering for sale, or sale of shirts or other garments in interstate commerce, unless such garments be made from broadcloth made in and imported from England.

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.

MEMORANDUM

HYMAN FINKELSTEIN, Complaint, December 22, 1928—Decision, February 16, 1929. (Docket 1552.) Similar findings and order were issued in this case.

Appearances: *Mr. William T. Kelley* for the Commission; *Reswick & Avrutis*, of New York City, for respondent.

IN THE MATTER OF

T. G. COOKE, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF UNIVERSITY OF APPLIED SCIENCE

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

Docket 1502. Complaint, Mar. 13, 1928—Decision, Feb. 26, 1929

Where an individual engaged in the sale of a correspondence course in Finger Printing, Bertillon Identification and Secret Service Intelligence, and of a fingerprint outfit and apparatus accessory to the course, and with no corps of instructors other than one person chiefly engaged in grading pupils' examination papers, and using the same place of business as that of three other schools in which the aforesaid individual was financially interested,

(*a*) Advertised under the trade name "University of Applied Science" and signed form letters to prospective pupils as "President, University of Applied Science", making such statements as that there was "probably no other university president in the United States" "so close to his students and graduates" as himself, and otherwise representing his business as a university and himself as the president thereof; thereby implying to prospective pupils and to the public an institution of higher learning, with a group of learned instructors engaged in teaching the several sciences and the application thereof, and that pupils successfully pursuing its course of study would receive the benefit and advantages of the high reputation and prestige of such an institution;

(*b*) Represented to prospective pupils that he was offering them his course at a temporarily reduced price, making such statement as "This is a special rate made to a selected number of prospective students", "I don't want you to have to scrimp and strain to make good. * * * To do this I have made a very considerable concession", "These terms * * * open to you for *immediate* acceptance", the fact being that the pretended reduced price or concession was his regular price for the course and the articles and services sold therewith;

(*c*) Represented that he was offering the aforesaid articles and services to prospective pupils, free, and without compensation, the fact being that the price thereof was included in the regular charge for the course; and

(*d*) Represented that he furnished pupils with a life membership in an "actual and existing identification bureau", the fact being that there was no such organization pertaining to his business, but that reference was had to a cabinet with fingerprint records of a large number of anonymous persons, and that pupils coming to his place of business were afforded an opportunity of inspecting the same and of receiving instructions by means thereof in classifying, filing and searching for fingerprints;

With the capacity and tendency to mislead and deceive the public and induce persons to enroll as pupils in reliance upon the truth and accuracy of the aforesaid representations and in the erroneous belief that said business constituted a university within the popular conception thereof and that pupils successfully pursuing the course would receive the benefit and advantages of the high reputation and prestige of such an institution:

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

Mr. Alfred M. Craven for the Commission.
McKercher & Link, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at Chicago under the trade name and style "University of Applied Science", in selling a course of printed instruction in fingerprint work and secret service intelligence, together with a complete fingerprint outfit for practical work [1] and a subscription, without cost to the pupil, to the only fingerprint magazine published, with using misleading trade name and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, carries on all his advertising, correspondence, and other business only under the aforesaid trade name of University of Applied Science, thereby implying to the public and prospective pupils an institution of higher learning engaged in teaching the practical application and use of the several sciences usually taught in colleges or universities, together with a faculty, proper plant and equipment and high standards and that pupils successfully pursuing a course therein will receive the benefit and advantage of the high reputation and prestige of such an institution, the fact being that respondent, as above set forth, does not undertake to teach any subject other than the single one above referred to, nor operate or control a university within the popular conception or any proper conception thereof.[2]

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[1] Set forth in the complaint as consisting of "magnifying glass, fingerprint rolls, oil can, glass slab, counter, fingerprint cards, and other articles regarded as accessories and aids to the acquirement of the knowledge of, and to the use and practice of, said arts, sciences, professions, or trades."

[2] The allegations of the complaint with reference to the meaning and implication of the words "University", and "University of Applied Science", follow:

The word "University" carries by necessary implication to the public mind and to the minds of prospective pupils, and is commonly understood by the public to include and insure, an educational institution of higher learning with a single organization, a single faculty of learned persons acting as istructors in the various departments which severally give instruction in the several liberal arts and sciences embraced in the curriculum of said educational institution. Such curriculum is presumed to include the liberal arts and sciences, together with an additional subject or additional subjects of more advanced learn-

Respondent, further, as charged, in advertising his aforesaid course, and the articles and things supplied therewith, in newspapers, magazines, periodicals and other publications of general circulation in the United States and in the several States thereof, and in pamphlets, letters, circulars, and other forms of printed, written, or mimeographed matter, using his aforesaid trade name only, falsely and misleadingly represents that—

The course, with accessories, for which the regular price is $100, is being offered to pupils who shall enroll within a certain fixed time, at the temporarily reduced price of $70, the fact being that $70 is the regular full price for such course and accessories.

The course, with accessories, for which the regular price is $100 as above set forth, is offered to a limited number of selected prospective pupils at a special reduced price of $70, the fact being that such reduced price, as above set forth, is respondent's permanent full price, regularly and freely offered to all prospective pupils indiscriminately.

Prospective pupils are offered freely and without compensation to respondent, a fingerprint outfit (to wit, the articles and things above enumerated), employment bureau service for five years, and a course of instruction in secret service intelligence, the fact being that the price or cost of said pretended free gifts and service is included in the regular full price charged by respondent, and that they are not given to pupils without full payment therefor.

A life membership in an actual and existing identification bureau is included among the things of value furnished by respondent to pupils, the fact being that such bureau has no real existence and the promised life membership therein can have none.

The use by respondent of said trade name, and the statements and representations made as above set forth, as charged, have the tendency and capacity to mislead and deceive the public and prospective pupils and will probably mislead and deceive them into the erroneous belief that respondent is a university within the popular conception of the word and term, as hereinabove set forth, "and that pupils successfully pursuing a course of study therein will receive the benefit and advantage of the high reputation and prestige

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ing. The name "University of Applied Science" carries by necessary implication to the public mind and to the minds of prospective pupils, and is commonly understood by the public to include and insure, such an institution of higher learning engaged in teaching the practical application and use of all or portion of the several sciences usually taught in colleges or universities. Such name by like necessary implication carries to the public mind the assurance of a group of such scholars and instructors engaged in such work, with a proper plant and equipment and with high standards of ability, character and conduct, and that pupils successfully pursuing a course of study therein will receive the benefit and advantage of the high reputation and prestige of such institution.

of such institution; that it is safe to rely and act upon statements and representations made by such university; that the several false statements and representations above set forth are made seriously and in good faith, and are true; and that, therefore, said university offers the best available opportunity for education, and that it is advisable to enroll as a pupil therein and pay to respondent the tuition so demanded by him."

Said acts and practices of respondent, as charged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 13th day of March, 1928, issued and thereafter served upon respondent, T. G. Cooke, a complaint charging him with the use of unfair methods in competition in commerce, in violation of the provisions of section 5 of said act of Congress. The respondent, T. G. Cooke, having entered his appearance and filed his answer herein, a hearing was had and evidence was thereupon introduced and received on behalf of both the Commission and the respondent before an examiner of the Commission theretofore duly appointed. Thereafter this proceeding came on for decision upon the record, and the briefs of counsel for the Commission, having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, T. G. Cooke, is now and since April, 1917, has been engaged in Chicago, Ill., under the trade name and style of University of Applied Science, in the business of selling and furnishing by correspondence a course of instruction in fingerprinting, Bertillon Identification and Secret Service Intelligence, consisting in all of 54 printed lessons, to pupils residing at various places in the several States of the United States, and in selling to such pupils certain articles comprising a fingerprint outfit or apparatus accessory to said course of instruction.

PAR. 2. Respondent, when a pupil enters into a contract with him, and enrolls as such pupil, in consideration of the agreed cash tuition paid and agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mails and otherwise, the course of instruction and the fingerprint outfit described in paragraph 1 hereof. Thereafter and in pursuance of said contract with such pupils respondent furnishes and causes to be transported from his said place of business at Chicago, Ill., into and through the several States of the United States and delivered to such several pupils at their respective places of residence, the lessons comprising said course of instruction and the said articles comprising said fingerprint outfit. In all of his said business, and in the several parts thereof, and in the procurement of pupils to enroll as such, and to purchase said course of instruction and said articles, and to pay therefor, respondent is in competition with other persons, firms, and corporations, who are engaged in the same or similar lines of business activity in interstate commerce.

PAR. 3. In aid of his said business and for the purpose of inducing persons to enter into contracts with him and to enroll as pupils and to purchase the said course of instruction and the articles of merchandise comprising the fingerprint outfit, respondent causes advertisements of his said course of instruction, and of said articles of merchandise, to be inserted and made accessible to the public in newspapers, magazines, periodicals, and other publications of general circulation in the United States and throughout the several States thereof, and also in catalogues, pamphlets, circular letters, and other forms of printed, written, and mimeographed matter. In all such advertisements respondent by and under said trade name of University of Applied Science, makes the statements and representations hereinafter referred to, as follows:

(1) Respondent represents that he is offering prospective pupils said course of instruction, together with said articles of merchandise, for which the regular price is the sum of $100, at the temporary reduced and special price of $70. In a catalogue sent out by respondent to each prospective pupil, copyrighted in 1925, and used by respondent since that time, respondent states that the regular price of his said course of instruction is $100. From the year 1925 up to shortly after the commencement of this proceeding, to wit, March 13, 1928, respondent, in a form letter mailed with said catalogue to each prospective student, stated as follows:

> The actual price of this course is $100. The regular terms are $20 down and $10 a month for 8 months. But to you, if you act quickly, they will be $70—only $5 down and $5 a month for 13 months—a reduction of $30, or 30 per cent.

In another form letter sent out by respondent to each prospective pupil, and used up to shortly after the commencement of this proceeding, respondent, in referring to the price of $70, said:

This is a special rate made to a selected number of prospective students to make up a new class.

The form letters above referred to were succeeded, shortly after the institution of this proceeding, by another form letter, which, thereafter and up to the present time, respondent has used, sending same out to each prospective pupil. In such form letter, the respondent, in reference to the price of $70, at which the course is offered, states:

So I have made the terms as low as business considerations will permit. I don't want you to have to scrimp and strain to make good. * * * To do this I have made a very considerable concession. If you act quickly, my terms will be $70—only $5 down and $5 a month for 13 months. * * * This is a wonderful opportunity for you. It gives you every advantage and privilege at a very considerable saving, and the terms are made exactly as you would like to make them yourself. The only condition is that you act quickly. These terms are open to you for *immediate* acceptance.

In truth and in fact, the said pretended reduced or special price of $70 is, and has been since the year 1925, the regular permanent and full price of said course of instruction, together with the articles of merchandise comprising the fingerprint outfit.

(2) The respondent represents that he is offering to give to prospective pupils, free and without compensation, the articles and things comprising the fingerprint outfit above mentioned, and also other articles or services; in truth and in fact, all of the said articles and things so represented as free gifts, are part of and included in the instruction, service, and articles for which pupils pay respondent in the payment of the regular price charged by respondent, as above set forth, and none of the said things so promised is given to pupils without payment therefor.

(3) Respondent represents that among the things of value furnished by him to pupils, is a life membership in an "actual and existing identification bureau". Respondent maintains at his place of business in Chicago, Ill., a filing cabinet designed to hold 10,000 card records of fingerprints. It is kept practically filled at all times with fingerprint records of anonymous persons, most of whom are dead criminals. Pupils of respondent, who may come to Chicago and respondent's place of business, are afforded the opportunity of inspecting this filing cabinet and of receiving instruction by means of such cabinet, in classifying, filing, and searching for fingerprints.

It is contended by respondent that this filing cabinet is an identification bureau, and the identification bureau referred to in his advertisements. An identification bureau, in which there can be any membership, is an organization of persons for the purpose of identifying criminals or other persons. There is no such organization pertaining to respondent's business, and respondent does not furnish to his pupils a membership in any such organization.

PAR. 4. The false and misleading statements and representations set forth in the third paragraph hereof, and each of them, have the capacity and tendency to deceive the public and to induce persons to enroll as pupils of respondent in reliance upon and by reason of their belief in the truth and accuracy of such representations.

PAR. 5. Respondent carries on all of his advertising under the trade name "University of Applied Science". He signs many of the form letters sent to prospective pupils for the purpose of inducing them to enroll as pupils, as "President, University of Applied Science". He otherwise represents his business to be a university, and himself to be the president of such university; for example, in the catalogue above referred to appears the following statement:

> There is probably no other university president in the United States who is so close to his students and graduates as T. J. Cooke.

A university, as commonly understood, is an educational institution of higher learning, empowered to confer degrees, with a faculty of learned persons acting as instructors in the various higher branches of learning embraced in the curriculum, and which curriculum usually includes the liberal arts and sciences and one or more special branches of learning, such as theology, law, and medicine.

The name "University of Applied Science" carries by necessary implication to the public mind and to the minds of prospective pupils of respondent, an institution of higher learning engaged in teaching the several sciences, and the application thereof, usually taught in colleges and universities. Such name, by like necessary implication, carries to the public mind the assurance of a group of learned instructors, and that pupils successfully pursuing the course of study therein, will receive the benefit and advantage of the high reputation and prestige of such institution.

In truth and in fact, respondent is not and does not have, operate, or control a "University" or "University of Applied Science" within any proper or common meaning of such terms.

Respondent's course of instruction is limited to the subjects set forth in paragraph 1 hereof, and such meager instruction in photography and chemistry as is incidental to instruction in finger-printing. The lessons are printed and sent out by mail to pupils, and when returned, are usually accompanied by a certain so-called examination, which is comprised of certain answers which the pupil makes to certain questions appearing at the end of the lesson. These examinations are graded by the respondent. The respondent has no faculty or corps of instructors other than one person whose time is chiefly taken up with marking or grading the examination papers above referred to. Respondent's place of business is one in common with three other correspondence schools, in which respondent individually is heavily interested financially. Respondent uses the term "University of Applied Science" solely as a trade name for his business.

PAR. 6. The use by respondent of the trade name "University of Applied Science", as set forth in paragraph 5 hereof, has the tendency and capacity to mislead the public and prospective students into the erroneous belief that respondent is a university within the popular conception of the word "University", as set forth in paragraph 5 hereof and within the popular conception of the name "University of Applied Science" as set forth in said paragraph, and that pupils successfully pursuing the course of study therein will receive the benefit and advantage of the high reputation and prestige of such an institution.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of 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 on the complaint of the Commission, the answer of the respondents, the evidence introduced on behalf of the Commission and said respondent, and the briefs of counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent, T. G. Cooke, has violated the provisions of an act of Congress approved

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

It is now ordered, That respondent, T. G. Cooke, in offering for sale or selling courses of instruction or articles of merchandise, in interstate commerce, to cease and desist from:

(1) Representing to prospective pupils or to the public that the price at which any course of instruction offered is a special or reduced price or a price that is lower than the price ordinarily and usually received, when such is not the fact.

(2) Representing that any article of merchandise or other thing or service is furnished free to pupils, when the price or value of such article of merchandise or other thing or service is included in the price specified as the price of the course of instruction.

(3) Representing that the respondent furnishes to the prospective pupil a life membership in an identification bureau.

(4) Using the word "University" in the trade name of respondent, or in any manner as descriptive of respondent's business; and from representing that the respondent is president of a "University", or that respondent's business is a "University" or "University of Applied Science".

It is further ordered, That said respondent, T. G. Cooke, 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 heretofore set forth.

IN THE MATTER OF

MASLAND DURALEATHER COMPANY, W. & J. SLOANE

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

Docket 1311. Complaint, May 19, 1925—Decision, Mar. 22, 1929

Where the trade name "Duro" had long been used by a leather manufacturer in its labels, brands, literature, correspondence and invoices to designate its calfskin and veal skin leathers, and also in its advertising thereof at large expense; and thereafter a corporation engaged in the manufacture of an imitation or artificial leather product containing no leather, though resembling and made to resemble the same in appearance, and its sole sales agent, designated the aforesaid product "Duraleather" and the samples thereof supplied to customers or prospective customers, and conspicuously so advertised, stamped, listed, and billed said product, together with the words, after a time and in some cases, in much smaller letters and hardly discernible, "A Durable Leather Substitute"; with the result that the use of the aforesaid term to designate such imitation or artificial leather was suggested to their customers or their customers' customers in the marketing and sale of products made thereof, and there was placed in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer and sell to said public articles made from the aforesaid product as and for articles made of real leather, and with the capacity and tendency to mislead and deceive such public into believing said imitation or artificial leather to be a product of the aforesaid leather manufacturer and to cause it to purchase articles made therefrom in such belief, and as and for articles made of genuine leather, and to divert trade from those engaged in the manufacture of real leather, and those engaged in the manufacture of imitation leather and selling and advertising the same as such:

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

Mr. E. J. Hornibrook for the Commission.
Roberts & Montgomery, of Philadelphia, Pa., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Masland Duraleather Co., a Pennsylvania corporation engaged in the manufacture and sale of imitation leather, and with principal office and place of business in Philadelphia, and respondent W. & J. Sloane, a New York corporation, engaged, among other things, in the sale, as sole sales agent, of said imitation leather, and with principal office and place of business in New York City, with naming product misleadingly, misbranding or mislabeling and simulating trade name of competitor, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth in competition with competitors dealing in artificial leathers and competitors dealing in genuine leathers, including the A. C. Lawrence Leather Co. of Boston, which has long since sold leather made by it to manufacturers of trunks, suit cases, upholstered articles and other similar products in various States, under its well-known trade name and designation "Duro" and so advertised and referred thereto in its advertising catalogues, price lists, circulars, and other trade literature and as "Duro leather" and in correspondence with customers and prospective customers, name, designate, brand, and label their said imitation leather, consisting of a coated fabric made in imitation of, but containing no leather "Duraleather" and sell said product so named, designated, branded, and labeled to manufacturers of trunks, suit cases, satchels, upholstered articles and other similar products, by whom said trunks, etc., are sold to retailers in various States and by said retailers to the consuming public.

The use by respondents, as alleged, of the name and designation "Duraleather" places in the hands of respondents' aforesaid vendees the means of committing a fraud upon retail dealers and eventually upon the consuming public by enabling said vendees to represent and sell the products made by them in whole or in part of said artificial leather to retail dealers as and for articles made in whole or in part of real leather, and said acts and practices tend to and do divert business from and otherwise injure competitors, many of whom sell and supply real leather to manufacturers of trunks and products above set forth, correctly representing their said products to the retail trade as composed in whole or in part of real leather and others of whom sell and supply artificial leathers to such manufacturers without in anywise representing such artificial leather as composed either in whole or in part of real leather; all to the prejudice of the public and respondents' competitors.

The use, further, as charged, of the aforesaid name and designation, has the capacity and tendency to mislead and deceive the trade into the belief that respondents' said "Duraleather" is a product of the aforesaid A. C. Lawrence Leather Co., and to cause the trade to purchase respondents' said imitation leather in such belief; all to the prejudice of the public and of respondents' said competitors.[1]

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Masland Duraleather Co. and W. & J. Sloane, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearances and filed their answers to said complaint, hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Masland Duraleather Co., is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Philadelphia in said State. It is engaged in the manufacture of a product which it calls "Duraleather", an imitation or artificial leather, which is hereinafter described, and the sale thereof through respondent W. & J. Sloane, as hereinbelow set forth.

Par. 2. Respondent, W. & J. Sloane, is a corporation organized under the laws of the State of New York with its principal office and place of business in the city of New York in said State. It is engaged, among other things, in selling said imitation or artificial leather manufactured by respondent, Masland Duraleather Co., to manufacturers of automobiles, automobile bodies, trunks, suitcases, satchels, upholstered articles, and other similar products, who manufacture many of said products in whole or in part of said imitation or artificial leather. Said manufacturers are located at points in various States of the United States. Respondent, W. & J. Sloane,

[1] The complaint is in two counts, the first relating to the application of the word "Duraleather" to an imitation leather, and the second relating to the use of such a designation in the light of the Lawrence Leather Co.'s trade name and trade designation "Duro" and "Duraleather".

distributes said imitation or artificial leather in the manner hereinafter set forth as sole sales agent for respondent, Masland Duraleather Co., with the exception that within the State of Pennsylvania respondent, Masland Duraleather Co., usually distributes its said product. Respondents cause said imitation or artificial leather so sold to be transported from respondent's, Masland Duraleather Co., said place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the United States to the said purchasers at their respective points of location.

In the course and conduct of their said business respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture of leather and imitation or artificial leather and the sale and transportation thereof between and among the various States of the United States.

PAR. 3. "Duraleather" is made from a cotton cloth base, upon which is spread a coating of nitra-cellulose solution, castor oil, and various pigments for coloring purposes. It is then painted and embossed with a leather grain so that it very closely resembles genuine leather. There is no leather in it.

About 75 per cent of this product goes into the upholstering and trimming of automobiles, 15 per cent into the upholstering of furniture, 5 per cent into the manufacture of handbags, suitcases, brief bags, and luggage, and 5 per cent into miscellaneous articles.

Respondents do an annual business of about $500,000 in the manufacture and sale of such imitation leather.

PAR. 4. In the year 1914 Walter E. Masland, an individual, began trading under the name and style of Masland Duraleather Co. and began the manufacture of an imitation or artificial leather which he designated and sold in interstate commerce as "Duraleather". He continued such manufacture and continued the use of the said trade name, "Duraleather", until the year 1919. In that year the said Walter E. Masland caused the respondent, Masland Duraleather Co., to be incorporated as aforesaid. This corporation succeeded to the said business of Walter E. Masland and continued the manufacturing of such imitation or artificial leather and continued to trade and is now trading under the name of Masland Duraleather Co. Since the date of such incorporation it has been and now is using the term "Duraleather" to designate its said imitation or artificial leather in the manner hereinafter described.

PAR. 5. Prior to 1924 the respondent, Masland Duraleather Co., advertised its said product as "Duraleather" in the Automotive Red Book and Chilton's, being two directories of general circulation in the automobile trade, and also in Thomas' directory and the Buyer's directory, annual publications of manufacturers of the United States, as "Duraleather" without explanation that said product was artificial or an imitation.

Up to and until the year 1924 the respondent, Masland Duraleather Co., designated and branded its said imitation leather with the word "Duraleather," without explanation that it was artificial and in imitation of genuine leather. Since the year 1924 the respondent, Masland Duraleather Co., has used the term "Duraleather" in branding, labeling, designating, and advertising its said imitation or artificial leather, which term is printed in very conspicuous type and is also accompanied with the phrase "The durable leather substitute" in letters of less conspicuous type.

"Duraleather" is generally put up in rolls containing 60 yards. The goods are from 50 to 56 inches in width. The trade name "Duraleather" is stamped on the outside of the roll and since the year 1924 such trade name has been accompanied, in much smaller letters, with the phrase: "The durable leather substitute". Also a ticket is attached to the roll, which, since the year 1924, has carried, in addition to the said trade name, the words, "The durable leather substitute" in much smaller letters than those forming said trade name.

Samples of this imitation leather are made up in small books and sent out to the customers and prospective customers of respondents. In the cases of jobber customers two to four hundred of these books are supplied to each. Prior to 1924 these samples bore the word "Duraleather" without explanation that the product was imitation or artificial. Since 1924 these samples have borne the word "Duraleather" in conspicuous letters and the words "A durable leather substitute" in letters so small as to be hardly discernible to the human eye.

This imitation or artificial leather is carried in stock by department stores and catalogue houses such as Sears, Roebuck & Co., and samples of this leather were sent to them stamped, prior to the year 1924, with the word "Duraleather" only, and since the year 1924 with the word "Duraleather", and in smaller type "A durable leather substitute". All such samples were made up and stamped by respondent, Masland Duraleather Co., and are generally distributed by the respondent, W. & J. Sloane. Price lists bearing the legend, "Duraleather" "A durable leather substitute" are prepared and circulated by respondent, W. & J. Sloane. All advertising, not herein specifically accredited to respondent, W. & J. Sloane, is done by respondent, Masland Duraleather Co. "Duraleather" is frequently billed to customers of respondents by respondent, W. & J. Sloane, without explanation on the billing or invoice that the same is imitation or artificial.

PAR. 6. When respondent, W. & J. Sloane, receive orders from the automobile companies for this imitation or artificial leather, to be used in the trimming and upholstering of automobiles, samples of genuine leather are sent to it with the instructions to imitate genuine leather as closely as possible and respondent, Masland Duraleather Co., endeavors to make such imitations.

PAR. 7. In the year 1923 the Virginia Trunk & Bag Co. of Petersburg, Va., purchased from one of the jobber customers of respondents a quantity of "Duraleather". It used the same in the manufacture of traveling bags and suit cases. It sold and delivered the same to its customers in various States of the Union, as "Duraleather" bags, "Duraleather" suit cases, and "Duraleather" overnight bags, without explanation that the same were made of artificial or imitation leather. In said year the said Virginia Trunk & Bag Co. issued catalogues and circulars to the number of more than 10,000, in which some of its bags and suit cases were described as "black, cobra grain Duraleather", without explanation that the same were made from imitation leather.

The reason the Virginia Trunk & Bag Co. used the word "Duraleather" as above described was because such name was given to the product by the manufacturer thereof.

PAR. 8. Among said competitors of respondent is the A. C. Lawrence Leather Co., a Massachusetts corporation with its principal office and place of business in the city of Boston. It is engaged in the manufacture of genuine leather and in the sale thereof to manufacturers of shoes and luggage, such as suit cases, bags, and brief cases, upholstered furniture, automobiles, novelties and other products, located in various States of the United States. It has for more than twenty-five years last past, used the word "Duro" as a trade name and designation for calfskin and vealskin leathers made and sold by it as aforesaid, and has expended large sums in advertising said products under said name. It has so used the said trade name "Duro" in its brands, labels, sales literature, advertising, invoices, and correspondence, and in said labels, brands, literature, advertising, correspondence, and invoices it designated and referred to its said products as "Duro calf", "Duro veal" and "Duro calf leather." It registered said name "Duro" as a trade-mark for leather and finished leather in the United States Patent Office in the years 1902 and 1912, and in the year 1921 successfully opposed the registration by respondent of the word "Duraleather" as a trade-mark for its said imitation or artificial leather in said Patent

Office. There is a similarity in appearance between the products of genuine leather produced by the A. C. Lawrence Leather Co. which it calls "Duro calf", "Duro calf leather", and "Duro veal" as aforesaid, and the product "Duraleather" manufactured by the respondent, Masland Duraleather Co. The said use by respondents of the trade name "Duraleather" has the capacity and tendency to mislead and deceive the consuming public into the belief that said "Duraleather" is a product of the aforesaid competitor and to cause the consuming public to purchase articles made in whole or in part from "Duraleather" in such belief.

PAR. 9. Respondents' said use of the term "Duraleather" as applied to its said imitation or artificial leather suggests the use of said term by the customers or the customers of the customers of said respondents in the marketing and sale of products made in whole or in part of "Duraleather".

PAR. 10. The said use by respondents of the term "Duraleather" as applied to its said imitation or artificial leather and its subsequent use by said manufacturers of articles made in whole or in part therefrom has the tendency and capacity to divert trade from those who are engaged in the manufacture of real leather and those who are engaged in the manufacture of imitation leather and selling and advertising the same as such imitation leather.

PAR. 11. The aforesaid use by the respondents of the term "Duraleather" and its subsequent use by the customers of the respondents and the customers of respondents' customers has the capacity and tendency to deceive the consuming public into the belief that the articles made therefrom are made from genuine leather and to cause the consuming public to purchase the same in such belief.

PAR. 12. Respondents' said acts and practices place in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer for sale and sell to the consuming public articles made from "Duraleather" as and for articles made of real leather.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents thereto, the testimony, evidence, briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusions that respondents have been, and are, using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That respondents, Masland Duraleather Co. and W. & J. Sloane, their officers, agents, representatives, and employees, in connection with the advertising, offering for sale and sale, in commerce among the several States of the United States, of the product "Duraleather" or any imitation or artificial leather, or substitute for leather, shall cease and desist:

1. From using the term "Duraleather" as a trade name, brand, stamp, or label for such products.
2. From using the term "Duraleather" on letterheads, envelopes, invoices, signs, in circulars, catalogues, magazines, newspapers, or otherwise to designate or describe such products, and
3. From using the word leather or any other word or combination of words in such manner as to import or imply that such products are real leather.

It is further ordered, That the respondents, Masland Duraleather Co. and W. & J. Sloane, 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 each has complied with the order to cease and desist hereinbefore set forth.

In the Matter of

N. FLUEGELMAN & COMPANY, INC.

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

Docket 1491. Complaint, Jan. 13, 1928—Decision, Apr. 2, 1929

Where a corporation engaged as a converter and wholesale distributor of cotton fabrics, named, advertised, offered and sold as "Satinmaid" a mercerized cotton fabric, dealt in by it as above set forth, and so labeled the board ends affixed to the cards or boards around which the fabric was wound, and the paste tickets, hanging tags, salesmen's color cards and other descriptive matter used in connection with the sale and distribution thereof, together with the words "A Satinized Fabric," and also the words, after a time, "A Cotton Fabric," in its advertisements and on the aforesaid descriptive matter used in connection with the sale thereof, but in a less conspicuous fashion; with the capacity and tendency to mislead and deceive buyers into believing said fabric to consist in whole or in part of silk and to induce its purchase in such belief, and with the effect of furnishing retailers with the means enabling them to mislead and deceive ultimate buyers into purchasing the same in the aforesaid belief, and the tendency to injure and divert trade from competitors dealing in cotton fabrics, silk fabrics, or both, or fabrics of both cotton or silk:

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

Mr. James M. Brinson for the Commission.

Mr. Henry Fluegelman of New York City and *Mr. Roger O'Donnell*, of Washington, D. C., for respondent.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged as a converter of cotton fabrics, and wholesale distributor thereof in interstate commerce, to purchasers in States other than New York, and with principal place of business in New York City, with naming product misleadingly, advertising falsely or misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, designated as "Satinmaid" a mercerized cotton fabric, prepared and sold by it, containing no satin or silk, a product of the cocoon of the silkworm, but composed wholly of cotton, and so advertised the same in publications of general circulation among various States, and labeled the cards or boards upon which said fabric was wound, and on its letterheads and in other advertising and labels designated and described said product as "Satinized."

The use by respondent of the words "Satinmaid" and/or "Satinized," as charged, in advertising, labeling, and selling its aforesaid product, as above set forth, has the capacity and tendency to and does mislead purchasers of said fabric into the belief that it is composed in whole or in part of satin or silk, the product of the cocoon of the silkworm, and to induce purchasers to purchase the same in that belief; all to the prejudice of the public and of respondent's competitors, among whom there are concerns and individuals who manufacture, sell, and transport in commerce fabrics composed wholly of cotton and so represented, or without any representation as to composition, and others making fabrics composed wholly or in part of satin or silk or both.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon N. Fluegelman & Co., Inc., hereinafter called respondent, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed its answer to the complaint, formal hearings were had thereon before an examiner of the Commission, theretofore duly appointed, and testimony, documentary evidence, and exhibits were offered and received and duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for hearing before the Federal Trade Commission on such complaint and answer and on the testimony, evidence, and exhibits on file and on the briefs and arguments of counsel, and the Federal Trade Commission having duly considered the same, now makes this its report in writing and states its findings as to the facts and conclusion as follows:

Findings as to the Facts

Paragraph 1. Respondent, N. Fluegelman & Co., Inc., has been for several years last past, and now is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of New York and State aforesaid. It has been and is engaged in business as a converter of cotton fabrics, and as wholesale distributor of same in interstate commerce, causing said product when sold to be transported from its said place of business to purchasers in the various other States of the United States. In the course and conduct of said business respondent is now and at all times hereinafter mentioned was in competition with individuals, partnerships, and corporations engaged in the sale and distribution of fabrics in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business respondent has offered for sale, through advertisements in publications of general circulation, and through traveling salesmen, and has sold, in the various States of the United States, a certain mercerized cotton fabric under and by the trade name "Satinmaid". Said product when sold and delivered by respondent has had so-called board ends affixed to the cards or boards around which the fabric was wound, containing said trade name, accompanied by the words "A Satinized Fabric", in one or more places, which also have appeared on paste tickets, hanging tags, salesmen's color cards, and other descriptive matter used in connection with the sale and distribution of said fabric. On or about December 7, 1925, respondent commenced and has since continued the practice of placing in its advertisements and on the aforesaid descriptive matter so used in connection with the sale and distribution of said fabric, the words "A Cotton Fabric", either above or below the words "Satinmaid", but in letters considerably smaller, except in the so-called color cards used by traveling salesmen to exhibit the various colors in which respondent offers said fabric for sale. On these color cards the words "A Cotton Fabric" appear in letters as large as, but less conspicuous than, those in which the trade name "Satinmaid" is expressed.

PAR. 3. The word "satin" when used to describe or designate a fabric means that such fabric is composed wholly of silk woven in a peculiar manner so as to impart a high luster to the surface of the fabric. The description or designation by respondent of its cotton fabric as "Satinmaid," a word composed of the word "satin" and of the word "maid", which has the same phonetic significance and effect as the word "made", has had and has the capacity and tendency to mislead and deceive buyers into the belief that such cotton fabric consists wholly or in part of silk and to induce its purchase in such belief. Its sale by respondent with labels, paste tickets, hanging tags, board ends, and color cards bearing the said trade name "Satinmaid", as described in paragraph 2 hereof, furnishes retail dealers with the means by which they have been and are enabled to mislead and deceive ultimate buyers into its purchase in the belief that said fabric consists either in whole or in part of silk.

PAR. 4. There are now and for several years last past have been other individuals, partnerships, and corporations engaged in selling, and describing or designating as such, cotton fabrics, silk fabrics, or both, or fabrics containing both cotton and silk, in competition with respondent among or between the various States of the United States, and the foregoing practices of respondent have had and have the capacity and tendency to divert trade from them to respondent and otherwise to injure them.

CONCLUSION

The practices of 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 an act of 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 submitted, briefs and arguments of counsel, and the Commission having made its report stating its findings as to the facts with its conclusion that respondent, N. Fluegelman & Co., Inc., has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, N. Fluegelman & Co., Inc., its officers, agents, servants, and employees, cease and desist, directly or indirectly, from using the word "Satinmaid", or any word or words, or combination of words, embracing the word "satin" as a trade name for, or to describe or designate a cotton fabric offered for sale or sold in interstate commerce.

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

IN THE MATTER OF

RALADAM COMPANY

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

Docket 1496. Complaint, Feb. 29, 1928—Decision, Apr. 13, 1929.

Where a corporation engaged in the sale of an alleged obesity cure in tablet form, with ingredients, among others, of thyroid and certain powerful laxatives, and with a medicinal virtue based, as claimed, principally upon the former,

Represented in advertisements in newspapers, magazines, periodicals, and other publications of general circulation, and on labels or in circulars and printed matter wrapped about, folded within or attached to the boxes or containers of said tablets, that said preparation was a safe, convenient, pleasant, effective, and scientific method for the treatment of obesity, resulting from and based on many years of scientific research in the United States and abroad;

The facts being that thyroid, popularly believed of great value for the reduction of fat, is a powerful agent liable to produce radical, harmful changes to the users, that the preparation is not the result of any scientific research, knowledge, or accuracy, and can not be used safely by any purchaser without previous consultation with a competent medical adviser, or without discomfort, inconvenience, or dangerous or harmful results, except under the direction of such a person, will not act with uniformity in all cases, or be generally effective for reducing excess flesh without imperiling the health of a substantial number, and, used without further information or advice than furnished by it, is liable to create the laxative habit in the user thereof and to have an injurious effect upon the person concerned;

With the tendency and capacity to mislead and deceive the purchasing public into believing the preparation in question to constitute a scientific and accurate treatment for reducing, resulting from many years of scientific research, and to afford a safe, convenient, effective, and dependable remedy for use by any and all purchasers, and to induce the purchase thereof in such beliefs:

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

Mr. E. J. Hornibrook for the Commission.

Stevenson, Butzel, Eaman & Long and *Mr. R. M. Connor*, of Detroit, Mich., and *Mr. Robert E. Cantwell, jr.*, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Michigan corporation engaged in the manufacture of a medical preparation in the form of tablets, to be taken internally, for the removal of excess flesh and in the sale thereof under the name "Marmola Prescription Tablets" in wholesale lots to wholesalers and jobbers in the several States (aside from the sale of a small portion at retail), and with office and principal place of business at Detroit, with advertising falsely or misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth in the sale of said pretended obesity cure, alleged in the advertisements thereof and in a pamphlet packed and shipped to retailers with each box thereof, to be effective by reason, principally, of the inclusion among its ingredients of "Desiccated Thyroid,[1]" in its advertisements in newspapers, magazines, periodicals, and other publications of general circulation in the United States and the several parts thereof and in the matter upon the labels of the containers or in circulars enclosed therein, states and asserts (1) that the preparation of its said compound "is the result of, and is based upon, scientific research, knowledge and accuracy; (2) that its medical properties are safe, pleasant and effective in their action in the removal of excess flesh from the human body; (3) that the same may be usesd by purchasers thereof without discomfort, inconvenience or danger of harmful results to the physical health of such users of said compound; (4) and that said Marmola is a scientific method for the treatment of obesity and is based on many years of scientific research in the United States of America and in foreign lands."

In truth and in fact, however, as alleged by the complaint, "scientific research has not so far progressed that any person or persons may be able to prescribe or prepare for use in said tablets so to be sold to the public, an amount of said thyroid, or a combination of other ingredients with said thyroid":

(1) That will act with a reasonable degree of uniformity upon the bodies of all users thereof;

(2) That will be sufficient to be generally effective for the reduction of the excess flesh of the users thereof, without imperiling the health of a substantial portion of such users and without danger of bringing to such substantial portion injurious results to physical health requiring the service of skillful physicians successfully to neutralize or counteract such injurious results;

(3) That may safely be used by any individual purchaser thereof, without previous consultation with a competent medical adviser and reliance upon his continuing observation and advice.

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[1] As set forth in the complaint the ingredient thyroid "is made from the thyroid gland of food animals and is claimed by respondent and popularly believed to be of value and effectiveness in the reduction of the fatty portions of the human body."

It is the truth and a fact, and all physicians and other students of thyroid as a remedial agent are of the opinion, that:

(1) Thyroid, when introduced into the human body, is a powerful agent liable at all times to produce radical changes of conditions that will be harmful to the user thereof.

(2) Such harmful changes may safely be guarded against in any case only by the previous and continuing investigation, observation and advice of a competent physician.

(3) The use of thyroid for the reduction of excess flesh under the direction of a competent physician is fraught with possible injury and calls for constant professional observation, medical skill and care.

(4) The use indiscriminately by all purchasers of said tablets, without other information, guidance or advice than is furnished by respondent as aforesaid, can be made harmless and safe only by reducing the amount of said thyroid so used in said tablets so greatly as to be ineffectual as such remedial agent.

"In and throughout the several States of the United States," as alleged, "are many persons who are seeking some safe and dependable means whereby they may quickly and permanently rid their bodies of excess fat or of portions of the flesh which they now bear and of which they desire to be rid" and "said statements and representations so made by respondent in said advertisements, labels and pamphlets have the tendency and capacity to mislead and deceive the purchasing public into the belief that said compound as such remedial agent for the reduction of excess fat or other flesh", is a scientific method of treatment, the result of many years of scientific research in the United States and abroad and constitutes a safe, effective, and dependable remedy which may be used by all purchasers without inconvenience, sacrifice, or danger of harmful results to the health; all to the prejudice of the public and of respondent's competitors, "engaged in offering for sale, and selling, printed professional advice, books of information and instruction, and other methods and means and certain remedies and appliances for dissolving or otherwise removing excess flesh of the human body."

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision and the Commission having duly considered the record and being now fully advised in the premises makes this its report stating its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Raladam Co. is a corporation organized and existing under and by virtue of the laws of the State of Michigan, having been incorporated in January, 1927, and maintains its office and principal place of business in the city of Detroit, State of Michigan.

PAR. 2. Respondent is engaged in the sale of an alleged obesity cure, or remedy, which it has named Marmola, and which it sells under the trade name, Marmola Prescription Tablets. The retail price of Marmola is $1 per box. Respondent does an annual business in the sale of Marmola of $600,000. Marmola is manufactured for respondent by Parke, Davis & Co., of Detroit, under a formula furnished and owned by the respondent. It is put up in tablet form and is for use by human beings, the same being taken into the mouth and swallowed.

PAR. 3. The respondent offers for sale and sells Marmola Prescription Tablets to wholesale druggists and jobbers in every State of the United States, and such wholesale druggists or jobbers resell the same to retail druggists located in the various States of the United States, who in turn resell the same to the consumers or purchasers thereof. The respondent causes the said Marmola Prescription Tablets to be transported from the city of Detroit in the State of Michigan, into and through other States of the United States to the purchasers thereof at their respective points of location or places of business.

PAR. 4. The respondent in the course and conduct of its business as aforesaid, is in competition with other persons, partnerships, or corporations in and throughout the several States of the United States, who are likewise engaged in offering for sale and selling printed professional advice, books of information and instruction, and other methods, means, remedies and appliances for dissolving or otherwise removing excess flesh of the human body.

PAR. 5. Respondent in the course and conduct of its business causes its Marmola Prescription Tablets to be put up in a cardboard container upon which said container appear the words "Marmola is recommended as a treatment for the reduction of excessive fat", and among other words and figures upon said container appear, under the heading, "Directions", the following:

Take one tablet after each meal and at bedtime with enough water to swallow easily. If preferred, tablet may be broken into pieces before taking. This treatment should be faithfully taken as directed from 60 to 90 days in order to obtain the best results.

Inclosed in the package in which Marmola Prescription Tablets reach the consuming public is the formula from which Marmola is made. Among the ingredients of Marmola are thyroid and three powerful laxatives called phenolphthalein, cascara sagrada, and phytolacca. Each tablet contains one-half grain of thyroid. If one follows the directions contained inside and outside the package he will consume two grains of thyroid per day. Respondent's principal claim for the medicinal quality and virtue of Marmola is based on the fact that said tablets contain said thyroid, which ingredient is made from the thyroid gland of food animals and is claimed by respondent and popularly believed to be of great value and effectiveness in the reduction of the fatty portions of the human body.

PAR. 6. Respondent in the aid of selling said Marmola causes the same to be advertised in newspapers, magazines, periodicals, and other publications of general circulation in the United States and the several States thereof, and in printed matter upon labels attached to or in circulars wrapped about or folded within the box in which such tablets are finally packed, and in printed matter attached to cartons or other containers used in packing and shipping same to purchasers.

In the aforesaid advertisements the respondent causes to be set forth the following representations:

1. That the preparation of said Marmola is the result of, and is based upon, scientific research, knowledge, and accuracy;

2. That its medical properties are safe, pleasant, and effective in their action in the removal of excess flesh from the body;

3. That the same may be used by purchasers thereof without discomfort, inconvenience, or danger of harmful results to the physical health of the users of such compound;

4. That the said Marmola is a scientific method for the treatment of obesity and is based on many years of scientific research in the United States of America and in foreign lands.

PAR. 7. Each and all of the representations mentioned in paragraph 6 hereof are false and misleading in—

1. That the preparation of said Marmola is not the result of, nor is it based upon scientific research, knowledge, or accuracy;

2. Its medical properties are not safe, pleasant, and effective in their action in the removal of excess flesh from the human body unless administered under the direction of a competent medical adviser.

3. The same may not be used by purchasers thereof without discomfort, inconvenience, or danger of harmful results unless administered under the direction of a competent medical adviser.

4. Marmola is not a scientific method for the treatment of obesity and is not based on many years of scientific research in the United States of America and in foreign lands, or upon any scientific research;

5. Marmola will not act with uniformity upon the bodies of all users thereof;

6. Marmola will not be generally effective for the reduction of the excess flesh of the users thereof without imperiling the health of a substantial number of such users;

7. Marmola may not be safely used by any purchaser thereof without previous consultation with a competent medical advisor and under his continuing observation and advice;

8. The thyroid in Marmola when introduced into the human body is a powerful agent liable at all times to produce radical changes of conditions that will be harmful to the users thereof;

9. Such harmful changes may be safely guarded against in any case where Marmola is taken only by the previous and continuing investigation, observation, and advice of a competent physician;

10. The use of said Marmola Tablets for the purpose of reducing or removing excess flesh, without further information, guidance, or advice than is furnished by respondent, is liable to have an injurious effect upon the person so using it.

11. The use of Marmola as directed, i. e., 4 tablets a day for a period of 60 to 90 days would be likely to create in the user thereof what is known in medical science as the "laxative habit".

PAR. 8. In and throughout the several States of the United States are many persons who are seeking some safe and dependable means whereby they may quickly and permanently rid their bodies of excess fat or portions of the flesh which they now bear and of which they desire to be rid. Said statements and representations made by respondent in said containers, directions, advertisements, labels, pamphlets, and other printed matter as described in paragraphs 5 and 6 hereof, have the tendency and capacity to mislead and deceive the purchasing public into the belief that said Marmola as such remedial agency for the reduction of excess fat or other flesh is a scientific and accurate method of treatment; is the result of many years of scientific research in the United States and foreign countries; is a safe, effective, and dependable remedy that may be used by any and all purchasers thereof without inconvenience, sacrifice, or danger of harmful results to physical health, and have the capacity and tendency to induce users thereof to purchase same in such belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That respondent Raladam Co., its officers, agents, representatives, and employees, in connection with the advertising, offering for sale and sale in commerce among the several States of the United States of the product " Marmola ", do cease and desist from directly or indirectly:

1. Representing that "Marmola" is a scientific and accurate method for treating obesity;
2. Representing that the formula from which "Marmola" is made is a scientific formula;
3. Representing that "Marmola" is the result of scientific research;
4. Representing that " Marmola " can be taken without the advice and direction of competent medical authority as a safe and harmless remedy in the treatment of obesity;

5. Representing that "Marmola" can be taken with no harmful result to physical health without the advice and direction of competent medical authority.

6. From representing "Marmola" as a remedy for the treatment of obesity unless such representation is accompanied by a statement that "Marmola" can not be taken with safety to physical health except under the direction and advice of competent medical authority.

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

IN THE MATTER OF

HOOSIER MANUFACTURING COMPANY, UNION SOAP COMPANY, CRESCENT SOAP COMPANY, C. A. WOCHER, ROBERT WANDS, AND ROSE K. WANDS

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

Docket 1480. Complaint, Oct. 10, 1927—Decision, Apr. 25, 1929

Where three corporations, operated as a common enterprise by as many individuals, the stockholders, officers, and directors thereof; and said individuals, engaged in the manufacture of soap containing nearly 2 per cent free alkali and 20 per cent sodium silicate and, by reason of said ingredients' effect upon the skin, not suitable for toilet or bath, and in the sale thereof, under different brand names and designations, to house-to-house peddlers and other vendees, in three cake lots, in small, fancy paper boxes,

(*a*) Conspicuously labeled the aforesaid boxes with the legend "FOR THE TOILET BATH SHAMPOOING", "BATH AND SHAMPOO SOAP", or "FOR THE TOILET BATH SHAMPOO" and offered and sold their product as and for a toilet and bath soap, with the capacity and tendency to mislead and deceive substantial numbers of the purchasing and consuming public into believing said product to be intended and suitable for such use, with no injurious effect, and to cause them to purchase the same in such belief; and

(*b*) Conspicuously labeled wrappers and containers of large quantities of their soap containing no product derived from the fruit of the lemon tree "NATURE'S LEMON-COCOA SOAP" and so sold the same, with the capacity and tendency to deceive and mislead substantial numbers of the trade and consuming public in respect of the composition thereof, and to cause them to purchase the same as and for a soap containing as a substantial ingredient a product derived from said fruit;

With the capacity and tendency to unfairly divert trade and business from their competitors, and to the injury and prejudice of the trade, consuming public, and said competitors:

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

Mr. Henry Miller for the Commission.
Mr. Chester L. Zechiel, of Indianapolis, Ind., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Hoosier Manufacturing Co., Union Soap Co., and Crescent Soap Co., Indiana corporations, and respondents C. A. Wocher, Rose K. Wands, and Robert Wands, president, vice president, and secretary and treasurer of the aforesaid corporations and owners of all the stock thereof, with offices at Indianapolis, with naming products misleadingly, misbranding or mislabeling and misrepresenting prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged in a common enterprise to produce "certain cheap products resembling soap" and designated as such, and to sell the same to purchasers and peddlers among the several States, and in pursuance of their joint undertaking so to do "and thereby mislead and deceive a portion of the public among the several States as to the origin, quality, nature, and ingredients of such products", sell their said products under brands, names, and labels which are false and deceptive and tend to deceive purchasers and consumers among the several States, said brands, names, and labels including the following:

Products designated as toilet soaps are called "Natures Lemon Cocoa" and "Marvola Vegetable Cream" and "Rosemary Scented", together with the legends on the cartons (in the case of the first two brands, respectively) "Pure Vegetable Oil Combined with Mineral Salts" and "Combination of Pure Vegetable Oil and Mineral Salts", notwithstanding the fact that none of said products was composed of lemon cocoa, the ingredients thereof were not pure vegetable oils combined with mineral salts, and none of said products, which were cheap imitations of soap and not entitled to be called soap, contained either lemon or cocoanut oil or consisted of a combination of pure vegetable oil and mineral salts.

Cheap products (produced by respondent Hoosier Manufacturing Co. in pursuance of an understanding with the other respondents and for a time sold and distributed by respondents Crescent Soap Co. and Union Soap Co.—which do no manufacturing—under their respective names, but later distributed only by said last named company) resembling soap, designated as such and given names and brands which are deceptive and tend to mislead and deceive purchasers and a portion of the public as to the origin, nature, and ingredients thereof; some of said products being misdescribed and misrepresented through use of the phrase "Toilet Soap" on the wrappers, cartons and containers thereof, though containing from 50 per cent to 60 per cent of ingredients other than toilet soap and ingredients not usable as toilet soaps without injury to the users.

Products as laundry soaps sold under the brand names "Foam White Family" and "Savetyme" and in cartons or containers which mislead and deceive and tend to result in deception to purchasers and consumers, said products being cheap imitations of soap and not entitled to be so called.

Respondents further, as charged, sold products (made by respondent Hoosier Manufacturing Co., as above set forth, for the others) not suitable for toilet, bath, and shampoo, nor a combination of pure vegetable oil and mineral salts, but containing in some cases from 50 per cent to 60 per cent of ingredients other than soap ingredients and not susceptible for use as a toilet soap without injury to the user, falsely designated as toilet soaps, and in wrappers, cartons, and containers, some of which contain such statements as "For Toilet, Bath and Shampoo"; "Combination Price 75¢"; "Crescent Soap Company", the fact being, in addition to those above set forth, that said price was fictitious and much in excess of the contemplated actual price of the product; all with the tendency to deceive purchasers as to the nature, use, price, and producer thereof.

The manufacture and sale, as charged, by respondents of their aforesaid products, as above set forth, were done by them "in pursuance of a joint undertaking or agreement to affect and influence interstate trade and commerce. The brands, names, and labels on the wrappers, cartons, and containers of the products manufactured and sold by the respondents were devised, intended and used to affect and influence the sale among the several States of soaps suitable for toilet and laundry purposes, and such brands, names, and labels did affect and influence the sale among the several States of such soaps. The brands, names, labels, and printed statements used by the respondents as set forth in this complaint, were intended to mislead and deceive purchasers and portions of the consuming public, and such statements tended to mislead and deceive as set forth herein, and in divers other respects. The acts of the respondents, and each of them, as stated in this complaint, constitute unfair methods of competition in commerce within the meaning of the act of Congress herein mentioned."

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents Hoosier Manufacturing Co., Union Soap Co., Crescent Soap Co., C. A. Wocher, Robert Wands, and Rose K. Wands, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances herein and filed answer to said complaint, hearings were had at which testimony was taken and evidence introduced by counsel for the Commission in support of the allegations of the complaint and by counsel for respondents in opposition thereto before an examiner of the Commission theretofore duly appointed. Said evidence, including a transcript of the testimony taken, was filed of record in the office of the Commission; and thereafter briefs were submitted by counsel for the Commission and for the respondents, and oral argument before the Commission was waived by counsel for the respondents. Thereupon this proceeding came on regularly for decision, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Hoosier Manufacturing Co., Union Soap Co., and Crescent Soap Co. are corporations severally organized and existing under and by virtue of the laws of the State of Indiana. Respondents C. E. Wocher, Robert Wands, and Rose K. Wands are individuals and are the stockholders, officers, and directors of each of said corporate respondents, respondent Wocher being president, respondent Robert Wands being secretary and treasurer, and respondent Rose K. Wands being vice president of each of said corporate respondents. Pursuant to a common understanding and agreement among themselves, respondents are and for more than three years last past have been continuously engaged, as hereinafter set forth, in carrying on and conducting, as a joint undertaking and enterprise, the business of manufacturing, selling and distributing soap to itinerant house-to-house peddlers and other vendees throughout the several States of the United States, jointly maintaining and operating in said business, and for the business of each of them, but one set of employees, manufacturing and other business equipment and a single office and place of business in the city of Indianapolis, Ind. They advertise and offer said soap for sale to their customers and prospective customers throughout the United States, and thereby many members of the purchasing public are from time to time induced to purchase, and they do purchase, said soap from respondents, and cause their purchase orders and remittances therefor to be transmitted and delivered from their respective points of location in States other than the State of Indiana to respondents at their aforesaid place of business in Indianapolis, Ind. Upon receipt of and pursuant to such purchase orders respondents complete the respective sales and deliveries of said soap by causing the soap so sold to be transported in commerce from their place of business in Indianapolis, Ind., through and into other States of the United States to the respective purchasers thereof in such other States. In so conducting said business respondents are, and at all times mentioned herein have been engaged in interstate commerce, and in direct, active competition with many persons, partnerships, and corporations engaged in the business of selling and distributing soap in and among the several States of the United States.

PAR. 2. Exclusive of a small percentage of coloring matter and perfumery, said soap sold and distributed by respondents consists substantially of the following ingredients in the proportions named:

	Per cent
Water	61.30
Anhydrous soap	14.00
Free alkali as sodium hydroxide	0.65
Free alkali as sodium carbonate	0.95
Salt from total chloride	3.01
Sodium silicate	19.75

In manufacturing and preparing said soap for the market respondents cause the same to be molded into small cakes of the customary size, and each cake to be wrapped in paper and packed in three-cake lots in small, fancy paper boxes. Said soap is offered for sale, sold and distributed by respondents and by their customers to the purchasing and consuming public under several different brand names and designations, with the wrappers and boxes of each brand bearing in conspicuous letters the respective designation and name used. In addition to the respective brand name used and other descriptive terms, each three-cake box of said soap also carries in large and conspicuous print one of the following phrases:

FOR THE TOILET BATH SHAMPOOING
BATH AND SHAMPOO SOAP
FOR THE TOILET BATH SHAMPOO

The soap, packed and branded as aforesaid is displayed, offered for sale, sold and distributed by respondents and by their vendees to the purchasing and consuming public as and for toilet and bath soap; whereas, in truth and in fact, said product is not suitable for use as soap for the toilet and bath, and when used as such has a tendency to produce a caustic, injurious, or deleterious effect upon the human body because of the presence in said soap of aforesaid free alkali and sodium silicate in the proportions hereinbefore set forth. Because of their deleterious effect upon the human skin, free alkali or sodium silicate are not used or found in the proportions used by respondents as aforesaid, or in any other substantial proportions, in soap generally and widely marketed in the United States by the soap industry for use upon the human body as toilet or bath soap.

PAR. 3. Respondents' use of the words "toilet" and "bath" and the sale and distribution of said soap as and for toilet and bath soap, as above stated, is deceptive; has and had the capacity and tendency to mislead and deceive substantial numbers of the purchasing and consuming public into, and to cause them to purchase said soap in and because of, the erroneous belief that said product as marketed is intended and suitable for use as soap for the toilet and bath, and that when used as such will not injure or have any deleterious effect upon the human body.

PAR. 4. For more than two years last past respondents caused and still cause to be sold and distributed as hereinbefore set forth to the purchasing and consuming public large and substantial quantities of their said soap described in paragraph 2 hereof under the brand name, designation, and description of, and as and for, "NATURE'S LEMON-COCOA SOAP"; and in so doing respondents cause said brand name to be displayed in conspicuous print upon aforesaid containers and wrappers in which the soap is marketed by them and by their deal-vendees. Such use by respondents of the word "lemon" in said name "NATURE'S LEMON-COCOA SOAP" is deceptive, has and had the capacity and tendency to deceive and mislead substantial numbers of the trade and consuming public into, and to cause them to purchase said soap in and because of, the erroneous belief that it contains as a substantial ingredient a product derived from the fruit of the lemon tree; whereas, in truth and in fact no such product is contained in said soap.

CONCLUSION

The acts and practices of respondents in the sale and distribution of said soap as and for toilet and bath soap and as "NATURE'S LEMON-COCOA SOAP" have the capacity and tendency to unfairly divert trade and business from respondents competitors, and said acts and practices, under the conditions and circumstances set forth in the foregoing findings as to the facts, are to the injury and prejudice of the trade, consuming public, and respondents' competitors, are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and other purposes".

ORDER TO CEASE AND DESIST [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and the Commission having heretofore, to wit, on April 25, 1929, entered and served its order upon respondents requiring them to cease and desist from certain practices; and it appearing to the Commission upon reconsideration of the matter that the said order should be modified in certain respects,

Now comes, therefore, The Federal Trade Commission under and by virtue of the provisions of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and hereby orders that the order to cease and desist, heretofore made in this proceeding on the 25th day of April, 1929, be and the same is hereby modified so that said modified order shall read as follows:

It is now ordered, That respondents, their agents, representatives, servants, and employees cease and desist from the following acts and practices, in connection with or in aid of, offering for sale or selling such product in interstate or foreign commerce, to wit;

(1) From using the word "toilet" or the word "bath" with which to advertise, describe, brand, label, or otherwise designate or refer to any soap that is composed of the particular ingredients specifically set forth in paragraph 2 of the said findings as to the facts herein, used in the same proportions as set forth in said paragraph 2, or of substantially the same ingredients used in substantially the same proportions.

(2) From using the word "lemon" with which to advertise, describe, brand, label, or otherwise designate or denote a constituent of any soap unless such soap shall contain in substantial proportions an ingredient derived from the fruit of the lemon tree.

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

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[1] Modified order made as of Jan. 13, 1930.

IN THE MATTER OF

GEORGE M. RUBINOW, AN INDIVIDUAL DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF RUBINOW EDGE TOOL WORKS

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

Docket 1342. Complaint, May 4, 1926.—Decision, May 1, 1929

Where an individual engaged in the manufacture of hammers, hatchets, axes, and similar hand tools of malleable iron, and in the sale thereof to wholesale dealers, described said tools in catalogues and other trade literature as "Warranted Cast Steel" and "Cast Steel" and so labeled and sold the same to customer dealers, by whom said tools were designated as "steel" in catalogues to customers, and sold thus labeled to the purchasing public; with the effect of misleading and deceiving the trade and consuming public into believing the metal parts thereof to be composed of steel, with its recognized different characteristics and understood greater tool value, and with the capacity and tendency so to do and to induce the purchase thereof in such belief, and with the result of placing in the hands of others the means of consummating a fraud through such use of the aforesaid designations, and of diverting business from and otherwise injuring and prejudicing competitors dealing in products the metal parts of which are steel, and those dealing in products of which said parts are not so composed, and with the tendency so to do:

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

Mr. William A. Sweet for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at Newark, N. J., in the manufacture and sale of tools, with misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, for about five years last past has conspicuously labeled certain tools made by him and containing no steel but composed, as to the metal parts thereof, of metal other than steel, with various legends and statements containing the words "Steel," including such legends and statements as "Cast Steel," "All Steel" and "New Process Converted Steel," and sells said tools so labeled to wholesalers, by whom the same are sold, thus labeled, to retailers in various States, and, by said retailers, still thus labeled, to the consuming public, and further, in his advertisements in trade journals of general circulation among the hardware and allied trades throughout the United States and certain sections thereof and in catalogues, price lists, pamphlets, leaflets, and other trade literature distributed among wholesale and retail dealers and the consuming public, sets forth many false and misleading statements and representations to the effect that his said tools are made of "Cast Steel," "All Steel," and "New Process Converted Steel," and others of similar import.

The use by respondent, as charged, of said legends and statements, and such false and misleading statements and representations by him, as above set forth, "have the capacity and tendency to and do cause many wholesale and retail dealers and many of the consuming public to purchase respondent's said tools in the belief that the metal parts thereof are composed of steel," and such acts and practices tend to divert business from and otherwise to injure and prejudice competitors, many of whom sell tools, the metal parts of which are composed of steel, and who rightfully and lawfully so represent, and others of whom sell tools, the metal parts of which are not steel, but other metal, and who in nowise misrepresent such parts of their tools as steel; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, George M. Rubinow, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act.

The respondent, having filed his answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondent before an examiner of the Federal Trade Commission duly appointed. Briefs were filed and oral arguments made on behalf of the Commission and of the respondent.

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

Findings as to the Facts

Paragraph 1. The respondent, George M. Rubinow, is, and has been for more than five years prior to the date of the service of the complaint herein, an individual doing business under the trade name and style of Rubinow Edge Tool Works with his principal place of business in the city of Newark, in the State of New Jersey.

PAR. 2. The respondent is, and has been during the times above mentioned, engaged in the business of manufacturing various hand tools, such as hammers, hatchets, axes, and similar tools, and in the sale thereof to wholesale dealers therein located in various States of the United States, other than the State of New Jersey, and in foreign countries, and has caused and still causes his said tools when so sold by him to be transported, in commerce, from his said place of business in the city of Newark, N. J., to, into and through said other States and to foreign countries to the purchasers thereof, wholesale dealers therein, located in said other States and foreign countries.

PAR. 3. During the times above mentioned, other individuals, firms, and corporations, located in various States of the United States, have been engaged in the manufacture of various hand tools, such as hammers, hatchets, axes, and similar tools, which they have sold and delivered and still sell and deliver to dealers therein, located in various States of the United States. The respondent, during the times aforesaid, was, and still is, in competition in commerce in the sale of his said tools with said other individuals, firms, and corporations.

PAR. 4. The respondent buys the metal parts of his said tools in the forms of rough castings in the desired shapes. These castings are composed of malleable iron. In the process of the manufacture of his tools by respondent, these castings are first ground and the edges of the hatchets and axes are sharpened. The edges of the hatchets and axes and the heads of the hammers are then tempered by heating them in molten lead to a temperature of from 1,500° to 1,600° for from five to ten minutes and then cooling them in oil. The respondent completes the tools by putting in the handles and polishing the metal parts.

PAR. 5. Steel and malleable iron are distinct and separate commercial products and are produced by different processes. The trade and purchasing public recognize a distinction between steel and malleable iron and understand that tools made from steel have different characteristics and are better and more serviceable and valuable than tools made from malleable iron.

Malleable iron is produced by subjecting cast-iron castings to an annealing process, which changes the carbon in the cast iron from the combined form to the graphitic form; distributes said carbon in small nodules throughout the structure; and makes the brittle cast iron comparatively ductile. The carbon content of malleable iron is high and almost entirely in the graphitic form. Malleable iron is brittle; will not retain a cutting edge when used for edged tools, and will readily chip.

Steel is produced generally by the Bessemer, crucible, open hearth, or electrical processes. These processes are refining processes, which burn out the impurities in the original pig iron, the product resulting from smelting the iron ore, reduce the carbon content, leave the carbon in the resulting metal almost wholly in the combined form, and produce a finished product which is initially malleable. Cast iron, the basis from which malleable iron is produced, is not formed during the processes for producing steel. The carbon content of steel is lower than the carbon content of malleable iron and is wholly in the combined form, that is to say, the carbon in the metal is combined with the ferrite and is not distributed throughout the structure in the form of small nodules of graphite. Steel is tough, will retain a cutting edge when used for edged tools, and will not readily chip.

The material in the metal parts of respondent's tools has the qualities and characteristics of malleable iron and not those of steel. It is high in carbon content, almost all of which is in the graphitic form; it is very brittle; will not retain a cuttin edge; and will chip readily. These qualities and characteristics are typical of malleable iron and not of steel. The rough castings from which respondent's tools are made are composed of malleable iron and the tempering process to which the respondent subjects the rough malleable iron castings as described in paragraph 4 hereof, does not change the malleable iron of which they are composed to steel. The metal parts of respondent's said tools are composed of malleable iron and not of steel.

PAR. 6. In connection with the sale of his said tools, respondent has caused, and still causes, descriptions of the same, containing the words and phrases "Empire—These Hatchets are Warranted Cast Steel," "Warranted Cast Steel," and "Cast Steel," to be inserted in catalogues and other trade literature issued by him and distributed among his customers and prospective customers. Respondent's customers in turn issue and distribute to their customers catalogues in which they use the word "Steel" to describe and designate tools purchased from respondent. The respondent uses the word "Steel" in and upon labels, which he affixes to his said tools, and with said labels so affixed, sells and delivers said tools to his customers, who in turn sell said tools so labeled to the purchasing public. The respondent has thus placed in the hands of others the means of consumating a fraud.

PAR. 7. The use by the respondent of the word "Steel" in catalogues, circulars, or other advertising matter, or as a trade brand or designation upon labels affixed to his said tools as hereinbefore set forth, has the capacity and tendency to and does mislead and deceive the trade and consuming public into the belief that the metal parts of said tools are composed of steel and to cause the trade and purchasing public to purchase respondent's said tools in that belief.

PAR. 8. There are among the competitors of respondent referred to herein those who sell hammers, hatchets, axes, and similar tools, the metal parts of which are composed of steel. There are others of said competitors who sell tools, the metal parts of which are not composed of steel and are composed of a metal other than steel, and respondent's acts and practices as hereinbefore set forth tend to and do divert business from and otherwise injure and prejudice such competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, George M. Rubinow, his agents, representatives and employees, cease and desist:

From the use of the words "Cast Steel" or the word "Steel" in the designation of, or in the advertising, branding, labeling, or description of tools offered for sale or sold in interstate or foreign commerce, unless the metal parts of tools so designated, labeled and described are composed of steel.

It is further ordered, That the respondent, George M. Rubinow, shall within 60 days after the service upon him 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 above order to cease and desist.

IN THE MATTER OF

WEST COAST THEATRES, INC., ET AL.

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

Docket 1319. Complaint, May 29, 1925—Decision, May 8, 1929

Where a corporation engaged in the business of owning, leasing, and operating motion picture theatres in certain towns and cities, owning or controlling more than 100 theatres in the southern portion of the State concerned, and strongly interested and in a position of power, through exclusive franchise rights and otherwise, in distribution and production of pictures as well as exhibition thereof, and dominating, if not monopolizing, the motion picture theatre business in the territory concerned (and especially in the first run theatre field), through (1) construction of theatres, purchase thereof or interests therein, induced by threats of competitive construction or otherwise, (2) contracts apportioning territory or otherwise frankly restricting or precluding competition, and (3) affiliations and arrangements with others in the industry; and other concerns and individuals engaged therein and associated with it through stock ownership, agreements, or other community of interest; in pursuance of a combination and conspiracy to prevent and restrain producers and distributors of motion pictures in other States from leasing their films to exhibitor competitors and from shipping the same into the State in question and delivering them to such competitors, and to restrain and prevent competition among themselves and with other exhibitors in said State, in negotiating for and leasing films to be shipped from other States and delivered to such exhibitors,

(*a*) Compelled motion picture producers and distributors, by withholding patronage and threats thereof, to—

(1) Discontinue dealing with their exhibitor competitors and to furnish films to theatres owned or controlled by them at competitive points;

(2) Withhold certain pictures from said competitors, with the intent and effect to preventing such competitors from obtaining an adequate and necessary supply of suitable films for the operation of theatres in competition with them;

(3) Refrain from leasing to competing theatres for subsequent runs, films theretofore previously displayed in their own theatres, until after the lapse of so long a period that said films had become practically valueless for exhibition purposes; and

(4) Lease films to them at prices substantially lower than competitors would have been willing to pay therefor if given a contemporaneous opportunity to lease the same; and

(*b*) Leased more films for certain of their theatres in competition with independent exhibitors, than could be exhibited therein, with the intent and effect of preventing the competitors concerned from securing a supply of films for their theatres;

With the result that competition in the sale, purchase and exhibition of motion picture films moving in interstate commerce for exhibition in the State concerned was lessened substantially, interstate commerce or trade therein was obstructed and hindered and the channels of such commerce were closed, to the injury of exhibitors and distributors, and of the public, denied the benefit of free competition in the motion picture trade:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. Jacob Samuels, of San Francisco, and *O'Melveny, Tuller & Myers*, of Los Angeles, by *Mr. Walter K. Tuller* and *Mr. James C. Sheppard* (*Mr. A. Dal. Thomson*, of San Francisco, of counsel), for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent West Coast Theatres, Inc., engaged in the owning or leasing and operating of motion picture theatres in California, and, as an incident to such business, in leasing films from producers and distributors in States other than California, and the various other respondents joined herein, largely also likewise thus engaged, as hereinafter set forth, with combining and cooperating to cut off competitors' sources of supply, of motion picture films, and to restrain and prevent competition in price thereof, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents include six California corporations, a partnership, and five individuals, joined as such, namely, A. L. Gore, Michael Gore, Sol Lesser, Adolph Ramish, and Dave Bershon. The corporations referred to are the West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, Venice Investment Co., Hollywood Theatres, Inc., All Star Feature Distributors, Inc., Educational Film Exchange, and Principal Pictures Corporation. All except the last three are engaged in the owning or leasing, or building or acquiring and operation of motion picture theatres in various California cities and towns, as is the partnership referred to, namely, Turner, Dahnken & Langley, composed of H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston. The three corporate respondents not included among those engaged in the operation of motion picture theatres, as above set forth, namely, All Star Feature Distributors, Inc., Educational Film Exchange, and Principal Pictures Corporation are engaged in distributing and/or producing and distributing motion picture films and the leasing thereof to exhibitors in the various States.[1]

Respondent West Coast Theatres, Inc., as alleged, with principal office and place of business in Los Angeles, owns more than 90 per cent of the stock of West Coast Theatres, Inc., of Northern California, with principal office in San Francisco, engaged in business as above set forth in California and particularly in approximately the northern half thereof, said last named corporation, in turn, owning one half or more of the stock of several corporations owning theatres in various California towns and cities; owns 50 per cent or more of the stock of the Venice Investment Co. and Hollywood Theatres, Inc., engaged as above set forth, the latter principally in Hollywood and Los Angeles; and owns all of the stock of the All Star Feature Distributors, Inc., 49 per cent or more of that of the Educational Film Exchange, and 60 per cent or more of that of the Principal Pictures Corporation. It further has a contract with the firm of Turner, Dahnken & Langley, above referred to, under which the two organizations, to avoid and prevent competition theretofore existing in several California towns and cities, "acquired equal interests in certain theatres and theatre holding corporations then in competition with one another, and mutually agreed to refrain from acquiring or operating theatres in specified territories where the other party to the agreement was already operating theatres, and to refrain from acquiring or building any theatre in any new territory without first giving the other party to the agreement an opportunity to acquire a 50 per cent interest in any such new enterprise at the actual cost thereof."

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[1] Allegations of the complaint with reference to the activities of the exhibitor respondents in leasing and contracting for motion picture films follow:

"In the prosecution of their respective businesses, all of the respondents herein, except All Star Feature Distributors, Inc., Educational Film Exchange, and Principal Pictures Corporation, are engaged in leasing from various producers and distributors of motion picture films located in other States of the United States than the State of California, and principally in the State of New York, motion picture films for exhibition in the respective theatres owned or leased, and operated, or controlled, by said respondents. All of said respondents are in competition with other individuals and corporations, who are also engaged in the operation of motion picture theatres in various towns and cities in California where respondents or one or more of them have theatres, and in negotiating for and leasing motion picture films from the said motion picture producers and distributors in New York and other States of the United States to be shipped into the State of California and exhibited in their respective theatres. The term "exhibitors" as hereinafter used refers to said respondents and their said competitors engaged in the operation of theatres and the leasing and exhibition of films as aforesaid. The contracts or agreements whereby said motion picture films are leased are in some instances made directly between said producers and/or distributors at their home offices in the several States and said exhibitors in California; and in other instances are made between said exhibitors and local agents of said producers and distributors in California, subject to approval by the home offices of said producers or distributors located in said other States of the United States. In all instances they contemplate and result in the shipment of said films from said other States into the State of California, and the delivery thereof to exhibitors through branch offices of said producers or distributors located in San Francisco or Los Angeles in the State of California."

Said respondent, West Coast Theatres, Inc., further, as alleged, in addition to its interest in respondent corporations, as above named, "has a substantial ownership and in many cases a controlling interest in a number of other corporations and companies owning and operating motion picture theatres both directly, and through its interests in the above named respondent corporations; it also through its own officials and agents conducts the negotiations for and the actual leasing of motion picture films from the various producers and distributors thereof for use in the several theatres owned or controlled and operated by it and by the various corporations and companies in which it holds aforesaid interests. It also conducts the negotiations for and the leasing of motion picture films for a large number of theatres in which it has no financial interest, through contracts or understandings with the owners of such theatres."

Respondents, as alleged, "individually and collectively operate or control the operation of theatres and the leasing of motion picture films for more than 100 theatres in thirty or more of the largest cities and towns in the State of California, including all or nearly all of the most lucrative cities and towns for the motion picture industry," and, in the aggregate operate and control in the larger and more lucrative towns and cities, for which they lease motion picture films, first run theatres exceeding in number such theatres in said cities and towns, and in other cities and towns of at least equal size in California, in the aggregate operated and controlled by their competitors and for which said competitors lease motion picture films. "The influence and power which respondents are thus able to and do exert upon the business of leasing and transporting motion picture films into the State of California from other States is so great that the respondents can by extending their patronage to any producer and/or distributor so leasing and transporting motion picture films, generally enable such producer and/or distributor to enjoy a successful and lucrative business in the State of California, and can by withholding such patronage prevent him from securing a successful and lucrative distribution for his said films or any of them in said State." [3]

[3] Allegations of the complaint more particularly relating to the "first run" and "repeat run" houses in this connection, are as follows:

"Motion picture theatres are divided into two classes, which are commonly known as 'first run' and 'repeat run' houses. The first run theatres are those in which occur the initial exhibition of pictures in their respective territories or localities. All others are repeat run houses. The successful distribution of a motion picture in a given territory is dependent largely upon the result of its showing in the first run theatres in that territory. This is due principally to two reasons: (a) Because much higher prices are generally commanded, and much greater crowds are attracted, by the initial exhibition of a new production than by subsequent exhibitions; and (b) because exhibitors who operate first run theatres in nearby territories and those who operate repeat run theatres in the same territory, are to a large extent governed in their choice of motion picture films for their theatres by the result of their initial showings in such first run theatres."

Respondents, as charged, engaged and situated as above set forth, and but for the things charged herein naturally in free and unrestrained competition with one another and others,[8] for a period of more than five years last past have "combined and cooperated with each of the other respondents named herein, and all of said respondents have combined and cooperated among themselves for the purpose of (1) hindering, restraining, and preventing said producers or distributors of motion picture films in other States from leasing their said films to said competitors of respondents or any of them and from shipping said films into the State of California and delivering them to said competitors, and (2) restraining and preventing competition among the respondents and between respondents and other exhibitors in the State of California in negotiating for and leasing motion picture films to be shipped from other States and delivered to said exhibitors respectively in the State of California as aforesaid. In pursuance of and to carry out said mutual purposes respondents and each of them have done and still do the following acts and things":

(*a*) Seek by threats of withholding patronage and by actually withholding patronage to coerce and compel, and coerce and compel such motion picture producers and distributors to—

(1) "Discontinue dealing with competitors of respondents and to furnish their films to respondents' theatres in all towns where respondents or any of them have competition.

(2) "Cease from dealing with particular competitors of the respondents, or to withhold certain pictures from said competitors from the purpose and with the effect of preventing said competitors from obtaining an adequate and necessary supply of suitable films for the operation of their respective theatres.

(3) "Withhold from, and refrain from leasing to competing theatres for repeat runs, films that have been previously run in respondents' theatres, until after the expiration of such a long time after such previous run that said films have become practically valueless for exhibition purposes.

(4) "Lease their films to respondents at prices arbitrarily fixed by respondents, without regard to the cost of production and distribution of said pictures, and at prices substantially less than the usual and normal exhibition value of said films in the respective

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[8] The allegation as to this states that "in the absence of the matters and things herein set out the respondents would naturally and normally be in free and unrestrained competition among themselves and with the other exhibitors hereinbefore described in negotiating for and obtaining the right to lease motion picture films from the said producers and distributors thereof and to exhibit same in the numerous cities and towns wherein two or more of said respondents or other exhibitors operate theatres."

towns and cities in which respondents exhibit them, and at prices substantially less than competitors of respondents would have been willing to pay for them in the same towns were they not prevented by said acts of the respondents from having an opportunity to lease said films."

(*b*) Lease films "which they can not use and do not expect to use, in order to prevent their exhibitor competitors from securing same for their theatres"; and

(*c*) Use "other cooperative and individual means to carry out and make effective their aforesaid purposes and undertakings."

The effect and result, as charged, "of the above alleged acts and things done by respondents have been and now are to unduly hinder and restrain interstate commerce between the said producers and distributors on the one hand and the said exhibitors on the other hand in the distribution, leasing, transportation into the State of California and delivery to exhibitors of motion picture films; to close to both said producers and distributors and said exhibitors certain of the outlets or channels through which they would otherwise be enabled to obtain trade and pursue their respective businesses; and to deprive them of the advantages which they would enjoy under the natural and normal conditions of competition which would exist among respondents and between respondents and the other exhibitors in the absence of the matters and things herein set out," and said acts and practices are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

The respondents having entered their several appearances and having filed their several answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for final hearing on the briefs submitted by counsel for the Commission and counsel for the respondents, 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 drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. West Coast Theatres, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, and maintaining its principal office and place of business in the city of Los Angeles in said State. Said corporation was organized in the year 1920 by Sol L. Lesser, A. L. Gore, M. Gore, Adolph Ramish, Thomas A. Morrissey, Goodwin Knight, and Frank S. Hutton. Since the year 1920 it has been engaged in the business of owning, leasing, and operating theatres for exhibition of motion pictures in cities and towns in the State of California. Its authorized capital stock under the original articles of incorporation was $2,000,000 divided into 200,000 shares with a par value of $10. Its officers in 1924 were Michael Gore, president; Sol Lesser, vice president; A. L. Gore, secretary; and Adolph Ramish, treasurer. The incorporators together with Goodwin Knight, Thomas A. Morrissey, and Frank S. Hutton, composed the first board of directors. Later, Messrs. Knight and Morrissey were replaced by J. M. Schenck and D. Bershon. At the time of the hearings in this proceeding, June, 1927, the officers were Harold B. Franklin, president; A. L. Gore, vice president; H. G. Buckley, secretary; and H. G. Delabar, treasurer. The officers, together with Michael Gore, Adolph Ramish, and Alfred Wright, composed the board of directors.

West Coast Theatres, Inc., of Northern California is a corporation organized and existing under and by virtue of the laws of the State of California. It maintains its principal office and place of business in the city of San Francisco in said State. Such corporation was organized more than ten years ago under the name of Turner & Dahnken. On or about August 9, 1923, the Superior Court of the State of California, in and for the city and county of San Francisco, permitted such corporation to change its name to "West Coast Theatres, Inc., of Northern California". Such corporation both before and after the change of its corporate name was engaged in, and still is engaged in, the business of owning, leasing, and operating motion picture theatres in cities and towns in the State of California, and particularly in the northern half of said State. Since March, 1923, respondent West Coast Theatres, Inc., has owned more than 90 per cent of the stock of said Turner & Dahnken, or respondent, West Coast Theatres, Inc., of Northern California, and has controlled the business operations of said respondent corporation. Respondent, West Coast Theatres, Inc., of Northern California, owns 50 per cent or more of the capital stock of several corporations owning theatres in California. In February, 1923, respondent, West Coast Theatres, Inc., bought 3,019 shares of the preferred stock and 68,850 shares of the common stock of Turner & Dahnken corporation (afterward West Coast Theatres, Inc., of Northern California) for $1,700,000.

Venice Investment Co. is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the city of Los Angeles in said State. Such corporation was organized in 1920. Since that time it has been engaged in the business of building, acquiring and operating motion picture theatres in several cities and towns in the State of California. Since on or about January 1, 1921, respondent, West Coast Theatres, Inc., has owned, and still owns, 50 per cent of the capital stock of said Venice Investment Co. It is an allied concern through which respondent, West Coast Theatres, Inc., has conducted a portion of its activities as exhibitor.

Hollywood Theatres, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, having its office and principal place of business in the city of Los Angeles in said State. Respondent, Hollywood Theatres, Inc., was organized prior to January 1, 1921. Such corporation has been and still is engaged in the business of building or acquiring and operating motion picture theatres, said theatres being largely in Hollywood and Los Angeles, Calif. Since on or about January 1, 1921, respondent West Coast Theatres, Inc., has owned and still ownes 50 per cent of the capital stock of respondent, Hollywood Theatres, Inc.

All Star Feature Distributors, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business in the city of San Francisco in said State. Such corporation was organized in the year 1914. It has been engaged in the business of distributing motion picture films and leasing them to distributors for exhibition in several States of the United States and in Hawaii. It is a so-called State right exchange with license to distribute in California, Arizona, Nevada, and Hawaiian Islands. Since on or about January 1, 1921, respondent West Coast Theatres, Inc., has owned and still owns 50 per cent of the capital stock of respondent, All Star Feature Distributors, Inc.

Educational Film Exchange. The name of this respondent should be Educational Film Exchange of Southern California, and it is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business in Los Angeles in said State. It was organized prior to

1920, and has been engaged in the business of distributing and leasing motion picture films to exhibitors for showing in Southern California and Arizona. West Coast Theatres, Inc., owns 49 per cent of the capital stock of respondent Educational Film Exchange of Southern California, the remaining 51 per cent of the stock in said respondent being owned by the national exchange of Educational Film Exchange.

West Coast Theatres, Inc., of Northern California acquired 49 per cent of the capital stock of Educational Film Exchange of Northern California through its acquisition of the capital stock of Turner & Dahnken, Inc. Educational Film Exchange of Northern California is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business in San Francisco in said State. It was organized prior to 1920 and has been engaged in the business of distributing and leasing motion picture films to exhibitors for showing in northern California, Nevada, and the Hawaiian Islands. The remaining 51 per cent of the capital stock of Educational Film Exchange of Northern California is owned by the national exchange of Educational Film Exchange.

Respondent, Principal Pictures Corporation, is a corporation organized and existing under and by virtue of the laws of the State of California having its principal office and place of business in the city of Los Angeles in said State. Such corporation was organized in the year 1922, and has been engaged in the business of producing motion picture films and distributing them to exhibitors in several States of the United States. Respondent, West Coast Theatres, Inc., owned 60 per cent of the capital stock of respondent. Principal Pictures Corporation, until July 16, 1923, when it sold its interest therein to other stockholders of said company.

H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston were copartners doing business as Turner, Dahnken & Langley. Such partnership was organized prior to July 1, 1921. Such partnership and the individuals of which it was composed maintained their offices and principal place of business in the city of Los Angeles, Calif. These individuals, operating as Turner, Dahnken & Langley, were engaged in the business of owning and leasing or operating motion picture theatres in towns and cities in California. On or about July 1, 1921, respondents, H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston entered into a contract with respondent, West Coast Theatres, Inc., whereby said individuals on the one hand and respondent West Coast Theatres, Inc., on the other, agreed to cease competing with each other in Southern California, and acquired certain interests in certain theatres and theatre-holding corporations, some of which had been, up to that time, in competition with one another.

PAR. 2. The term "exhibitors" as hereinafter used applies to respondents (excepting All Star Feature Distributors, Inc., Educational Film Exchange, and Principal Pictures Corporation), and to their competitors engaged in the operation of theatres and in the leasing and the exhibition of motion picture films.

"Exhibitors" is a term used generally to designate operators of theatres which show motion pictures to the public. "Producers" are persons or concerns who produce motion picture films. "Distributors" are persons or concerns who distribute motion pictures.

Motion picture theatres are divided into two classes: (1) first run houses, (2) subsequent run houses. The successful distribution of motion picture films in a given territory depends largely upon their showing in the first run theatres in that territory. First run theatres in territory continguous to the central city in which the film has its "first run," and subsequent run theatres in the same territory are guided in their choice of motion picture films by the result of the exhibition of such films in the first run theatre in such central city.

PAR. 3. Respondents operate, control and/or "book" for first run theatres in large numbers in the more important California cities and towns. At the date of its organization, respondent West Coast Theatres, Inc., controlled the following theatres:

Theatre	West Coast percentage of interest	Remarks
Los Angeles		
Kinema (Criterion)	100	
Rosebud	100	
New Central	100	
Strand	100	
Alhambra	50	50 per cent at time of organization, 100 per cent later.
Hollywood	50	House owned by Hollywood Theatres, Inc., of whose stock 50 per cent owned by West Coast Theatres, Inc., and 50 per cent by Frank Grant, J. L. Swope, J. M. Young, and others.
Apollo	50	Same as Hollywood Theatre (see new Apollo).
Windsor	50	Same as Hollywood.
Venice		
Auditorium	50	House owned 100 per cent by the Venice Investment Co., 50 per cent of whose stock is owned by West Coast Theatres, Inc., and the other 50 per cent was then owned by George Cleveland, Kinney, and others. Mr. Cleveland was closely associated with the men who controlled respondent.
Neptune	50	Do.
California	50	Do.
Anaheim		
California	75	Under name of Anaheim Theatres, Inc., theatre was constructed, G. T. Ingram owning the other 25 per cent interest.

Theatre	West Coast percentage of interest	Remarks
Pomona		
American	100	
Belvidere	100	
Bakersfield		
California	100	
Pastime	100	
Hippodrome	100	
Opera House	100	
Taft		
Sunshine	22½	Directly 22½ per cent, indirectly a majority interest.
Redondo		
Capitol	50	Same as California Theatre, Venice.
Ocean Park		
La Petite	50	Do.

Since the date of its organization and prior to May, 1925, when the complaint was issued in this proceeding, respondent, West Coast Theatres, Inc., had acquired the following theatres or the interest therein hereinafter indicated:

Theatre	West Coast percentage of interest	Remarks
Los Angeles		
Circle	100	
Roosevelt	50	Leased by Huntington Park Theatres, Inc., of which West Coast Theatres, Inc., owns 50 per cent of capital stock, the other 50 per cent owned by West Coast-Langley Theatre Circuit, controlled by respondent.
Tally's	100	
Sunbeam	100	
Highland	100	
Mission (Monterey Park).	100	
Boulevard	100	
Brooklyn	100	
Uptown	100	
Shamrock (Bandbox)	75	Leased from A. C. Blumenthal Co., other 25 per cent owned by I. H. Norton.
New Apollo	50	Replaces the old Apollo which is owned by Hollywood Theatres, Inc., in which corporation West Coast Theatres, Inc., has 50 per cent interest.
Wilshire	50	Leased by Hollywood Theatres, Inc., in which company West Coast Theatres, Inc., owns 50 per cent of stock.
Granada	50	Do.
Paramount	50	Do.
Caramel	50	Do.
Beverly	50	Do.
Sunbeam	66⅔	Leased from I. King by West Coast-Sunbeam Theatre Co., of which West Coast Theatres, Inc., owns 66⅔ per cent of capital stock and C. W. Grubb owns 33⅓ per cent.
Kinema	66⅔	Do.
Loew's State	50	Leased by Combined Theatres, Inc., from 7th and Broadway Building Co., West Coast Theatres, Inc., owns 50 per cent of stock and Loew's, Inc., owns other 50 per cent.
California	50	Do.
Miller	50	Do.

Theatre	West Coast percentage of interest	Remarks
Los Angeles—Con.		
Grauman's Egyptian	50	Owned by Boulevard Theatre Co., Inc., of which West Coast Theatres, Inc., owns 50 per cent and Sidney Grauman owns 50 per cent.
Manchester	50	Owned by South Side Theatres, Inc., 50 per cent of whose stock is owned by West Coast Theatres, Inc., and 50 per cent by R. B. Grunauer.
York	50	Owned by John Sugar. West Coast Theatres, Inc., has 50 per cent interest in profits and operates theatre.
Anaheim		
Fairyland	75	Leased by Anaheim Theatres, Inc., the other 25 per cent of whose stock is owned by G. T. Ingram.
Strand	75	Do.
Pomona		
California	100	Built by respondent upon land leased for 99 years from M. Potter.
Taft		
Hippodrome (old)	22½	Leased from F. Livingston, who holds 38¾ per cent of stock; C. L. Langley, who had similar share, sold to respondent, West Coast Theatres, Inc., which now owns 61¼ per cent of stock.
Redondo		
Art	50	Leased by Venice Investment Co., of whose stock West Coast Theatres, Inc., owns 50 per cent.
Pavilion	50	Do.
Ocean Park		
New Dome	50	Do.
San Pedro		
Cabrillo	100	
San Bernardino		
West Coast	100	Lease for 15 years.
Long Beach		
West Coast	100	
Liberty	100	
Palace	50	Sold.
Wilmington		
Granada	100	
Riverside		
Mission	50	West Coast-Langley Circuit owns other 50 per cent.
Regent	50	Do.
Loring	50	Do.
Orpheum	50	Other 50 per cent owned by Turner, Dahnken & Langley.
El Centro		
Palace	50	Leased from Mrs. Blackwell to Valley Theatre Co., West Coast Theatres, Inc., own 50 per cent and Arthur Brick 50 per cent.
Valley	50	Do.
Airdome	50	Owned by Valley Theatre Co.
Tulane	50	Leased by Valley Theatre Co.
Hermosa Beach		
Metropolitan	50	Through Venice Investment Co. See Art Theatre, Redondo.
Santa Monica		
Criterion	50	Do.

Theatre	West Coast percentage of interest	Remarks
Huntington Park		
Huntington	50	Throuth Huntington Park Theatre Co. See Roosevelt Theatre, Los Angeles.
California	50	Do.
Glendale		
Palace Grand (now Lincoln).	20	Leased by Glendale Theatre Co., other 80 per cent of stock owned by West Coast-Langley Circuit.
Gateway	30.3	Owned by Gateway Theatre Co., in which Fred Miller, Roy Miller, and B. E. Loper, sr., own other 69.7 per cent of the stock.
San Diego		
Balboa	100	Building owned by Balboa Building Co., but leased to Silvergate Theatre, Inc., of which respondent West Coast Theatres, Inc., owns 100 per cent of the stock.
Cabrillo		Do.
Santa Barbara		
California	49	Leased by California Theatres Co., in which West Coast Theatres, Inc., acquired an interest of 49 per cent, but purchase was rescinded and interest now nil.
Potter		Do.
Mission		Do.
Granada		Same as California. (These theatres are leased by the California Theatre Co.; booked for by West Coast.)

Besides the direct holdings detailed above, respondent, West Coast Theatres, Inc., has indirect interests in the following theatres:

Theatre	West Coast percentage of interest	Remarks
Los Angeles		
Alvarado	50	Leased by the West Coast-Langley Theatre Circuit—Same as Mission Theatre, Riverside, Cal.
De Luxe	50	Do.
Theatorium (now Hollyway).	50	Do.
Rivoli	50	Owned by Holly-Western Theatres, Inc., 50 per cent of whose stock is owned by Hollywood Theatres, Inc., in which respondent West Coast Theatres, Inc., has a half interest; the other half is owned by Graff Brothers.
Carlton	50	Do.
Crescent	50	Do.
Iris		Leased by Earl Sinks and Hollywood Theatres, Inc., with interests of 50 per cent each, West Coast Theatres, Inc., having 50 per cent interest in Hollywood Theatres, Inc.
Pasadena		
Pasadena		Leased by West Coast-Langley Circuit—Same as Alvarado Theatre, Los Angeles.
Florence		Do.
Raymond		Do.
Strand		Do.
Inglewood		
Inglewood		Leased by the Inglewood Theatre Co., which is owned 33⅓ per cent by D. B. Van Derlip, 33⅓ per cent by West Coast Theatres, Inc., and 33⅓ per cent by Venice Investment Co. West Coast Theatres, Inc., owns 50 per cent of the stock of Venice Investment Co.
Granada		Do.

Prior to the issuance of the complaint in this case, May 29, 1925, respondent, West Coast Theatres, Inc., had begun construction of or had started negotiations for the acquisition of an interest in certain other theatres which have subsequently been opened and/or acquired. These theatres are as follows:

Theatre	West Coast percentage of interest	Remarks
Los Angeles		
San Carlos	100	
La Mirada	50	Leased by Hollywood Theatres, Inc., of whose stock 50 per cent is owned by West Coast Theatres, Inc.
Belmont	50	Leased by Huntington Park Theatres, Inc., of whose stock West Coast Theatres, Inc., owns 50 per cent, West Coast Theatres, Inc., of Northern California and C. L. Langley own 50 per cent.
Balboa	50	Owned by Southside Theatres, Inc., of whose stock West Coast Theatres, Inc., own 50 per cent.
Mesa	66⅔	Owned by Mesa Investment Co., 66⅔ per cent West Coast Theatres, Inc., and 33⅓ per cent by Adolph Ramish.
Ritz	100	
South Pasadena		
Rialto	50	50 per cent Turner, Dahnken & Langley and 50 per cent by West Coast Theatres, Inc.
Santa Ana		
West Coast Walker	51	Owned by West Coast Walker Theatres, Inc.,—51 per cent West Coast Theatres, Inc., and 49 per cent C. W. Walker.

Through a corporation known as West Coast Junior Circuit, respondent, West Coast Theatres, Inc., has an interest in the following theatres:

Theatre	West Coast percentage of interest	Remarks
Los Angeles		
Royal	50	Owned 100 per cent by West Coast Junior Circuit, Inc., of whose capital stock West Coast Theatres, Inc., owns 50 per cent.
Jewel	50	Do.
Crystal	50	Do.
Redlands		
Majestic	50	Do.
Liberty	50	Do.
Wyatt	50	Do.
Ontario		
Granada	50	Do.
Burbank		
Victory	50	Do.

As of May, 1925, the New Central, Apollo, and Windsor of the original holdings in Los Angeles were closed. The Auditorium in

Venice was destroyed by fire and the Neptune was closed. The American and Belvidere in Pomona were closed, as was the Opera House in Bakersfield, La Petite in Ocean Park was dismantled. Of the later acquisitions in Los Angeles, the Tally's and Sunbeam were closed, as was also Miller's. Fairyland and Grand in Anaheim, and Pavilion in Redondo, were also closed, as were Palace in Long Beach, Mission in Riverside, and Palace, Valley and Tulane in El Centro. Crescent in Los Angeles, in which respondent West Coast Theatres, Inc., had an indirect interest, was also closed in May, 1925.

Respondents refused to give information as to theatre holdings later than May, 1925, except where negotiations leading to the acquisition of a theatre had been begun before that date, but there were indications that the processes of expansion are continuing as they continued between 1920 and 1925. The lists above given do not include the holdings of respondents in northern California.

PAR. 4. While technically accurate, having in mind that the above lists set forth the direct ownership of respondent, West Coast Theatres, Inc., in the theatre-owning and operating corporations, said lists do not in fact give full information as to such virtual ownership. As of May, 1925, respondent, West Coast Theatres, Inc., owned directly 5,506.2 shares of the capital stock of the Taft Theatre Co. C. L. Langley and respondent, West Coast Theatres, Inc., of Northern California, a subsidiary of West Coast Theatres, Inc., owned 9,490.8 shares of such stock out of a total issue of 15,000 shares. With C. L. Langley, its associate, tied to its policies by contract, it controlled all the stock. In the same way, respondent, West Coast Theatres, Inc., and its subsidiary West Coast Theatres, Inc., of Northern California, together with C. L. Langley owned 9,998 shares of stock in Glendale Theatre Co., out of a total issue of 10,000 shares. In the same way West Coast Theatres, Inc., its subsidiary and its associate owned 4,997 shares of stock of the Huntington Park Theatre Co., out of a total issue of 5,000 shares.

The West Coast-Langley Theatre Circuit is the same as the partnership of Turner, Dahnken & Langley, named as a respondent in this case. Turner & Dahnken (now West Coast Theatres, Inc., of Northern California) owned a two-thirds interest in Turner, Dahnken & Langley, which interest was acquired by respondent, West Coast Theatres, Inc., when it bought more than 90 per cent of the capital stock of Turner & Dahnken. Since that time F. W. Livingston and C. L. Langley have sold their interests in the partnership to respondents, so at present respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California and Adolph Ramish own the West Coast-Langley Theatre Circuit.

PAR. 5. Respondent, West Coast Theatres, Inc., does the booking of all the theatres in which it has any interest. Booking for a theatre involves the purchase of motion picture films for exhibition in the theatre, the arranging of runs, play dates, etc. A commission of 10 per cent is charged for this service in practically every case, both for theatres in which it has an interest, and those in which it has no interest.

In addition to booking for theatres in which it has an interest, respondent West Coast Theatres, Inc., also booked for thirty theatres in which it had no interest of any kind. It had terminated the purchase of films for eight of such theatres prior to the issuance of the complaint in this proceeding, and shortly thereafter, ceased booking for six other of such theatres. At the present time it is booking for sixteen theatres in which it is not an owner in whole or part. By booking for theatres in which it has no interest of any kind, West Coast Theatres, Inc., is able to control to a great extent the policy of such theatres, and add to its influence and dominance in the film-purchasing market in southern California.

Respondent, West Coast Theatres, Inc., when it acquires an interest of any kind in a theatre or theatre-owning company, usually requires that it shall keep the books and accounts of said theatre or theatre-owning company.

PAR. 6. A "first-run" theatre is one which exhibits a film for the first time in a particular city, town, or zone. Subsequent exhibitions of a film in the same city, town, or zone are called "second run", "third run", etc. Patrons of moving picture theatres usually prefer to attend first-run theatres, and such theatres charge higher admission prices than subsequent-run theatres. A large majority of the theatres owned, controlled and operated by respondent West Coast Theatres, Inc., are first-run theatres in the cities, towns, and zones in which said theatres are located.

PAR. 7. Individuals with large or controlling interests in respondent, West Coast Theatres, Inc., and in prominent executive positions, and others who are connected with said respondent or some of its affiliated companies, also held in 1925, and now hold, important positions in companies named herein as owning, leasing or operating motion picture theatres. The officers and directors of these companies in May, 1925, and at present are as follows:

Venice Investment Co.—1925: M. Gore, president and director; George J. Cleveland, secretary and director; John J. Harrah, treasurer and director; Sol Lesser, vice president and director. At present: A. Ramish, president and director; A. L. Gore, vice president and director; C. A. Buckley, secretary; G. A. Delabar, treasurer; E. P. King, assistant secretary and controller; Alfred Wright, director; M. Gore, director.

Hollywood Theatres, Inc.—1925: M. Gore, president and director; J. M. Young, vice president and director; Sol Lesser, secretary and director; F. A. Grant, assistant secretary and director; J. Leslie Swope, treasurer and director; A. L. Gore, director. At present: M. Gore, president and director; J. M. Young, vice president and director; J. Leslie Swope, treasurer and director; Frank Grant, secretary and director; C. A. Buckley, assistant secretary and director; A. L. Gore, director.

All Star Feature Distributors, Inc. (Not an exhibitor, but a subsidiary).—1925: Sol Lesser, president; Henry D. Meyer, vice president; Jacob Samuels, secretary. At present: Henry D. Meyer, president; Samuel Meyer, vice president; Jacob Samuels, secretary.

South Side Theatres, Inc.—1925: M. Gore, president and director; Sol Lesser, vice president and director; R. B. Grunauer, secretary, treasurer, and director; A. L. Gore, director. At present: M. Gore, president and director; R. L. Lauterstein, vice president and director; Ralph B. Grunauer, secretary and director; A. L. Gore, director.

Hollywestern Theatres, Inc.—1925: J. Leslie Swope, president and director; Adolph Ramish, vice president; Carl H. Graff, secretary and director; Joe J. Graff, treasurer and director; M. Gore, director; J. M. Young, director. At present: J. Leslie Swope, president and director; Adolph Ramish, vice president; Carl H. Graff, secretary and director; Joe J. Graff, treasurer and director; M. Gore, director; J. M. Young, director.

Taft Theatre Co.—1925: C. L. Langley, president; F. W. Livingston, vice president; C. E. Kells, secretary; A. Ramish, M. Gore, C. L. Langley, and C. E. Kells, directors. At present: A. L. Bernstein, president and director; Adolph Ramish, vice president and director; Charles A. Buckley, secretary and director; H. G. Delabar, treasurer; M. Gore, director.

Glendale Theatre Co.—1925: C. L. Langley, president and director; C. E. Kells, secretary, treasurer and director; Sol Lesser and A. L. Gore, directors. At present: A. L. Bernstein, president and director; Adolph Ramish, vice president and director; Charles A. Buckley, secretary and director; H. G. Delabar, treasurer; A. L. Gore, director.

Huntington Park Theatre Co.—1925: C. L. Langley, president; C. E. Kells, secretary and director; M. Gore and Adolph Ramish, directors. At present: A. L. Bernstein, president and director;

Adolph Ramish, vice president and director; Charles A. Buckley, secretary and director; H. G. Delabar, treasurer; M. Gore, director.

Principal Pictures Corporation.—1925: Sol Lesser, president and director; M. Rosenburg, secretary and director; Irving Lesser, vice president and director; E. H. Messer, secretary. At present: Same.

Educational Film Exchange, Inc., of Southern California.—1925: M. Gore, president and director; E. W. Hammons, vice president and director; Bruno Weyers, assistant treasurer; J. W. Toon, assistant treasurer; Sol Lesser, secretary and director; E. H. Allen, director. At present: Same.

Boulevard Theatres, Inc.—At present: Joseph Schenck, president and director; Joseph Loeb, vice president and director; A. M. Brentinger, secretary, treasurer, and director; Earl Adams, director.

Grauman's Greater Hollywood Theatre, Inc.—At present: Sidney Grauman, president and director; M. Gore, secretary and director; Joseph M. Schenck, vice president and director.

West Coast Walker Theatres, Inc.—1925: A. L. Gore, M. Gore, Sol Lesser, Charles E. Walker, and Edythe Walker, directors. At present: Not furnished.

West Coast Junior Circuit, Inc.—At present: A. L. Gore, M. Gore, C. A. Buckley, H. M. Sugarman, and A. L. Bernstein, directors.

There are a number of other corporations owning, leasing, and operating theatres in which respondent West Coast Theatres, Inc., has stock interests, but the names of the officers and directors of these companies are not available.

PAR. 8. In extending its theatre holdings or control, West Coast Theatres, Inc., entered into contracts, agreements, and understandings with certain of the other respondents herein, and with other motion picture theatre owners, with the purpose and effect of restraining competition between the theatres owned by said other respondents and motion picture theatre owners, and the theatres owned, operated, or controlled by respondent and/or its principal stockholders.

(1) Under date of July 1, 1921, F. W. Livingston, Hattie M. Turner, Fred Dahnken, and C. L. Langley, partners, doing business under the name and style of Turner, Dahnken & Langley, as parties of the first part, entered into a contract with respondent West Coast Theatres, Inc., and Mike Gore, A. L. Gore, Sol Lesser, and Adolph Ramish, as parties of the second part, in which contract it is recited:

Whereas, said parties of the first part, are the owners, controllers, or operators of certain theatres in Southern California, hereinafter enumerated; and, Whereas, in certain localities in Southern California the theatres of said parties hereto, respectively, are in open and aggressive competition which threatens to be ruinous and unprofitable to said parties respectively and such parties are fearful that such competition may extend to other localities in Southern California where a theatre or theatres of said parties only is now owned, controlled, or operated, and the parties hereto for the purpose of their mutual benefit, and to avoid and prevent such ruinous and unprofitable competition, and for the further purpose of providing against the contingencies of the future as the business of the parties hereto may come in conflict have agreed as follows, to wit: * * *

Following the above preamble, the parties to this contract agree to organize and incorporate the Hippodrome Theatre of Taft, Inc., and Palace Grand Theatre of Glendale, Inc., for the purpose of acquiring, operating, and dealing in theatres and kindred property. These corporations are to be made holding companies for the theatres and other kindred properties owned by the parties to the contract and located in the places indicated by the names of the corporations. Parties of the second part were to hold 22½ per cent of the stock of the Hippodrome corporation and 20 per cent of the stock of the Glendale corporation, and the corporations were to be given certain First National film franchises owned by parties of the second part. It is provided in such contract that each of the parties thereto shall have an equal number of stockholders on the boards of directors of the two companies, although West Coast Theatres, Inc., has a minority of the capital stock, and each shall have 50 per cent of the voting power both in the Hippodrome and the Glendale corporations. Said corporations were formed in accordance with the terms of the contract, on April 6, 1922, under the names "Taft Theatre Co.", and "Glendale Theatre Co.", and are now in existence.

It is recited in the agreement that parties of the second part (West Coast Theatres, Inc.) own theatres in Bakersfield, Pomona, Long Beach, Venice, Redondo, Anaheim, San Pedro, San Diego, and Taft, Calif., which are designated as "Closed and restricted towns owned by West Coast Theatres, Inc.", and that said parties of the second part also own eight theatres in Los Angeles, one in Gardner Junction, and three in Hollywood, Calif., which have "Protection of one and one-half mile radius closed zone given". It is also recited that such parties of the second part own three theatres in Los Angeles, the Kinema, Alhambra, and Shamrock, designated as "Open and unrestricted communities". It is also recited that parties of the first part have three theatres in Los Angeles, Jensen's Theatorium, Alvarado, and DeLuxe Theatres, which are designated as "Theatres owned by Turner, Dahnken & Langley, wherein a protection of one and one-half miles closed zone is given". It is further recited in the contract that Main Street, Los Angeles, is "open and unrestricted" in the block between Fourth and Fifth Streets. Also that on the Bush property, located on the line of Santa Monica and Venice, Turner, Dahnken & Langley propose to establish a theatre which shall be open and unrestricted.

Closed towns as understood in the motion picture industry are towns where one interest owns the theatres, and there is but one customer for films.

The contract further provides that the theatres already owned, controlled, operated, or in the course of construction, belonging to either party to the contract, shall continue to serve the respective communities or zones set out in the foregoing paragraph of the contract, and the parties to the contract agree not to invade any such zone or community and to refrain from competition with each other therein. If new zones are created by either party during the life of the contract in any manner, the party creating such new zone or community must first give notice to the other party of the location of such new zone, proposed plans, etc., and said other party shall have the exclusive right and option for thirty days to acquire a 50 per cent interest in such enterprise at actual cost.

It is provided that whenever the parties of the first part create a new zone or zones subject to service by a First National franchise, parties of the second part agree to assign or cause to be assigned to the parties of the first part such franchise, if in their power so to do.

Another clause requires the parties to the contract to refrain from acquiring an interest in any new theatre within a one and one-half mile radius of any theatre then owned or being constructed by either party, with certain exceptions.

Under the contract, the options given to each of the parties to the contract to share in each new theatre enterprise of any of the other parties, are limited to two years. If the parties undertaking such new enterprise fail to notify the other parties and offer them 50 per cent interest in the enterprise, then the other parties may give notice of a desire to participate and such notice gives the other parties an option under certain circumstances, during the life of the contract. This arrangement for the participation by all parties to the contract in the new enterprises of each party applies to any interest which either party may get in any new project.

It is also provided that the contract is effective in and binds the parties from the northern line of Kern and San Luis Obispo Counties, and takes in what is known as Southern California.

The words "invade" or "compete" or "invasion" or "competition," are defined by the parties to the agreement as including any interests, rights, and titles, indirect as well as direct, as copartners, stockholders, owners of units, under declaration of trusts, or otherwise, "However acquired, or however direct or inconsequential."

The term of the contract is twenty-five years. The parties to said contract have adhered to and abided by the policies and provisions contained therein, and so far as necessary, said contract is still in effect. The acquisition of control over the Turner, Dahnken & Langley interests by respondent, West Coast Theatres, Inc., in February or March, 1923, made this contract unnecessary as a means of extending its control over the theatres in Southern California, and in the suppression of competition between Turner, Dahnken & Langley and respondent West Coast Theatres, Inc., in such territory. Turner & Dahnken, the corporation afterward known as West Coast Theatres, Inc., of Northern California, when acquired by respondent West Coast Theatres, Inc., in February or March, 1923, owned a two-thirds interest in Turner, Dahnken & Langley, and this interest passed to respondent West Coast Theatres, Inc., with the other Turner & Dahnken holdings.

(2) An agreement between respondent, West Coast Theatres, Inc., and Loew's Inc., was dated May 26, 1923. By this agreement the parties bound themselves to form a New Jersey corporation to be known as "Combined Theatres Corporation," the stock of which was to be shared by the parties to this agreement, and to place in the control of such corporation said Loew's theatres in Los Angeles and San Francisco, Calif. Combined Theatres Corporation was to be controlled by a board upon which both parties were represented. Under the agreement, the theatres were to be operated for joint account. The contract recites that Loew's, Inc., owns all the capital stock of Metro Pictures Corporation, a New York corporation (now known as Metro-Goldwyn-Mayer), and that respondent West Coast Theatres, Inc., "is the owner of the exclusive franchise or right to the distribution in the State of California, of motion picture productions released by or through the Associated First National Pictures Corporation." By the agreement Combined Theatres Corporation was to have the pick of not less than twenty-two pictures per year released by Metro Pictures Corporation and Associated First National Pictures Corporation, respectively, for first run exhibition in the two theatres covered by said contract, said pictures to be on the "play or pay" basis. The theatres covered by said contract are Loew's State Theatre in Los Angeles, and Loew's Warfield Theatre in San

Francisco, both being leading downtown, first-run theatres in their respective cities, and their policies being the showing of a picture for seven days. Each concern, Loew's and respondent, West Coast Theatres, Inc., had share and share alike in the profits. Loew's Inc., had general inspection rights and West Coast Theatres, Inc., was the actual operator. The California and Miller's theatres in Los Angeles were also acquired by Combined Theatres Corporation and operated under similar terms. The contract is still in force as to Loew's State Theatre in Los Angeles and Loew's Warfield Theatre in San Francisco. Until May 15, 1925, it was in force as to the California Theatre, and was in force as to Miller's until 1926, when the lease on that theatre expired. The California Theatre has since been leased to other parties.

From May 26, 1923, the date of the contract, to May 29, 1925, the date of the complaint, only eleven films other than those produced by Metro Pictures Corporation and Associated First National Pictures Corporation were exhibited in Loew's State Theatre, and three of these pictures were produced by respondent West Coast Theatres, Inc., two of them under the name All Star Feature Producers, and one by Principal Pictures Corporation, the money for making said picture being provided by West Coast Theatres, Inc. No pictures produced or distributed by Metro Pictures Corporation or Associated First National Pictures Corporation are given a first-run exhibition in Los Angeles or San Francisco in any other theatre in said cities unless they have been rejected by West Coast Theatres, Inc., as not being of sufficient quality to be exhibited in said Loew's State Theatre or Loew's Warfield Theatre.

By this contract, competition between Loew's, Inc., and respondent West Coast Theatres, Inc., as exhibitors was terminated in the cities of Los Angeles and San Francisco, as was also competition between Metro Pictures Corporation and Associated First National Pictures, Inc., in the leasing of films for first-run exhibition in said cities.

(3) Respondent, West Coast Theatres, Inc., and respondents Sol Lesser, Adolph Ramish, A. L. Gore, and Michael Gore, as parties of the second part, entered into an agreement with Sidney Grauman of Los Angeles, party of the first part, under date of November 17, 1922. In such agreement it is recited that Sidney Grauman was owner of all the capital stock of Boulevard Theatre Company Inc., being 3,000 shares. Such stock was acquired by Sidney Grauman in exchange for a theatre building and equipment which he had erected in Hollywood at a cost of $130,000, and certain obligations for which he had pledged $30,000 in Liberty bonds. Boulevard Theatres,

Inc., on the other hand assumed all the obligations of Sidney Grauman in connection with the building and equipment of the theatre known as "Grauman's Egyptian". By the contract of November 17, 1922, Sidney Grauman sold to respondent West Coast Theatres, Inc., and its associates, 1,500 shares of the capital stock of Boulevard Theatres, Inc. Respondent, West Coast Theatres, Inc., and its associates, agreed to pay for the stock $25,000, and one-half of such amounts as Sidney Grauman had expended upon the construction and equipment of the theatre, which is agreed upon as $160,000, already expended. Outstanding liabilities were also to be shared. By the agreement, Sidney Grauman was retained as a general director of the theatre management. Should it become a losing venture, he may be directed in the management by the board of directors of the Boulevard Theatre Co., Inc.

The contract states that it is the intention of both parties that Boulevard Theatre Co., Inc., shall have first right and option to the exhibition of all pictures released by or through Associated First National Pictures, Inc., and West Coast Theatres, Inc., agrees to use its influence to secure for the new corporation the right to first-run exhibition in the district of Hollywood of all such pictures. Respondent, West Coast Theatres, Inc., and its associates agree to the same preference for Boulevard Theatre Co., Inc., in the leasing of any films distributed by any concern in which they have as much as a one-fourth interest. They also agree to endeavor to secure from any distributor, whose productions they or any of them control, or are interested in, a clearance period of sixty days in the district of Hollywood, after the date of the last exhibition by Boulevard Theatre Co., Inc., in favor of said Boulevard Theatre Co., Inc., and also a provision that no picture exhibited by Boulevard Theatre Co., Inc., shall be announced for exhibition in any other theatre in the city of Los Angeles until thirty days after the last day of exhibition by Boulevard Theatre Co., Inc.

Both parties agree that during the life of the agreement neither of them will directly or indirectly become connected with, or financially interested in, any theatre in the district of Hollywood, except that West Coast Theatres, Inc., is allowed to remain interested in Hollywood Theatres Co., Inc., in which it is a stockholder.

At the time Grauman's Egyptian Theatre was opened, it was the finest theatre in Los Angeles. The agreement above set forth eliminated all further competition between Sidney Grauman and West Coast Theatres, Inc., in Hollywood. It also gave the Egyptian Theatre an exclusive right and option in Hollywood to the first run of all pictures released by or through Associated First National

Pictures, Inc., and restrained the trade in the leasing of films in Hollywood of distributors and producers in which respondent West Coast Theatres, Inc., and its associates had an interest of 25 per cent or more.

(4) Respondent, West Coast Theatres, Inc., under date of March 30, 1921, made a contract with J. E. Wrightsman and W. J. Johnson, a copartnership doing business as Johnson & Wrightsman, by which the respondent got a one-half interest in the Palace and Liberty theatres, in Long Beach, Calif., theretofore owned by Johnson & Wrightsman. It was provided that all interest in these theatres should be transferred to a corporation whose capital stock should be owned share and share alike by the parties to the contract. A consideration of the purchase was that respondent, West Coast Theatres, Inc., transferred to the new corporation the Associated First National Pictures, Inc., franchise for Long Beach. Apparently the corporation was never formed, but West Coast Theatres, Inc., acquired a 50 per cent interest in the Liberty and Palace theatres in Long Beach. Shortly after the agreement was entered into Wrightsman sold his 25 per cent interest in the theatres to Johnson. Some time later respondent, West Coast Theatres, Inc., and Johnson separated their interests, West Coast, Theatres, Inc., taking the Liberty Theatre and Johnson retaining the Palace Theatre. At the date of the issuance of the complaint said respondent owned and was operating the Liberty Theatre, which theatre held the First National Franchise for Long Beach. During the term of this contract all competition between respondent, West Coast Theatres, Inc., and Johnson & Wrightsman was eliminated in Long Beach.

(5) Respondent, Hollywood Theatres, Inc., controlled by respondent, West Coast Theatres, Inc., under date of October 14, 1922, entered into a contract with Carl Graff and Joseph Graff, a partnership. At that time the corporation owned the Rivoli Theatre, and the partnership the Crescent Theatre, on Western Avenue, in the city of Los Angeles, Calif. In this contract the following recitation of facts and motive occurs:

> Whereas it is the desire of all the parties hereto that the competition in the operation of said theatres be terminated, and that they hereafter be run in conjunction with each other, and—

The agreement provides that the theatres should thereafter be conducted jointly for the benefit of the parties to the agreement, and that the partnership should get one-third and the corporation two-thirds of the profits. The parties also agreed that the partnership acquire and equip a new theatre at Fifty-fourth Street and Western Avenue, Los Angeles, and that when that theatre had equipment equal to the Rivoli, then a new corporation should be formed in which the partnership and the corporation should have equal holdings. Finally, the Crescent Theatre was to be sold and the Rivoli and the new theatre operated. Virtual control was given the Hollywood Theatres, Inc., and bookings were to be made for the theatres in conjunction with respondent, West Coast Theatres, Inc., which was to receive 10 per cent of the contract price of all films shown for this service. The partnership was to transfer its Associated First National franchise to the new corporation for mutual benefit of the parties, and the corporation was to pay to Graff Brothers 50 per cent of the cost of the franchise. The new corporation contemplated in this contract was formed and is now operating under the name of Holly-Western Theatres, Inc., the stock being held as provided for in the agreement. Holly-Western Theatres, Inc., owns the Rivoli, Crescent, and Carlton theatres in Los Angeles, the latter being the new theatre agreed upon in the contract. The Crescent Theatre has been closed.

By this contract all competition between Graff Bros. and respondents, Hollywood Theatres, Inc., and West Coast Theatres, Inc., in the business of owning and operating motion-picture theatres has been eliminated.

(6) Respondent, West Coast Theatres, Inc., by agreement dated October 9, 1923, with Charles W. Grubb, joined with him in the construction and equipment of a theatre at Sixty-ninth Street and Compton Avenue in Los Angeles County, Calif. At this point Mr. Grubb had operated a theatre which had been destroyed by fire. By the agreement, respondent, West Coast Theatres, Inc., secured two-thirds interest in and control of the new theatre. It is provided that neither party will engage in the motion-picture or theatrical business within a radius of one mile of the new theatre, and that the influence of the parties will not be used for the benefit of any other theatre to the detriment of the theatre operated by the parties to the agreement. While not provided for in the agreement, a corporation called West Coast Sunbeam Theatre Co. was formed, the stock of which is owned 66⅔ per cent by West Coast Theatres, Inc., and 33⅓ per cent by C. W. Grubb. Said corporation owns the Sunbeam and Kinema theatres in Los Angeles. Respondent, West Coast Theatres, Inc., does the booking for the theatres, originally charging a commission of 10 per cent, but later charging a flat rate.

By this contract all competition between respondent, West Coast Theatres, Inc., and C. W. Grubb, was eliminated.

(7) Respondent, West Coast Theatres, Inc., agreed with Ralph Grunauer, as shown in an instrument in writing dated September

10, 1924, to form a corporation to be known as "South Side Theatres, Inc.," through which the parties were to construct and conduct a motion-picture theatre on Scovill's Moneta Avenue Tract, in the city of Los Angeles, Calif. The theatre was to be controlled by respondent, West Coast Theatres, Inc., and it was to book for the theatre and make a charge for the booking, and also controlling the entertainment policy of the theatre and keep the books, for which a charge of $15 per week is made. In the agreement there appears the following provision:

The agreement provides that if either party becomes interested directly or indirectly in any other motion picture or theatrical enterprise within a radius of one mile of the theatre covered by the agreement, a 50 per cent interest in the holdings of either party shall be offered to the other on the same basis as acquired.

The following clause is then added:

It is understood that certain of the agreements set forth in this agreement may not be enforceable; nevertheless the parties hereto agree that at all times they will consider themselves in honor bound to carry out each and all of their respective agreements therein contained.

The theatre contemplated by this contract was erected and is now operating under the name of the Manchester Theatre, in Los Angeles.

The clause in the contract quoted above with reference to either party becoming interested in any other theatre within a radius of one mile of the Manchester Theatre was invoked by Grunauer in connection with the Balboa Theatre. Respondent, West Coast Theatres, Inc., was contemplating building another theatre eight-tenths of a mile from the Manchester, and putting said theatre in South Side Theatres, Inc. Grunauer, under date of March 13, 1925, addressed a letter to the board of directors of West Coast Theatres, Inc., protesting against the proposition as planned by said respondent, and suggesting alternative plans. West Coast Theatres, Inc., arranged the matter amicably with Grunauer, as such new theatre was built under the name of Balboa Theatre, and is now being operated. It is owned by South Side Theatres, Inc., 50 per cent of whose stock is owned by respondent West Coast Theatres, Inc., and 50 per cent by R. B. Grunauer.

(8) By agreement dated September 6, 1925, respondent, West Coast Theatres, Inc., engaged with Charles E. Walker and Edythe Walker of Santa Ana, Calif., to form a corporation to be known as the West Coast Santa Ana Theatres, Inc., of which respondent was to own 51 per cent of the capital stock and the Walkers 49 per cent. This corporation was to take over the Walker's Theatre in Santa Ana, then owned by the Walkers, and operate it according to re-

spondent's system. Respondent was to have control and do the booking. It is provided that any other theatre that West Coast Theatres, Inc., shall operate, be interested in, or that a corporation in which it holds any stock shall operate, shall be operated by and through the corporation provided for in the agreement. The corporation contemplated in said contract has been formed, with interests to the respective parties as set forth therein, and is operating the West Coast Walker Theatre, in Santa Ana.

Several years previous to the entering into of this contract, respondent, West Coast Theatres, Inc., through Messrs. Gore and Lesser, offered to buy an interest in the Yost Theatre and Yost's Broadway Theatre, in Santa Ana, owned and operated by E. D. Yost. Mr. Yost refused to sell. Subsequently the board of directors of West Coast Theatres, Inc., on May 12, 1925, voted to acquire a 51 per cent interest in the theatre owned by C. E. Walker, and the contract set forth above was consumated. Since that time West Coast Theatres, Inc., through Mr. Walker, have several times unsuccessfully sought to buy an interest in the Yost Theatres. By this agreement respondent acquired a controlling interest in a theatre in Santa Ana, and have eliminated competition between itself and the Walkers.

(9) D. B. Van Derlip had been operating the Inglewood Theatre, in Inglewood, Calif., a suburb of Los Angeles for some time. Representatives of Venice Investment Co., a respondent herein in which respondent, West Coast Theatres, Inc., owns a 50 per cent interest, proposed to buy an interest in his theatre. A contract of copartnership was drawn up between Van Derlip, party of the first part, and Venice Investment Co., party of the second part, by which Vennice Investment Co. acquired a 50 per cent interest in said Inglewood Theatre. This contract is dated June 1, 1923, and it is set forth therein that the purpose of Van Derlip entering into the partnership arrangement is the benefit to be derived by him because of the stronger purchasing power and influence in motion picture lines possessed by respondent, Venice Investment Co. The contract then sets forth the various interests transferred, and the express conditions governing the contract, among the latter being one that neither party, for a period of fifteen years, except upon the written consent of the party of the first part had and obtained, will either directly or indirectly conduct, maintain, operate, supervise, or manage, or in any manner, financially or otherwise, be interested in any motion picture theatre, motion picture theatre business, or other theatre, or other public entertainment hall, or public entertainment business or building, located within a radius of one and one-half miles of the building now occupied by the Inglewood Theatre, nor will they be-

come interested in any way in more than three motion picture theatres, or motion picture theatre businesses, etc., located more than 1½ miles, but less than 4 miles, from the Inglewood Theatre, without the written consent of the party of the first part, and on the condition that the first party shall have an interest in each of the three new motion picture theatres. The agreement covers any person, firm or corporation which is interested in the Venice Investment Co., or either or any of them, and the Venice Investment Co. agrees to secure the consent and approval of all persons, firms and corporations interested in it to this provision of the agreement. It is further provided that should Van Derlip agree to the Venice Investment Co. acquiring an interest in any motion picture theatre, or erecting a theatre within a radius of 4 miles, then Van Derlip shall be entitled to a one-half interest in any theatre within 1½ miles of the Inglewood, and a one-third interest in any one more than 1½ miles but less than 4 miles of the Inglewood Theatre.

The contract also provides that the association of the Venice Investment Co. with Van Derlip in the ownership of the theatre be not made public in Inglewood or vicinity, in order " to discourage prospective competition, or otherwise."

Attached to the contract is a consent signed by West Coast Theatres, Inc., by Sol Lesser, vice president, to the provisions of the contract regarding the acquisition of any other theatre or theatres by the Venice Investment Co.

This contract was in effect until the formation of Inglewood Theatre Co., which now owns the Inglewood and Granada theatres, in Inglewood, the capital stock of which is owned 33⅓ per cent by D. B. Van Derlip and 66⅔ per cent by Venice Investment Co. This contract eliminates all competition, present and future, between Van Derlip and respondents, Venice Investment Co. and West Coast Theatres, Inc., within a 4-mile radius of the Inglewood Theatre.

Prior to opening the Inglewood Theatre, in Inglewood, Mr. Van Derlip had owned and operated a theatre in Huntington Park, Calif., another suburb of Los Angeles. Mr. Claude L. Langley, one of the partners in Turner, Dahnken & Langley, respondent therein, approached him to buy a one-half interest in his theatre. Van Derlip did not wish to compete with the Turner, Dahnken & Langley circuit, so sold all his theatre interests to them. Van Derlip sold a 50 per cent interest in the Inglewood Theatre to respondent, Venice Investment Co., because he did not want to have the competition of that circuit in Inglewood.

(10) Under date of January 26, 1926, an agreement was entered into between M. Rosenberg, Harry Sugarman, and A. L. Bernstein,

parties of the first part, and West Coast Theatres, Inc., party of the second part, for the formation of a theatre-owning corporation to be called "West Coast Junior Circuit". The contract provides that Rosenberg, Sugarman, and Bernstein have purchased certain theatres "by mutual agreement with West Coast Theatres, Inc.", and that the interests of the respective parties are 50 per cent to respondent, West Coast Theatres, Inc.; 16⅔ per cent to M. Rosenberg; 16⅔ per cent to Harry Sugarman; and 16⅔ per cent to A. L. Bernstein. It is stated that it is the desire and purpose of all the parties that other theatre properties be acquired, and that the theatre properties already acquired and hereafter to be acquired shall be operated independent of the individual interests of any of the parties, and that for the purpose of convenience a new corporation had been theretofore organized under the name of Junior Theatres, Inc., and that as all the parties desire that the corporation known as Junior Theatres, Inc., and West Coast Theatres, Inc., should operate in harmony and for the best interests of each other, it was thereupon agreed that the name of the corporation should immediately be changed to West Coast Junior Circuit, Inc.; that upon execution of the agreement all affairs of the parties should be transferred to said corporation, and that stock should be issued in accordance with the respective interests of the various parties. It further provided for the organization of another corporation known as "The Holding Corporation", to which corporation Rosenberg, Sugarman, and Bernstein transfer any or all of their stock interests in the West Coast Junior Circuit, with a right to them to dispose of not to exceed 50 per cent of the capital stock of the Holding Corporation. It is then provided for the method of disposing of stock interests held by the parties if they so desired. The contract provides that the management of the West Coast Junior Circuit should be in Rosenberg, Sugarman, and Bernstein, subject to the supervision of the directors of West Coast Junior Circuit, so long as those parties should collectively own or control 50 per cent of the stock of the Holding Corporation or West Coast Junior Circuit. It is further provided that should such stock ownership cease, West Coast Theatres, Inc., should at its option take over and retain the management as long as desired. No theatres or real estate should be purchased by the Junior Circuit except through a vote of a majority of the directors of the corporation, and no theatres then being operated by the parties to the agreement should be taken over, leased or operated except by like consent. The share in the profits, losses, and expenses of the new circuit should be in the proportion of the stock holdings, and the directorate of the corporation should be composed of four directors selected by West

Coast Theatres, Inc., and four selected by Rosenberg, Sugarman, and Bernstein. The method of paying for the stock is set forth, and it is provided that West Coast should pay for its interest and stock the same as the collective cost to Rosenberg, Sugarman, and Bernstein. It is provided that the bookkeeping of the Junior Circuit shall be carried on by the bookkeeping department of West Coast Theatres, Inc., at actual cost, and that West Coast shall have control of the buying of all pictures for the various theatres owned by the Junior Circuit, and that the Junior Circuit will bear a proportionate share of the actual cost of maintaining the buying department.

West Coast Junior Circuit, Inc., was organized in accordance with the terms of the above contract, and among its directors, in June, 1927, were A. L. Gore, M. Gore, C. A. Buckley, H. M. Sugarman, and A. L. Bernstein, the latter being a nephew of Adolph Ramish, one of the directors of West Coast Theatres, Inc., and a respondent herein. Certain theatres owned by Rosenberg, Sugarman, and Bernstein were turned over to the corporation, and others have since been erected or bought. At the time of taking testimony West Coast Junior Circuit, Inc., owned and was operating seven theatres, in Los Angeles, Redlands, Ontario and Burbank, Calif.

Prior to the entering into of the contract of January 26, 1926, the formation of West Coast Junior Circuit, Inc., had been presented to the board of directors of respondent West Coast Theatres, Inc., by a letter from M. Rosenberg, dated March 30, 1925. The minutes of the meeting of the board of directors of West Coast Theatres, Inc., dated April 7, 1925, show that Messrs. Rosenberg and Sugarman were present and presented the matter to the board. They stated that the new circuit intended to operate in smaller towns and districts, such as Fullerton, Burbank, Compton, Maywood, etc., where West Coast Theatres, Inc., was not interested, and that they desired to cooperate with West Coast Theatres, Inc., in every way, and would not go into any opposition points against respondent or its affiliations. They would give respondent the right and privilege to approve or reject any location. Director Ramish was in favor of the proposition with the proviso that if West Coast Theatres, Inc., should decide against any location its decision would be final, that respondent owns 50 per cent of every proposition, and that if respondent did not want 50 per cent of any proposition it should be rejected so far as the new circuit was concerned. Reference was made to a location in Los Angeles the new circuit was considering at the time, and Rosenberg stated that as long as respondent, West Coast Theatres, Inc., was interested in the location the Junior Circuit would drop it. On April 28, 1925, A. L. Gore was appointed by the board of directors as a point of contact between West Coast Theatres, Inc., and the Junior Circuit.

The purpose and effect of this agreement is to eliminate competition between the parties to it in the ownership and operation of motion picture theatres. West Coast Junior Circuit, Inc., is under the control of West Coast Theatres, Inc., which respondent books for the theatres of the Junior Circuit, and keeps its accounts.

(11) Under date of November 21, 1924, respondent, West Coast Theatres, Inc., entered into a four-party agreement with Fedroy Amusement Co., Combined Theatres Corporation, and Loew's, Inc., by which for the year in which the contract was in force, Fedroy's Miller's Theatre was made a second-run theatre, running second to the Criterion, California, and Loew's State in Los Angeles. The contract states that Loew's, Inc., owns or controls all the stock of Metro-Goldwyn Distributing Corporation, and respondent, West Coast Theatres, Inc., is the owner of the exclusive franchise in the State of California of all pictures released by through First National Pictures, Inc., Loew's, Inc., and West Coast Theatres, Inc.; agree to make available as many pictures distributed by these two exchanges as are necessary, which pictures have previously been exhibited at the Criterion, California, or Loew's State theatres. The contract also states that Combined Theatres Corporation is also about to take over the management of the California Theatre in Los Angeles. While the management of the theatre during the term of the agreement is given to Combined Theatres Corporation, respondent, West Coast Theatres, Inc., actually managed and operated the theatre, as under the contract between Loew's, Inc., and West Coast Theatres, Inc., by which Combined Theatres Corporation was formed to take over Loew's State Theatre, the management of theatres owned by Combined Theatres Corporation is given to respondent, West Coast Theatres, Inc. The term of this contract was from November 22, 1924, to October 31, 1925. This contract eliminated Miller's Theatre from competition with theatres owned or controlled by respondent, West Coast Theatres, Inc., as a first-run house.

(12) On June 20, 1923, respondent, West Coast Theatres, Inc., entered into an agreement with John Sugar, who was the owner of a theatre under construction at the northwest corner of Avenue 50 and York Boulevard, Los Angeles, known as the York Theatre, whereby for a term of five years Sugar was to give West Coast Theatres, Inc., 50 per cent of the profits derived from the theatre, with option of extension of another five years. If at any time during the life of the agreement respondent, West Coast Theatres,

Inc., should build another theatre within a radius of a mile of the York Theatre, Sugar is given an option to acquire a one-half interest in such theatre. All film and vaudeville bookings for the York Theatre are to be made through West Coast Theatres, Inc., for which it is to receive 10 per cent commission for the films and 5 per cent for vaudeville. Sugar is to manage the theatre under the supervision of West Coast Theatres, Inc.

(13) On January 1, 1922, respondent, West Coast Theatres, Inc., entered into a copartnership agreement with Ike Norton, covering the Shamrock Theatre, in Los Angeles, by which it was agreed that West Coast Theatres, Inc., should receive 75 per cent of all profits from the theatre, and Norton should receive 25 per cent, the losses being borne in the same proportion. West Coast Theatres, Inc., is to keep the books of account and have exclusive management of the theatre.

(14) On January 1, 1925, respondents, West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, and C. L. Langley, entered into an agreement showing the ownership of each party in the Mission, Regent, and Loring Theatres in Riverside, Calif., as follows: West Coast Theatres, Inc., one-half; West Coast Theatres, Inc., of Northern California, two-sixths; and C. L. Langley, one-sixth. It is further provided that respondent, West Coast Theatres, Inc., shall have exclusive management, operation, and supervision of said theatres, and shall do the booking for, and keep the accounts of said theatres. In September, 1925, C. L. Langley sold his interest in these theatres to Adolph Ramish, through A. L. Bernstein, nephew of Mr. Ramish, who was the ostensible purchaser.

(15) Henry C. Jensen of Los Angeles, a theatre owner and exhibitor under date of May 25, 1921, made three separate agreements with Hattie M. Turner, Fred Dahnken, and C. L. Langley, by which he agreed to refrain from carrying on the business of maintaining and operating any theatres within the corporate limits of the city of Pasadena, the city of Glendale, or within 1½ miles of the Theatorium Theatre, in Los Angeles, as long as respondent, Turner, Dahnken & Langley, or any or either of them, or any person or persons deriving title to the good will from any or either of them should carry on a like business in the same location. He had sold at a previous time Jensen's Pasadena Theatre, and Jensen's Raymond Theatre in Pasadena, Calif.; Palace Grand Theatre in Glendale, Calif., and Jensen's Theatorium in Los Angeles, Calif., to the parties. It is recited that at the time of sale, May 5, he had agreed to refrain from the theatre business in the territory in which the theatres had been located. The agreements of May 25, 1921, it is recited, were

for the purpose of reducing the former agreements to writing. In this way, Mr. Jensen, a large theatre owner, was eliminated from the theatre field in some of the best theatre territory in California. July 1, 1921, respondent, West Coast Theatres, Inc., entered into contracts with the parties with whom Mr. Jensen had contracted, eliminating competition between them and respondent West Coast Theatres, Inc. Afterward respondent, West Coast Theatres, Inc., secured a controlling interest in the Turner, Dahnken, & Langley holdings, and in September, 1925, it together with Adolph Ramish, one of its directors and a respondent herein, owned all of the holdings of Turner, Dahnken & Langley.

(16) In September, 1921, respondent, West Coast Theatres, Inc., entered into a copartnership agreement with C. T. Ingram, who was operating the Fairyland and Grand theatres, in Anaheim, Calif. West Coast Theatres, Inc., at that time was building the California Theatre, in Anaheim. These three theatres were consolidated under the terms of the agreement, with West Coast Theatres, Inc., having 75 per cent interest and Ingram 25 per cent. Under date of November 6, 1922, another agreement between the same parties was entered into whereby a corporation called Anaheim Theatres, Inc., was formed, to which corporation the three theatres were turned over. The stock of said corporation is held 75 per cent by respondent, West Coast Theatres, Inc., and 25 per cent by C. T. Ingram. West Coast Theatres, Inc., has the control and operation of the theatres. The lease on the Fairyland Theatre expired in 1926, and was not renewed, and the lease on the Grand Theatre expired sometime previously. Both theatres were controlled and operated by respondent, West Coast Theatres, Inc., during the term of the leases. In June, 1927, Anaheim Theatres, Inc., only owned the California Theatre, in Anaheim.

PAR. 9. By opening negotiations for the building of theatres, and by circulating reports through parties connected with it, or its affiliated companies, that it intended building theatres, in competition with existing theatres owned by its competititors, respondent, West Coast Theatres, Inc., in many instances induced and persuaded its competitors to sell their theatres, or an interest in said theatres, to said respondent or its affiliated companies.

PAR. 10. By the purchase and construction of theatres, by contracts with competitors eliminating competition, by making partnerships with competitors, respondent, West Coast Theatres, Inc., has steadily progressed from the time of its organization to the time of the hearing in this proceeding toward greater and greater domination of the motion picture theatre field in Southern California. So great has this domination become that the situation now strongly tends to monopoly of the motion picture theatre business in this territory. Respondent is especially dominant in the first-run theatre field, so that it is in position to make successful or to embarrass a producer or distributor in marketing his product in Southern California.

PAR. 11. In addition to its power as an exhibitor, respondent, West Coast Theatres, Inc., is and has been an important distributor in California, and the States of Nevada and Arizona, and in Hawaii. It has had control of the franchise rights of the Associated First National Pictures, Inc., for the States of California, Arizona, Nevada, and Hawaiian Islands. By contract, it has had refusal of the Metro-Goldwyn pictures for certain of its theatres. It has also an interest in Educational Film Exchange of Southern California and Educational Film Exchange of Northern California, in All Star Feature Distributors, Inc., and in Principal Pictures Corporation. Its interest in the last named was sold later to Sol Lesser and Mike Rosenberg, both closely associated in business with respondent.

(1) Associated First National Pictures, Inc., is a Delaware corporation engaged in production and distribution of motion picture films. Respondent, West Coast Theatres, Inc., and its predecessors, have held since 1919, sole and exclusive franchises for distribution of the films of this producer in California, Arizona, Nevada, and the Hawaiian Islands. Distribution in Southern California and Arizona was made through Associated First National Pictures of Southern California, Inc., also a Delaware corporation, which performed the function of an exchange. Respondent, West Coast Theatres, Inc., owned 51 per cent of its stock, and the principal stockholders of this respondent held the other 49 per cent. Respondent, West Coast Theatres, Inc., also held a block of the stock of the national company, Associated First National Pictures, Inc. Through its subsidiary, respondent, West Coast Theatres, Inc., of Northern California, it succeeded to the Frederick Dahnken interests, which held the distribution franchise for Northern California, Nevada, and Hawaiian Islands, held beneficially by Associated First National Pictures, Inc., of Northern California, of which Turner & Dahnken owned and transferred to this subsidiary, 51 per cent of the stock. This subsidiary and its predecessor held stock also in the Associated First National Pictures, Inc., the producing corporation, and had a representative among the five voting trust trustees, who controlled the corporation's policies.

(2) Ownership of the exclusive franchise for the distribution of First National pictures in the State of California, Arizona, Nevada,

and Hawaiian Islands entitled respondent, West Coast Theatres, Inc., to grant subfranchises to theatres in those States.

There were sixty-two theatres holding First National subfranchises in Southern California and Arizona in May 29, 1925, when complaint issued in this proceeding, of which thirty-eight were owned by West Coast Theatres, Inc., all issued through respondent West Coast Theatres, Inc., and its predecessors in interest. As of the time of taking testimony, June, 1927, there were fifty-eight subfranchises held by theatres, of which thirty-nine were theatres owned by respondent, West Coast Theatres, Inc. Many of the subfranchises sold to other theatres by respondent, West Coast Theatres, Inc., were for second and third-run exhibition in the territories in which said theatres were located. The ownership of the exclusive franchise for the distribution of pictures produced and distributed by Associated First National Pictures, Inc., and the right to grant subfranchises for these pictures to other theatres, is a valuable asset to respondent, West Coast Theatres, Inc., and aided said respondent in increasing and expanding its power and influence in the motion picture theatre field in the State of California.

About three-fourths of the output of Associated First National Pictures, Inc., was made up of " franchise pictures", the rest being " open market " pictures, which were pictures for the most part, of an inferior quality to the franchise picture, and in some instances pictures the exhibition value of which could not be agreed upon by the producers and officials of Associated First National Pictures, Inc. Franchise holders had to take and pay for all " franchise " pictures, whether they were exhibited or not, and were always given first opportunity to buy " open-market " pictures.

(3) Respondent, West Coast Theatres, Inc., also through its subsidiary, respondent, West Coast Theatres, Inc., of Northern California owned 60 per cent of the issued and outstanding stock of the First National Exchange of New York, a dstributing corporation, which in turn owned 60 per cent of the capital stock of Associated First National Pictures of New York, a corporation, which in turn is owner of 14½ per cent of the capital stock of Associated First National Pictures, Inc., the national company. First National Pictures, Inc., of New York owned a franchise entitling it to distribute motion picture films throughout the State of New York. For several years the Associated First National Pictures, Inc., has produced and distributed high-class motion picture films. Control of its output in California, Arizona, Nevada, and the Hawaiian Islands has given respondent, West Coast Theatres, Inc., advantages over its exhibitor competitors. Its power in the motion picture field is

further shown by its control over the distributing concern handling the Associated First National Pictures, Inc., output in the State of New York, and an indirect important interest in the Educational Film Exchange.

(4) Under date of March 9, 1921, Associated First National Pictures, Inc., a Delaware corporation (called the Pictures Company), entered into a contract with Associated First National Pictures of Southern California, a Delaware corporation (called the Exchange) then controlled by West Coast Theatres, Inc. By that contract a franchise was given the Exchange for the exclusive distribution until 1945 in Southern California and Arizona of all films produced by the Pictures Company. The Exchange was to pay twenty-seven fifty-sixths per cent of the exhibition value of the pictures. It was given power to issue subfranchises in its exclusive territory, with the approval of the Pictures Company. The Exchange was made the agent of the Pictures Company and was obliged to account to it periodically. The Exchange deposited a voting trust certificate for 1,489⅔ shares of its capital stock as security for the carrying out of the contract. This agreement was signed by Michael Gore and David Bershon for the Exchange. An amended agreement was made between the parties January 1, 1924. It was shown that the Exchange had stock interests in the Pictures Company. It received 402 shares of preferred A Stock and 280 shares of preferred B stock in the Pictures Company, of an estimated aggregate value of $68,000. This was issued to respondent, West Coast Theatres, Inc. The Exchange was released from assessments by the Pictures Company. It relinquished its franchise agreement and gave up its former privilege of distributing films other than those of the Pictures Company. The Exchange got back its voting trust certificates for its own stock. This agreement was signed by J. M. Young and A. L. Gore for the Exchange, two officers of respondent, West Coast Theatres, Inc.

Respondent West Coast Theatres, Inc., did not lose its exclusive franchise for the distribution of First National pictures in Southern California. On November 21, 1924, more than eleven months after the contract with Associated First National Pictures, Inc., whereby West Coast Theatres, Inc., relinquished its exclusive franchise for the distribution of First National pictures in Southern California, in a contract between respondent, West Coast Theatres, Inc., Fredroy Amusement Co., Combined Theatres Corporation, and Loew's, Inc. (referred to in paragraph 8) it is stated:

Whereas, West Coast is the owner of the exclusive franchise in the State of California of motion pictures released by or through First National Pictures, Inc.

(5) Under date of November 27, 1919, the Pictures Company made a voting trust agreement with its stockholders by which Fred Dahnken, who afterward sold his motion picture interests to respondent, West Coast Theatres, Inc., was one of the five trustees who were to control the policies of the Pictures Company. This agreement discloses interest by respondents herein in 12,075 shares of the capital stock of the Pictures Company, through Thos. L. Tally, Turner & Dahnken, and indirectly through First National Exchange, Inc.

(6) Associated First National Pictures, Inc., requires every exhibitor who wishes to use its pictures to sign a franchise contract containing these stipulations, among others: (a) Films must be shown in a specified theatre and in no other for stated period; (b) must be shown in no other theatre for a fixed period after the exhibition period; (c) must not be advertised for a fixed period after the exhibition period; (d) franchise holder must take all pictures offered; (e) must play on dates fixed by the producer; (f) must pay a pro rata share of the exhibition value; (g) must pay for pictures even though not used; (h) is not used, producer must resell in exhibitor's territory; (i) exhibitor must advance money to producer for picture-making (now obsolete); (j) producer may exploit pictures in other threatres at higher prices; (k) exhibitor may reject such exploited picture; (l) exhibitors may have longer run for pictures of exhibition value above $400,000; (m) exhibitor must use pictures as sent him and must use producer advertising; (n) exhibitor must ship films to addresses given him by the producer; (o) exhibitor insures films and producer ads while in his possession; (p) exhibitor must not permit the film to be copied or exhibited in any theatre except his own; (q) after June 30, 1923, the contract is subject to cancellation by either party upon six months notice; (r) exhibitor is required to pay the Federal tax.

(7) Respondent, West Coast Theatres, Inc., owns 50 per cent of the stock of All Star Feature Distributors, Inc., the other half being owned by Samuel, Henry D. and Estella Meyer, of California. It distributes motion pictures films in California, Arizona, Nevada, and the Hawaiian Islands. All Star Feature Distributors, Inc., is a "state right" exchange, or distributor. The pictures are purchased from producers, and All Star Features Distributors, Inc., has an exclusive right to distribute them in the territories named.

(8) Respondent, West Coast Theatres, Inc., owns 49 per cent of the capital stock of the Educational Film Exchange of Southern California, and 49 per cent of the capital stock of the Educational Film Exchange of Northern California. The stock of the southern

corporation was owned by Gore Brothers and Sol Lesser, and acquired by respondent, West Coast Theatres, Inc., at the same time the other interests of that concern were acquired. The stock of the northern corporation was owned by Turner & Dahnken, and acquired by respondent, West Coast Theatres, Inc., indirectly when Turner & Dahnken was acquired. Educational Film Exchange, a national exchange distributing short reel films to motion picture houses, owned or had a beneficial interest in the other 51 per cent of the capital stock of both the northern and southern concerns. While the ownership did not give respondent specific distribution rights in California because of the ownership, respondent, West Coast Theatres, Inc., was favored in the distribution of films in its territory, and given "preferential treatment". Through purchase of Turner & Dahnken, respondent, West Coast Theatres, Inc., secured 60 per cent of the capital stock of Associated First National Exchange of New York, and that concern in turn owned 49 per cent of the stock of Educational Film Exchange of New York.

(9) Respondent, West Coast Theatres, Inc., on January 15, 1923, acquired 60 per cent of the capital stock of Principal Pictures Corporation, a producing and distributing company, the other stockholders being Irving Lesser, 15 per cent; M. Rosenberg, 15 per cent; and Sol Lesser, 10 per cent. West Coast Theatres, Inc., agreed to finance the operations of the company. As set forth hereinafter, Principal Pictures Corporation produced at least three pictures during the time respondent owned stock in it. On or about July 16, 1923, respondent, West Coast Theatres, Inc., sold its stock to Messrs. Irving Lesser, M. Rosenberg, and Sol Lesser, the latter being at that time secretary of respondent. After the sale of all its stock in Principal Pictures Corporation, said company continued to represent respondent, West Coast Theatres, Inc., in the sale of the Jackie Coogan pictures which respondent had made under the trade name of All Star Feature Producers.

PAR. 12. Respondent, West Coast Theatres, Inc., also had been a producer of motion pictures. Under the trade name "All Star Feature Producers", West Coast Theatres, Inc., produced five pictures featuring Jackie Coogan. The names of these pictures were "My Boy", "Trouble", "Oliver Twist", "Circus Days", and "Daddy". The distribution rights to these pictures for the State of California were sold by respondent, West Coast Theatres, Inc., to All Star Feature Distributors, Inc., also a respondent herein. The distribution rights for the rest of the United States were sold to Associated First National Pictures, Inc. All contracts for distribution of the pictures had to be approved by respondent, West Coast

Theatres, Inc. "All Star Feature Producers" was a trade name used by respondent and its associates for the purpose of producing these pictures, and respondent, West Coast Theatres, Inc., owned a 60 per cent interest in the undertaking, its associates being Irving Lesser, who owned a 7½ per cent interest, Col. Fred Levy, 7½ per cent, and Jack Coogan, sr., 25 per cent.

During the time respondent, West Coast Theatres, Inc., owned 60 per cent of the stock of respondent, Principal Pictures Corporation, it financed the making of three pictures, called "The Recreation of Brian Kent", "When a Man is a Man", and "The Mine with the Iron Door".

PAR. 13. Because of its ownership and/or control of more than one hundred theatres in Southern California, including the outstanding first-run theatres in this territory, its close association with other theatre owners, who are in some instances officers or stockholders and sometimes associated with it through contracts or other common interests, as hereinabove shown in greater detail, its power and influence in the distribution field through ownership in the Associated First National Pictures, Inc., and by contract arrangements with Loew's, Inc., respondent, West Coast Theatres, Inc., is in control of the market for motion picture films in Southern California, and in contiguous territory. It has used this control in lessening or eliminating competition between the producers and distributors in which it is interested and the producers and distributors in which Loew's, Inc., is interested, including Metro-Goldwyn, and to cut off the exhibitor competitors of this respondent from a supply of motion picture films necessary if they would compete successfully with respondent.

PAR. 14. For several years last past respondent, West Coast Theatres, Inc., has combined and cooperated with several of the other respondents named herein, more especially with the individual respondents, to prevent and restrain producers and distributors of motion pictures in other States from leasing their films to the exhibitor competitors of respondent, and from shipping said films into the State of California and delivering them to said competitors, and in restraining and preventing competition among said respondents, and with other exhibitors in the State of California, in negotiating for and leasing motion picture films to be shipped from other States and delivered to said exhibitors in the State of California.

PAR. 15. Respondents, by threats of withholding patronage, and by actually withholding patronage, have compelled motion picture producers and distributors (1) to discontinue dealing with exhibitor competitors of respondents and to furnish their films to theatres owned or controlled by respondents at competitive points; (2) to withhold certain pictures from said competitors for the purpose and with the effect of preventing said competitors from obtaining an adequate and necessary supply of suitable films for the operation of theatres in competition with respondents; (3) to refrain from leasing to competing theatres for subsequent runs films that have been run previously in respondents' theatres, until a period so long after the previous runs that the films have become practically valueless for exhibition purposes; (4) to lease their films to respondents at prices substantially less than competitors of respondent would have been willing to pay for them if given an opportunity to lease them at the time theirs were leased to respondents.

(1) B. F. Robison owned and operated the Seville Theatre in Inglewood from February, 1924, to about May 1, 1927. He had selected the location so that he might get prompt film service. His theatre was just across the street from the city limits of Los Angeles, and did not come within the zoning regulations established by the Film Board of Trade for theatres in that city, which zoning regulations grouped the theatres in a particular zone, stated which theatres were to be first-run, second-run, etc., and fixed the time after the downtown first-run showing of a picture that it could be shown in the particular zone. When he opened his theatre, the nearest theatre was the Inglewood Theatre, controlled by respondent, West Coast Theatres, Inc., which was about 2 miles away. Robison's Theatre was usually second-run, following the Inglewood Theatre. The Inglewood Theatre showed pictures 7 days after the first-run, downtown showing in Los Angeles, and the Seville Theatre followed 7 days after the Inglewood. The Rivoli Theatre, controlled by respondent, West Coast Theatres, Inc., was about 3½ miles from the Seville Theatre in the city of Los Angeles. Robison had dated the "Marriage Circle", a Warner Bros. motion picture film, for showing in the Seville Theatre, after it had been shown first-run in the Inglewood Theatre. The Inglewood delayed the showing of the picture for so long a time that when it was exhibited in the Seville Theatre it had lost a large part of its exhibition value.

Robison was able to secure first-run pictures only from the Universal Exchange, and such other pictures as he could occasionally pick up. About 1924 Mr. Robison arranged to run twelve Associated First National pictures as second-runs in the Seville, including "Black Oxen", "When a Man's a Man", and "A Man of Action". They were to be run subsequent to the Inglewood Theatre of respondent, West Coast Theatres, Inc., with the understanding that each run was to be 14 days after the first run in Los Angeles (the "key city") and 7 days after Inglewood. He was able to secure in his theatre only the three names, and was informed by the district manager of the First National Exchange that the Rivoli Theatre controlled by respondent, West Coast Theatres, Inc., objected to the pictures being shown in the Seville and advertised in the territory. Robison had received written confirmation of the play dates for the three pictures used. After giving him written confirmation for the three pictures, First National Exchange wrote him that he could not have any of the pictures, but because of the previous confirmation of the three pictures, the exchange could not withdraw them.

Since the opening of the Seville Theatre by Robison three theatres controlled by respondent, West Coast Theatres, Inc., have been opened in his vicinity, the Granada, in Inglewood, and the Mesa and Carlton, in Los Angeles. The Mesa Theatre was opened in the spring of 1926, and is about three-quarters of a mile from the Seville. In December, 1925, respondent, West Coast Theatres, Inc., demanded that the Seville Theatre be put in a Los Angeles zone with the Mesa Theatre, although the theatre was located outside the city limits of Los Angeles. The Film Board of Trade did rezone the Seville Theatre, and put it in a Los Angeles zone with respondent's Mesa Theatre, which resulted in the Seville having to run pictures after the Mesa, which theatre could not show pictures until 30 days after the first-run, downtown showing. Before being rezoned the Seville Theatre could show pictures 14 days after the downtown first-run, but after being zoned with and forced to follow the Mesa, he could not show them until more than 30 days after the downtown showing, and the pictures had lost some of their exhibition value.

After the Mesa Theatre was opened Robison found it almost impossible to get film service for his theatre. He applied for service from eleven exchanges, but could get only two of them. Services that he had used for some time, or offered to buy 100 per cent, were taken away from him and given to the Mesa, even after agreements to sell them to the Seville had been signed by the local agents of the exchanges. These pictures were subsequently exhibited in the Mesa Theatre. Because of the difficulty in procuring film supplies, Robison was forced out of business and closed his theatre about May 1, 1927.

(2) In the years 1925–26, Mr. Robison had used many of the pictures of the Producers' Distributing Corporation. He attempted to get the pictures of that distributor as second-run in Inglewood for the season 1926–27. He negotiated for a list of about thirty-five or forty with the representative of the exchange. A work sheet was presented to him giving him the exchange prices, which he regarded as prohibitive. He started to make a counter offer by writing

in prices that he would pay for the films. After writing in prices for nine of the films offered, he was told by the representative that it would not be worth while to go on as the prices which he was offering would not be considered. The distributors thereafter sold the pictures to respondent West Coast Theatres, Inc., not only for less than they had asked of Mr. Robison, but for less than he had offered for them. For "The Sea Wolf," Mr. Robison offered $25. It was sold to West Coast for $22.50. For "Sunny Side Up," he offered $30; it was priced to him at $32, and sold to West Coast for $20. For "Meet the Prince," Mr. Robison offered $25. It was priced to him originally at $29, and sold to West Coast at $20. For "Her Man O'War," Mr. Robison offered $35. It was priced to him at $37.50, and sold to West Coast at $32.50. For "The Clinging Vine," Mr. Robison offered $35. It was priced to him originally at $37.50, and sold to the West Coast at $25. For "The Speeding Venus," Mr. Robison offered $25. It was priced to him originally at $35.50, and sold to the West Coast for $20. For "Gigolo," Mr. Robison offered $35. It was priced to him originally at $43, and sold to the West Coast at $27.50. For "Young April," Mr. Robison offered $30. It was priced to him originally at $47.50, and sold to West Coast for $30. In not one of the twenty-eight other offerings to Mr. Robison did the exchange get as much from West Coast as it demanded of Mr. Robison. In some cases, it cut its asking price to Mr. Robison in halves, as in "Silk" and "The Country Doctor." West Coast Theatres, Inc., bought these pictures for first-run exhibition in the Mesa, and Robison was buying them for second-run showing. Respondent, West Coast Theatres, Inc., also included in the contract for these pictures a clause giving the Mesa Theatre a 14-day clearance period over the Seville, and to guard against Robison reducing admission prices, another clause was inserted giving the Mesa Theatre 90 days' clearance over any theatre in the zone charging less than 20 cents admission.

(3) R. W. McKinney has the Regent Theatre, at 4012 Vermont Avenue, and the Playhouse, at 1234½ West Seventh Street, Los Angeles, Calif. He has had the former for 5 years and the latter for 8 years. He is in competition with the Vermont (about 4 blocks away), Astor, Colonial and Temple Theatres, booking for the first named being under control of respondent, West Coast Theatre interests. He was refused film service by the Paramount Exchange for the Regent Theatre, and told by the management that they were protecting their account with the Vermont Theatre, and could not sell him second run. Mr. McKinney also applied for Associated First National pictures, and was denied them, being told by the

manager that Mr. Harper, part owner of Vermont, for which West Coast booked, refused to permit the leasing of the pictures to Mr. McKinney. F. B. O. Exchange had been supplying Mr. McKinney since 1923. When the exchange offered "Human Wreckage," a feature picture, it went to the Vermont. He was told by the manager that West Coast would throw out his pictures everywhere if he did not sell it to the Vermont rather than to Mr. McKinney. The Exchange yielded to the threat. Mr. McKinney has been playing everything the Exchange offered, some of it indifferent and not profitable. McKinney applied to the Goldwyn Exchange for pictures, and was told by the manager that he could not have any pictures because the exchange was protecting the Vermont Theatre.

(4) Mrs. Ora L. Hunley conducted a motion picture house known as "Hunley's" in Hollywood, Los Angeles, from 1921 to 1924. It was in immediate competition with Apollo Theatre of respondent, West Coast Theatres, Inc., located about five blocks away. This respondent also had the Paramount and the Hollywood, and later other theatres in the district. Mrs. Hunley lost the Goldwyn service after the Paramount Theatre started business, because she could not pay as high a price for it as this respondent's theatres could. She was denied Associated First National Pictures films for second-run, and was informed by the manager that this respondent had forbidden his leasing them to Hunley's, and for that reason he could not lease them although he wished to do so. She applied for the Metro picture, "Four Horsemen of the Apocalypse," for the second-run exhibition, but could not get it, and it was subsequently shown in one of the West Coast Theatres near her. Mrs. Hunley did secure Paramount service in competition with respondent, West Coast Theatres, Inc. Paramount's contract with Apollo had expired and Mrs. Hunley secured it against the Apollo.

(5) James Sams operated the Rosemary Theatre, a small house at Ocean Park, from 1912 to 1925. He competed with La Petite and Dome Theatres of respondent, West Coast Theatres, Inc. A fire destroyed the theatres at Ocean Park. This respondent's officers attempted to have Mr. Sams join them in rebuilding, so that a theatre might be eliminated and competition for films cut down. Sams refused this offer. After the fire Mr. Sams had the Goldwyn and Universal services taken from him and given to houses of this respondent. He had a contract before the fire for "Why Worry" from Pathe, the price being agreed upon. It was sold to this respondent's Dome Theatre. United Artists, Metro and Fox Exchanges also canceled contracts with Mr. Sams and sold to theatres of this respondent after the fire. Only Paramount and F. B. O.

services were left available to him. He sold out to a respondent, Venice Investment Company in November, 1925.

(6) Jacob Dorner has operated the Globe Theatre, in San Pedro, Calif., since 1916. Respondent, West Coast Theatres, Inc., in 1923 opened the Cabrillo Theatre in San Pedro. Prior to 1923, Mr. Dorner had been showing Goldwyn and Fox services 100 per cent in his theatre ever since he had opened it. He applied for Goldwyn service for the 1923–1924 season, and after being put off from time to time the exchange manager finally told him all the service had been sold by the home office in New York to West Coast Theatres, Inc., for the Cabrillo Theatre, and that the local exchange had nothing to do with it.

(7) Walter F. Jensen operates the Melrose Theatre, in Los Angeles. He was a franchise holder in Associated First National Pictures, entitling him to fourth-run in his zone, following three other theatres operated by West Coast Theatres, Inc. Respondent, West Coast Theatres, Inc., opened the Belmont Theatre in opposition in 1926. Prior to the opening of the Belmont, Jensen had been taking all First National pictures for his theatre, and had been showing all except the poor ones, which he would pay for but not use. The Belmont claimed the right to show First National pictures before the Melrose, even though it was outside the zone, and Associated First National Exchange gave the pictures to the Belmont and obliged Mr. Jensen to run them after the Belmont, if at all. Later the Belmont changed its policy to a legitimate theatre and Mr. Jensen was allowed to have the pictures. Mr. Jensen had been using the Metro-Goldwyn film service ever since his theatre opened. He applied for it for 1926–27, and his written application was received by Mr. Lamb, manager of the exchange, after he and Mr. Jensen had talked it over. Prices were set forth in the application, which is upon a form provided by the exchange. He was denied the service. Mr. Lamb called Mr. Jensen to his office and told him he was sorry, but the service had been sold by the New York office to the Belmont Theatre.

(8) D. V. Van Derlip has one-third interest in the Granada and Inglewood Theatres, in Inglewood. Venice Investment Company, one of the organizations controlled by respondent, West Coast Theatres, Inc., owns the other two-thirds. Mr. Van Derlip has had the Inglewood either alone or with a partner for about five years. He was approached by officers of this respondent who suggested that they were expecting to build a motion picture theatre in Inglewood, but would be glad to take an interest in his and avoid competition. Rather than have the competition of this respondent, he sold its

subsidiary a two-thirds interest in his business. He had sold his theatre in Huntington Park some years before to another West Coast Theatres, Inc., organization in much the same circumstances. In neither instance were Van Derlip's theatres on the market for sale.

(9) E. D. Yost of Santa Ana operates the Yost Theatre and the Yost's Broadway Theatre, in Santa Ana, Calif., the latter being a 2,000-seat theatre, the largest in the city and opened June 2, 1926. Mr. Yost had used United Artists film services for years. When he wanted it for Yost's Broadway Theatre for 1926–27, he could not get it, being told by the manager that it had been sold in New York to respondent, West Coast Theatres, Inc., for use in the Walker Theatres in Santa Ana, for which this respondent was booking, and for which it had a contract of purchase. The pictures were used in the Walker theatres. Mr. Yost had been securing part of the Universal service prior to 1926–27, the rest of it being used by respondent, West Coast Theatres, Inc. A salesman for the service had offered him several pictures which Mr. Yost had accepted. Prices were agreed upon and contracts drawn up. The branch manager refused Mr. Yost the pictures, saying that he had been selling to respondent, West Coast Theatres, Inc., and it insisted that it must have all the pictures, including those offered Mr. Yost, and the manager for that reason refused them to Mr. Yost. Relying upon the action of its salesman, Mr. Yost had advertised the Universal pictures for exhibition in his house. Mr. Yost had been running Harold Lloyd pictures in his houses ever since Lloyd started making pictures. He applied to the Pathe Exchange, which distributed the Lloyd picture "The Freshman", but was told by Mr. Jenner, the manager, that the picture had been sold in New York to the West Coast 100 per cent. Three or four years ago Sol Lesser and Mr. Gore, of respondent, West Coast Theatres, Inc., approached Mr. Yost to buy an interest in his Santa Ana Theatre, and in the past year Mr. Walker, associated with this respondent, has several times sought to buy an interest.

(10) Glen Harper, manager of the Vermont Theatre, in Los Angeles, has been operating the theatre for about six years in competition with the Strand, Rivoli, Temple, Apollo and Colonial theatres of respondent, West Coast Theatres, Inc. Mr. Harper had an Associated First National Pictures subfranchise for the Vermont, which gave it first run in the zone. Rivoli Theatre, of this respondent, in the same zone, had transferred to it from the Crescent, another of respondent's theatres, an Associated First National subfranchise. It was to run day and date with Vermont, although a

second-run franchise for the zone. The First National Exchange notified Mr. Harper to change the date of showing its picture for the convenience of Rivoli. Mr. Harper protested, since under his franchise he had the setting of the date in his zone regardless of Rivoli's convenience. He was obliged to defer the showings, however. This condition lasted four or five months, and applied to all First National pictures. In the meantime the pictures were being run in the Strand Theatre, a competing house owned by this respondent, and located about the same distance from the Vermont Theatre that the Rivoli was. This was about 1923. Respondent, West Coast Theatres, Inc., booked for Mr. Harper's Vermont Theatre in 1924 and 1925, and he had no trouble with his film supply.

(11) H. W. Chotiner operates Chotiner's Ravenna and Chotiner's Parisian Theatres, in Los Angeles. He books also for Chotiner's La Brea. The Ravenna Theatre was built in 1925. Ravenna was put in a zone with Jensen's Melrose and with the Belmont of the respondent, West Coast Theatres, Inc. Mr. Chotiner applied for the Metro-Goldwyn-Mayer service for his theatre before the Belmont was completed, but was told that it was reserved by the West Coast for the Belmont when it was purchased for other houses. At that time the Belmont had not been opened. Mr. Chotiner had applied for the Fox service, all but the "Westerns," and his written application was taken and sent to New York, where the application was rejected and the service given to West Coast Theatres, Inc., for its theatres, including the Belmont. This situation applied to La Brea Theatre, for which he was booking, as well as to the Ravenna. He had applied for Warner Brothers service for the La Brea, but was "stalled off" by the exchange, and finally told that it had been sold to West Coast for use in the Ritz Theatre, in immediate competition with La Brea. After the Belmont Theatre turned to spoken drama, Mr. Chotiner secured the Metro-Goldwyn and Fox services for his theatres.

Mr. Chotiner formerly owned the Roosevelt Theatre, now called Parisian, from June, 1922, when he opened it, to November, 1922, when he sold it to respondent, West Coast Theatres, Inc. It was in competition with the DeLuxe and Alvarado Theatres, owned by Turner, Dahnken & Langley, respondent herein, and Mr. Chotiner had to purchase films to be used after their exhibition in those theatres. Because of difficulty in securing a film supply, he sold the Roosevelt Theatre to interests affiliated with respondent, West Coast Theatres, Inc. He repurchased the theatre April 1, 1927, changed its name to Parisian Theatre, and is now operating it.

(12) H. W. Anderson operated La Petite Theatre, at Ocean Park. He acquired the theatre in 1919, and was doing a good business. Jack Calicotte, manager of the Kinema Theatre, an opposition house owned by respondents, Gore brothers and Sol Lesser, came to him and told him that Gore brothers and Sol Lesser were about to build a 2,000-seat theatre on the next block and they would put Mr. Anderson out of business. Calicotte said he had influence with them and would get them to buy La Petite instead. The Gores and Sol Lesser came to see him the next night and bought his theatre, telling him that he could go into some other territory and they would not molest him. Mr. Anderson then built the Jewell and the Crystal theatres, on Whittier Boulevard, and operated them from 1921 to 1925. Mr. Anderson then sold them to the West Coast Junior Circuit, controlled by the same interests as respondent West Coast Theatres, Inc. Before selling he received information that the Junior Circuit was to build a 2,000-seat house midway between the Jewell and Crystal. Mr. Anderson called on Mr. A. L. Gore with reference to the proposed theatre, and Gore confirmed the report. Anderson reminded Gore of his promise not to build a theatre near him in the future, and Mr. Gore replied that they were no longer a one-horse concern, that the Gores and Lesser did not control it any more, and that the board of directors had voted to build a theatre there. Both the Gores and Sol Lesser were on the board of directors. Mr. Arthur, a salesman for respondent, All Star Features Distributors, offered to try to induce the Junior Circuit to buy out Anderson's theatre instead. It did in June, 1925.

(13) William A. Howe has been manager and part owner of the Glendale Theatre, at Glendale, Calif., since 1920. It is a 1,231-seat house. When he first opened the theatre his competition was Jensen's Palace Grand Theatre. Since Mr. Howe opened his theatre there have been added the Gateway, Bards, Alexander, and Cosmo Theatres. The Palace Grand (now Lincoln), Alexander, and Gateway are controlled by respondent, West Coast Theatres, Inc., the first two through Turner, Dahnken & Langley. The other houses are small. Glendale Theatre was a first-run house in the city. In competition with Jensen's Palace Grand, Mr. Howe secured Universal, Fox, Goldwyn, and Metro services. At times he had secured United Artists pictures distributed by F. B. O. Exchange. Mr. Howe had been using Universal service 100 per cent, except serials, until about November 1, 1922. At that time the exchange took the News Reel and Century Comedies, as well as two pictures for which written applications had been made and prices agreed upon, away from him.

The Exchange manager told him that the service had all been sold to respondent West Coast Theatres, Inc., and that if Turner, Dahnken & Langley, respondent herein, could not get the service for Glendale, they would not take it for their other towns. Correspondence between the exchange manager, Mr. Howe, and Mr. Carl Laemmle, president of Universal Film Co., to whom Mr. Howe wrote in regard to the matter, at the time the service was taken away from Howe, sets forth the reasons.

Mr. Howe had a verbal understanding with Mr. Rand, manager of the United Artists Exchange, that if he bought a picture called "Richard, the Lion Hearted", he would have the refusal of the rest of the United Artists service for the season of 1925–26. He bought the picture, but did not get any other United Artists pictures that season, and has only been able to secure one picture from the Exchange since that time. All the other pictures released by United Artists Exchange for 1925–26 were subsequently shown in the Turner, Dahnken & Langley theatres, in Glendale.

Howe had been using the Goldwyn pictures in his theatre. He applied for the service for the season 1923–24, but did not have an opportunity to make a definite offer, as it had been sold. The pictures were shown in the Turner, Dahnken & Langley theatres.

Mr. Glimm, salesman for Associated First National Pictures, solicited him, in February, 1922, to buy four pictures which West Coast Theatres, Inc., could not use. He signed applications for the pictures and put up a deposit, at the request of the exchange. He never received the pictures, and was notified by the salesmanager that they had been sold to Turner, Dahnken & Langley, and the pictures were subsequently shown in that respondent's theatre. At this time the Turner, Dahnken & Langley theatre was the First National franchise holder in Glendale.

In August, 1925, the vice president of Universal Pictures Corporation, R. H. Cochrane, in a letter to Mr. Howe, advised him that he had been selected as one of the exhibitors to be allowed to show the super-feature picture "Phantom of the Opera". Such an exorbitant price was put on the picture that Howe could not afford to buy it. The picture was subsequently shown in the Lincoln Theatre, in Glendale, owned by Turner, Dahnken & Langley, which is much smaller than Howe's Glendale Theatre. Howe protested to Cochrane against the showing of the picture in the Lincoln Theatre, and received a letter from Cochrane stating that because of the power respondent West Coast Theatres, Inc., wields, it was necessary to to give it the picture in all its theatres or it would not show it anywhere.

(14) J. W. Anderson, of Ontario, Calif., has operated the Euclid Theatre for the past five years, and the California for two years. He had used the Associated First National feature service in his houses for the years 1923–24, 1924–25, and 1925–26, 100 per cent. He tried to buy these services for 1926–27, and was told by Manager Brower that West Coast Theatres, Inc., wanted it. Mr. Anderson had applied for the Associated First National franchise in 1925 but could not get it. He was told that West Coast Theatres, Inc., controlled the franchise. The pictures which Mr. Anderson wanted were shown in the Granada Theatre, in Ontario, owned by West Coast Junior Circuit, Inc., in which respondent, West Coast Theatres, Inc., owns 50 per cent of the stock. Mr. Anderson had been using all the Norma Talmadge pictures up to 1926. He made an offer for "Kiki", which the sales manager accepted, and signed memoranda of agreement May 17, 1926, and May 21, 1926, with Associated First National Exchange. A few days later he was advised that his application had been rejected because respondent West Coast Theatres, Inc., had wired to Mr. Schenck, in New York, and secured the picture. It was subsequently shown in the Granada Theatre. Anderson also signed applications for two First National pictures called "Tramp, Tramp, Tramp" and "Greater Glory", but did not receive them. They were later shown in the Granada Theatre. Anderson had been using F. B. O. pictures 100 per cent until the season of 1926–27, when the price of the service was put too high for him. West Coast Junior Circuit, Inc., opened the Granada Theatre on June 3, 1926.

PAR. 16. Respondent, West Coast Theatres, Inc., and the other respondents, herein, except Educational Film Exchange of Southern California, All Star Feature Distributors, Inc., and Principal Pictures Corporation, in many instances leased more films for certain of their theatres which were in competition with independent exhibitors than could be exhibited in said theatres, with the purpose and effect of preventing said competitors from securing a supply of films for their theatres. There were about eleven companies distributing feature film services in Southern California which were available for leasing during the period of the complaint, and respondents often contracted for eight or nine of them, or all of them, for their theatres which were in competition with other exhibitors in particular localities, with the result that said competitors were unable to secure a sufficient supply of films to enable them to operate their theatres. Such excess films leased by respondents would not be exhibited to the public in said particular localities, to the detriment of the producers and distributors of said films.

PAR. 17. Motion picture exhibitors show films which are positive prints from negatives made when the pictures are produced. These positive prints, the services of which in competing theatres were interfered with by respondents as detailed in paragraph 15, herein, were shipped to California usually in interstate commerce, being shipped from New York State, New Jersey or Illinois, largely. Practically always the contracts of sale or lease in connection with such films were finally closed by approval in New York. The films, or positive prints, always remained the property of the producers, and/or distributors. This was true of the Metro-Goldwyn service. It was also true of the prints distributed by the Film Booking Office of America. It was also true of the prints distributed by the Universal Film Exchange. Universal news reels are often sent direct from the printing laboratory in the East to exhibitors in California. Warner Bros. film prints, with some exceptions, are sent to California from New York. Warner Bros. contracts are closed by approval in New York. In the period 1924–25, positive prints for Warner Bros. were made in California. Pathe ships all its prints to California from the East. Its news reels are often shipped direct from New York or New Jersey to the exhibitors in California. It distributes both short reels and features, shipments being from Jersey City, N. J. All except two pictures of United Artists had positive prints made in California. These two were shipped into California from other States. Prints of United Artists picture "Black Pirate" were made in Boston; Gloria Swanson prints were received from the Consolidated Laboratories, outside of California. Positive prints of Associated Exhibitors pictures are made in the East, and shipped from the East to California. Positive prints distributed in California by Producers' Distributing Corporation, with one exception, were made in New York and shipped to California. Positive prints of Fox Films are made in the East. Positive prints of Film Booking Co. were shipped from New York.

The territory of the distributing exchanges in Southern California includes all of California south of the northern boundary of Kern and San Luis Obispo Counties, and the State of Arizona.

PAR. 18. Exchanges referred to in paragraph 17, herein, sold the bulk of their pictures to respondents, and in some cases, at least, were required to refuse the pictures to competitors everywhere if they would sell them to respondents anywhere. Respondent, West Coast Theatres, Inc., because of its growing monopolization of the motion picture exhibitor field in Southern California, was in position to demand and actually had the virtual refusal of all motion picture films offered in that territory by large or important distributors, with one probable exception, during the time covered by the complaint in this proceeding, and indications point to its now being in a still stronger position.

PAR. 19. As a result of the growing control of respondent, West Coast Theatres, Inc., over the motion picture exhibitor business in Southern California, which has been progressively moving toward monopoly, and of the use made of such control, and the cooperation with it of the other respondents herein, especially the individual respondents, competition in the sale and purchase and exhibition of motion picture films which have moved in interstate commerce for exhibition in California, has been lessened substantially, and interstate commerce or trade in said films has been obstructed and hindered, and channels of such commerce closed, to the injury of exhibitors and distributors, and to the injury of the public, which has been denied the benefits of free competition in the motion picture trade.

PAR. 20. That under the circumstances set out in the foregoing findings of fact the affiliations and relationships existing between respondents and their purposes, policies and practices as described and set out in said findings of fact constitute a combination and common course of action, as alleged in paragraph 4[4] of the complaint in this proceeding.

CONCLUSION

The practices of respondent, West Coast Theatres, Inc., and the other respondents herein, except Principal Pictures Corporation, under the conditions and circumstances set forth in the foregoing findings of fact, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

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

[4] Set forth on pp. 387, 388.

Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, Venice Investment Co., Hollywood Theatres, Inc., All Star Feature Distributors, Inc., Educational Film Exchange, H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston, partners doing business under the name and style of Turner, Dahnken & Langley, and Messrs. A. L. Gore, Michael Gore, Sol Lesser, Adolph Ramish, and Dave Bershon, and each and all of them and their officers, agents, representatives, and employees, and all other persons acting under, through, by or in behalf of them, or any of them, forever cease and desist, from:

(1) Combining, agreeing, or cooperating among themselves or with others to induce, persuade, coerce, or compel producers and/or distributors of motion picture films to refuse to sell or lease, in interstate commerce, to a competitor or competitors of respondents, or any one of them, motion picture films, or a particular film, by threats of refusal to purchase or lease films, or a particular film, for all or part of the theatres owned, operated, or controlled by respondents, or any one of them.

(2) Combining, agreeing or cooperating among themselves or with others, through control by respondents or any one of them of the distribution of the motion picture films of a producer or producers, to refuse to sell or lease in interstate commerce to a competitor or competitors of respondents or any one of them motion-picture films or a particular film.

(3) Combining, agreeing, or cooperating among themselves or with others to hinder, obstruct, or prevent producers and/or distributors of motion picture films from selling or leasing films, or a particular film, in interstate commerce, to a competitor or competitors of respondents, or any one of them, by intimidation, coercion, withdrawal or threatened withdrawal of patronage or by promises or agreements or assurances to increase the patronage of respondents, or any one of them.

(4) Combining, agreeing, or cooperating among themselves or with others to hinder, obstruct, or prevent motion picture exhibitors from freely purchasing or leasing motion picture films, in interstate commerce, or from freely competing, in the purchase or lease of motion picture films, in interstate commerce, with respondents, or any one of them, by communicating directly or indirectly with any producer and/or distributor of motion picture films or any agent or representative thereof for the purpose of inducing, persuading, coercing,

or compelling such producers and/or distributors not to sell or lease motion picture films to such exhibitors.

(5) Combining, agreeing, or cooperating among themselves or with others to hinder, obstruct, or prevent competitors or a competitor in any city, town, or zone from securing a supply of films in interstate commerce for theatres or theatre owned and operated by said competitors or competitor, by leasing a larger number of films for the theatres or theatre of respondents or any one of them than can be shown in said theatres or theatre.

It is further ordered, That the respondents above named, and each of them, within 60 days from the date of the notice hereof, file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

ORDER OF DISMISSAL

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and the testimony taken, and upon briefs filed herein,

It is now ordered, That complaint as to respondent Principal Pictures Corporation be, and the same is, hereby dismissed.

IN THE MATTER OF

WEST COAST THEATRES, INC., AND WEST COAST THEATRES, INC., OF NORTHERN CALIFORNIA ET AL.

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

Docket 1320. Complaint, May 29, 1925—Decision, May 8, 1929

Where (1) a corporation engaged in the business of owning, leasing and operating a large number of motion picture theatres, chiefly first run, in certain towns and cities in the southern portion of the state concerned, and strongly interested and in a position of power (together with the corporation immediately following, controlled by it), through exclusive franchise rights and otherwise, in the distribution of pictures as well as exhibition thereof in the state, and dominating, if not monopolizing, the business in the southern portion thereof; the corporation referred to, similarly engaged in other portions of the state in question; (3) a third corporation, likewise thus engaged, and, together with that immediately before referred to directly and indirectly interested in and controlling and operating a very large number of theatres in said state, and dominating the business involved in that part thereof not directly served and controlled by the corporation first referred to; and (4) certain individuals, partners, similarly engaged, whose business was controlled by the two first named corporations and who were associated with said corporations and those conducting the same and interested therein; with a community of interest through common stockholders and otherwise, and progressed to their position of dominance (a) by purchase and construction of theatres (and interests therein), and (b) by contracts providing for (1) joint operation thereof, (2) apportionment of territory and other mutual protection of one another's interests, (3) affiliation with or elimination of competitors and competitive interests (including arrangements directed to control and noncompetitive operation of first run theatres, particularly in the two principal cities of the state, and of one of the only two long run theatres in one of said cities), and (4) in other respects frankly providing for elimination, restriction or preclusion of competition, all in pursuance of a common course of action, and in cooperation and confederating together;

(*a*) Influenced, coerced and compelled motion picture producers and/or distributors to sell pictures to them at lower prices than those at which their competitors could buy the same, and to refrain from selling pictures to competitors desired by them for their own theatres, through threatened refusal to buy any pictures, through their arrangements for the showing of first run pictures in said last named city incident to showing thereof by them in their other theatres in the state, and threatening not to show pictures in any of their theatres unless they could have the same for first run exhibition in said city, and through attempting to influence certain competitors to cooperate with them by refusing to bid on pictures offered by the exchanges;

(*b*) Used the influence and power possessed by them, by virtue of their extensive ownership and control of theatres in the state, and their common interests with producers and/or distributors doing business therein, to give producers and distributors a satisfactory business in said state or to make it extremely difficult to find a satisfactory market for their films, to prevent competitors from securing films, desired by said corporations, for said competitors' theatres, and to force producers and/or distributors, by threats of boycott, to refuse to lease films to competitors, theretofore long since customers of said producers and distributors, and to give such films to them for use in their own theatres in the cities and towns concerned; and

(*c*) Purchased more films than they could use, to prevent competitors in certain cities and towns from securing supplies for said competitors' theatres;

With the result that competition in the leasing, sale and exhibition in said state of motion picture films leased from persons or companies located in other states and shipped therein for exhibition, was lessened by the aforesaid acts and contracts, and by the withholding, induced by threats or otherwise, by distributors, of motion picture films from theatres of competitors, thereby compelled to sell their theatres to the corporations herein or affiliated interests, or to close the same and retire from the motion picture field or to cease exhibiting motion picture films therein:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Gavin McNab, *Schmulowitz*, *Wyman*, *Aikins & Brune* of San Francisco, Calif. (*Mr. Robert T. Swaine*, *Mr. Bruce Bromley*, and *Mr. William Mallard*, of New York City, of counsel), for respondent Herbert L. Rothchild Entertainment, Inc.

Mr. Jacob Samuels, of San Francisco, Calif., *O'Melveny*, *Tuller & Myers*, of Los Angeles, Calif., by *Mr. Walter K. Tuller* and *Mr. James C. Sheppard* (*Mr. A. Dal. Thomson*, of San Francisco, Calif., of counsel), for all other respondents.

Synopsis of Complaint

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent West Coast Theatres, Inc., engaged in the owning or leasing and operating of motion picture theatres in California, and the various other respondents joined herein, likewise thus engaged, with uniting in a common course of action and cooperating and confederating together to cut off competitors' sources of supply of motion picture films, leased from producers or distributors thereof in States other than California and Nevada,[1] and to restrain and prevent com-

[1] See footnote on page 438.

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

Respondents include four California corporations and a partnership, engaged in owning or leasing and operating motion picture theatres, as follows: West Coast Theatres, Inc., with principal office and place of business in Los Angeles; West Coast Theatres, Inc., of Northern California, with principal office in San Francisco, engaged, like the preceding corporation, as above set forth, in operating motion picture theatres in various towns and cities of California, but particularly in the northern portion thereof; The T. & D. Jr. Enterprises, Inc., similarly engaged in the central portion of said State, and in Nevada; Herbert L. Rothchild Entertainment, Inc., similarly engaged in San Francisco, where it operates five theatres; and the partnership of Turner, Dahnken & Langley, composed of H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston, engaged as above set forth in operating theatres in various California towns and cities.[2]

Respondents, as alleged, "individually and collectively operate or control the operation of motion picture theatres in practically all of the largest and most important cities in the State of California, and those which are most lucrative for the motion picture industry", and, in the aggregate, operate and control first-run theatres in the larger and more important California towns and cities exceeding in number

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[2] Allegations of the complaint with reference to the activities of respondent exhibitors in leasing and contracting for motion picture films are as follows:

In the prosecution of their respective businesses said respondents are engaged in leasing, from producers or distributors of motion picture films located in other States of the United States than the States of California and Nevada and principally in the State of New York, motion picture films to be exhibited in the respective theatres severally owned or leased, and operated by said respondents. All of said respondents are in competition with other individuals, partnerships, and corporations, who are also engaged in the operation of motion picture theatres in the various towns and cities in California where the respondents or one or more of them also have theatres, and in negotiating for and leasing motion picture films for exhibition in their said theatres from the said motion picture producers and/or distributors in New York and other States of the United States to be shipped into the State of California. Respondents and their said competitors are hereinafter sometimes referred to as exhibitors. The contracts or agreements whereby said motion picture films are leased are in some instances made directly between the exhibitors on the one hand and the respective producers or distributors located in said other States of the United States, and in the other instances they are made between said exhibitors and local agents of said producers or distributors in California but subject to approval and acceptance by said producers or distributors at their home offices. In all cases said contracts contemplate and result in the shipment of said films from said other States into the State of California and the delivery of said films to exhibitors' respective theatres through branch offices of said producers or distributors located in San Francisco or Los Angeles in the State of California.

the number of such theatres operated and controlled by all of their exhibitor competitors in the aggregate.[3]

Respondents, as charged, engaged and situated as above set forth, and but for the things charged herein naturally in free and unrestrained competition with one another and others[4] for a period of more than five years last past "have united in a common course of action, and have cooperated and confederated together and with each other, for the purpose of (1) hindering, restraining and preventing said producers or distributors of motion picture films in other States from leasing their said films to said competitors of respondents or any of them, and from shipping said films into the State of California and delivering them to said competitors, and (2) restraining and preventing competition among the respondents and between respondents and other exhibitors in the State of California in negotiating for and leasing motion picture films to be shipped from other States and delivered to said exhibitors respectively in the State of California as aforesaid."

In "pursuance and to carry out said mutual purposes respondents and each of them", as charged, have done and still do the following acts and things:

(*a*) Enter into and observe agreements and understandings among themselves or between two or more of them whereby they combine under joint management and ownership any theatres which two or more of them may then own or operate in the same towns and

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[3] Allegations of the complaint more particularly relating to "first-run" and "repeat-run" houses in this connection are as follows:

Motion picture theatres are divided into two classes, which are commonly known as "first-run" and "repeat-run" houses. The first-run theatres are those in which occur the initial presentations of pictures in their respective territories or localities. All others are repeat-run houses. The successful marketing and distribution of a motion picture in a given territory by the producer and/or distributor thereof, is dependent largely upon its showing in the first-run theatres in that territory, (a) because much higher prices are generally commanded and much greater crowds are attracted by the initial exhibition of a new production than by subsequent exhibitions; and (b) because exhibitors who operate first-run theatres in near-by territories and those who operate repeat-run theatres in the same territory, are to a large extent governed in their choice of motion picture films for their respective theatres, by the results of the showings of such films in usch first-run theatres. "The influence and power which respondents are thus able to and do exert upon the business of leasing and transporting motion picture films into the State of California from other States are so great that respondents can by extending their patronage to any said producer or distributor, generally enable him to enjoy a successful and lucrative distribution of his product in the State of California, or can on the other hand by withholding such patronage from such producer or distributor prevent him from obtaining a successful and lucrative distribution for his said films or any of them in the State of California."

[4] The allegation as to this states that "In the absence of the matters and things hereinafter set out respondents would naturally and normally be in free and unrestrained competition with other exhibitors and with each other in negotiating for and leasing motion picture films from said producers and/or distributors thereof and exhibiting same to the public in many towns, cities and localities throughout the State of California."

cities; agree to mutually refrain from entering into the business of exhibiting motion pictures in any towns or cities wherein another respondent is already engaged in that business; and/or agree to mutually refrain from acquiring additional theatres in new territory or mutually competitive territory without first giving the other party or parties to the agreement an opportunity to participate on a basis of joint ownership and management.

(*b*) In either towns and cities where two or more respondents are operating theatres, they enter into and observe agreements and understandings with one another that they will not compete with each other in negotiating for or offering to lease any motion picture film; agree among themselves as to which films each shall exhibit; and mutually refrain from negotiating for or leasing any others.

(*c*) Exchange information as to the motion picture films which each desires to exhibit in order to more fully carry out their understanding set out in subparagraph (b) hereof.

(*d*) Coerce and compel aforesaid producers and distributors by threats of boycott and by actual boycott to (1) refrain from leasing any of their motion picture films to certain exhibitors who are competing with respondents or one or more of them; (2) refrain from leasing to certain competitors particular films which are from time to time specified by respondents or some of them; (3) refrain from leasing to competitors for repeat or subsequent showings, films that are previously shown or are to be previously shown in respondents' theatres, until after the expiration of such a long period of time after the dates upon which they are exhibited by the respective respondents that said films lose the greater part of their distribution and exhibition value, and/or (4) refrain from leasing any motion picture films to competitors of said respondents unless said competitors will increase their admission price for their theatres to, and maintain it at, specified sums fixed by one or more of the respondents.

(*e*) Refuse to lease films, sometimes altogether and sometimes only for exhibition in particular towns and cities where respondents' theatres have no competition, from those of said producers and distributors, who fail or refuse to comply with respondents' demands as set forth in subparagraph (*d*) hereof.

(*f*) Use other cooperative and individual means to carry out and make effective their aforesaid purposes and undertakings.

The effect and result of the alleged acts and things done by respondents, as alleged, "have been and now are to unduly hinder and restrain interstate commerce between the said producers and distributors on the one hand and the said exhibitors on the other hand, in the distribution, leasing, transportation into the State of California and delivery of motion picture films; to close to both said producers and distributors and said exhibitors certain of the outlets or channels through which they would otherwise be enabled to obtain trade and pursue their respective businesses; and to deprive them of the advantages which they would enjoy under the natural and normal conditions of competition which would exist among respondents and between respondents and the other exhibitors in the absence of the matters and things herein set out"; and respondents' said alleged acts and practices "are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

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

The respondents having entered their several appearances, and having filed their several answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and respondents before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the briefs of counsel, and oral argument by counsel for Herbert L. Rothchild Entertainment, Inc., counsel for the other respondents having waived oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. West Coast Theatres, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California and maintaining its principal office and place of business in the city of Los Angeles in said State. Such corporation was organized in the year 1920 by Sol L. Lesser, A. L. Gore, Adolph Ramish, Thomas A. Morrissey, Goodwin Knight, and Frank S. Hutton. Since the year 1920, it has been engaged in the business of owning, leasing, and operating theatres for exhibition of motion pictures in cities and towns in the State of California. Its authorized capital stock under the original articles of incorporation was $2,000,000 divided into 200,000 shares of $10 each. Its officers in 1924 were Mike Gore, president; Sol Lesser, vice president; A. L. Gore, secretary, and Adolph Ramish, treasurer. A. L. Gore was afterward vice president. The incorporators, together with Goodwin Knight, Thomas A. Morrissey, and Frank S. Hutton, composed the first board of directors. At the first meeting of the board of directors, Goodwin Knight resigned and Dave Bershon was elected a director.

West Coast Theatres, Inc., of Northern California is a corporation organized and existing under and by virtue of the laws of the State of California. It maintains its principal office and place of business in the city of San Francisco in said State. Such corporation was organized more than ten years ago under the name of Turner & Dahnken. On or about August 9, 1923, the Superior Court of the State of California in and for the city and county of San Francisco, permitted such corporation to change its name to "West Coast Theatres, Inc., of Northern California". Such corporation both before and after the change of its corporate name was engaged in and still is engaged in the business of owning, leasing, and operating motion picture theatres in cities and towns in the State of California, and particularly in the northern half of said State. Since March, 1923, respondent West Coast Theatres, Inc., has owned more than 90 per cent of the stock of said Turner & Dahnken, or respondent West Coast Theatres, Inc., of Northern California, and has controlled the business operations of said respondent corporation. Respondent, West Coast Theatres, Inc., of Northern California, owns 50 per cent or more of the capital stock of several corporations owning theatres in California. In February, 1923, respondent, West Coast Theatres, Inc., bought 3,019 shares of the preferred stock and 68,850 shares of the common stock of Turner & Dahnken corporation (afterward West Coast Theatres, Inc., of Northern California) for about $1,700,000. Since that time respondent, West Coast Theatres, Inc., has acquired additional shares of common and preferred stock, and at the date of the issuance of the complaint, May 29, 1925, it owned 4,096 shares of preferred stock, out of a total of 6,796 shares issued, and 71,350 shares of common stock, out of a total of 72,850 issued. Officers and directors of Turner & Dahnken immediately after the acquisition of this corporation by respondent West Coast Theatres, Inc., were A. L. Gore, president; Harry Arthur, jr., vice president; A. M. Bowles, secretary, all these gentlemen being directors also. The other four directors were Adolph Ramish, Sol

Lesser, Oscar Samuels, and Jacob Samuels. E. Salomon, a stenographer in the office of Messrs. Samuels, served as director temporarily. As of the date of filing the complaint in this proceeding, A. L. Gore was president and director, Jacob Samuels, vice president and director, A. M. Bowles, secretary and director, Sol Lesser, Adolph Ramish, Oscar Samuels, and Maurice Rosendorn being the other directors.

Respondent, T. & D. Jr. Enterprises, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with principal office and place of business in the city of San Francisco, in that State. It was organized in March, 1921, by Mrs. H. M. Turner, L. R. Crook, G. C. Parsons, J. G. Hunter, A. H. Moore, C. W. Godard, and J. C. McCann, residents of San Francisco, Sausalito, Berkeley, and Sacramento, Calif., "to conduct and carry on a general motion picture and film exchange business in any and all of its branches." Powers as to ownership and control of property were secured to enable it to conduct such business. The incorporators were interested in the motion picture business at the time. Incorporators were the first directors. Authorized capital stock was $1,000,000, divided into 100,000 shares of $10 each. First officers were (Mrs.) H. M. Turner, president; G. C. Parsons, vice president; A. L. Crook, secretary and treasurer; A. H. Moore, assistant secretary. April 12, 1921, J. G. Hunter was elected second vice president. G. C. Parsons, being a distributor, in an organization primarily of exhibitors, resigned. Respondent T. & D. Jr. Enterprises, Inc., owns or leases and operates theatres in Sacramento, Susanville, Petaluma, Paso Robles, Lodi, and Selma, Calif., and in Reno, Nev., and has in addition interests in theatres or companies operating theatres in Sacramento, Oakland, and San Leandro, Calif. Its stockholders and officers have holdings in theatres elsewhere.

Respondent, Herbert L. Rothchild Entertainment, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California. It was organized in March, 1920, under the name of Famous Players-Lasky Corporation of California, with 120,000 shares of stock authorized, divided into 80,000 shares of common and 40,000 shares of preferred. The preferred stock was never issued. At the time of its formation Herbert L. Rothchild owned 75 per cent of the common stock and Famous-Players Lasky Corporation 25 per cent. At the time of its organization the officers were Herbert L. Rothchild, president, and Sanford F. Walter, secretary. In September, 1922, the name of the corporation was changed to Herbert L. Rothchild Entertainment, Inc. Sometime later the officers were Herbert L. Rothchild, president; I. M. Golden, vice president; E. B. Barron, secretary; and Walter E. Wilcox, treasurer. The directors were Rothchild, Golden, Wilcox, W. W. Stettheimer, and Gavin McNab. The officers and directors remained the same until July, 1925. In July, 1925, Mr. Rothchild sold all his stock in the company to Famous-Players Lasky Corporation, to be paid for over a term of years, and since that time he has had no control over the stock, although some of it still stands in his name on the books. After the sale by Rothchild of his stock the name of the corporation was changed to San Francisco Entertainment, Inc.

H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston are copartners doing business as Turner, Dahnken & Langley. Such partnership was organized prior to July 1, 1921. Such partnership and the individuals of which it was composed maintained their offices and principal place of business in the city of Los Angeles, Calif. These individuals operating as Turner, Dahnken & Langley, were engaged in the business of owning and leasing or operating motion picture theatres in towns and cities in California. On or about July 1, 1921, said respondents H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston entered into a contract with respondent, West Coast Theatres, Inc., whereby said individuals on the one hand and respondent West Coast Theatres, Inc., on the other, agreed to cease competing with each other in Southern California and acquired certain interests in certain theatres and theatre-holding corporations, some of which had been, up to that time, in competition with one another.

PAR. 2. The term "exhibitors" as hereinafter used applies to respondents and to their competitors engaged in the operation of theatres and in the leasing and the exhibition of motion picture films.

"Exhibitor" is a term used generally to designate operators of theatres which show motion pictures to the public. "Producers" are persons or concerns who produce motion picture films. "Distributors" are persons or concerns who distribute motion pictures.

Motion picture theatres are divided into two classes: (1) First-run houses, (2) subsequent run houses. The successful distribution of motion picture films in a given territory depends largely upon their showing in the first run theatres in that territory. First-run theatres in territory contiguous to the central city in which the film has its "first-run," and subsequent run theatres in the same territory, are guided in their choice of motion picture films by the result of the exhibition of such films in the first-run theatre in such central city.

PAR. 3. Respondent West Coast Theatres, Inc., operate, control and/or "book" for first-run theatres in large numbers in the more important California cities and towns. At the date of its organization, respondent West Coast Theatres, Inc., controlled the following theatres:

Theatre	West Coast percentage of interest	Remarks
Los Angeles		
Kinema (Criterion)	100	
Rosebud	100	
New Central	100	
Strand	100	
Alhambra	50	50 per cent at time of organization, 100 per cent later.
Hollywood	50	House owned by Hollywood Theatres, Inc. of whose stock 50 per cent owned by West Coast Theatres Inc., and 50 per cent by Frank Grant, J. L. Swope, J. M. Young, and others.
Apollo	50	Same as Hollywood Theatre. (See new Apollo.)
Windsor	50	Same as Hollywood.
Venice		
Auditorium	50	House owned 100 per cent by the Venice Investment Co., 50 per cent of whose stock is owned by West Coast Theatres, Inc., and the other 50 per cent was then owned by George Cleveland, Kinney, and others. Mr. Cleveland was closely associated with the men who controlled respondent.
Neptune	50	Do.
California	50	Do.
Anaheim		
California	75	Under name of Anaheim Theatres, Inc., theatre was constructed, G. T. Ingram owning the other 25 per cent interest.
Pomona		
American	100	
Belvidere	100	
Bakersfield		
California	100	
Pastime	100	
Hippodrome	100	
Opera House	100	
Taft		
Sunshine	22½	Directly 22½ per cent—indirectly a majority interest.
Redondo		
Capitol	50	Same as California Theatre, Venice.
Ocean Park		
La Petite	50	Do.

Since the date of its organization and prior to May, 1925, when the complaint was issued in this proceeding, respondent, West Coast

Theatres, Inc., had acquired the following theatres or the interest therein hereinafter indicated:

Theatre	West Coast percentage of interest	Remarks
Los Angeles		
Circle	100	
Roosevelt	50	Leased by Huntington Park Theatres, Inc., of which West Coast Theatres, Inc., owns 50 per cent of capital stock, the other 50 per cent owned by West Coast-Langley Theatre Circuit, controlled by respondent.
Tally's	100	
Sunbeam	100	
Highland	100	
Mission (Monterey Park)	100	
Boulevard	100	
Brooklyn	100	
Uptown	100	
Shamrock (Bandbox)	75	Leased from A. C. Blumenthal Co., other 25 per cent owned by I. H. Norton.
New Apollo	50	Replaces the old Apollo which is owned by Hollywood Theatres, Inc., in which corporation West Coast Theatres, Inc., has 50 per cent interest.
Wilshire	50	Leased by Hollywood Theatres, Inc., in which company West Coast Theatres, Inc., owns 50 per cent of stock.
Granada	50	Do.
Paramount	50	Do.
Carmel	50	Do.
Beverly	50	Do.
Sunbeam	66⅔	Leased from I. King by West Coast-Sunbeam Theatre Co. of which West Coast Theatres, Inc., owns 66⅔ per cent of capital stock and C. W. Grubb owns 33⅓ per cent.
Kinema	66⅔	Do.
Loew's State	50	Leased by Combined Theatres, Inc., from 7th and Broadway Building Co., West Coast Theatres, Inc., owns 50 per cent of stock and Loew's, Inc., owns other 50 per cent.
California	50	Do.
Miller	50	Do.
Grayman's Egyptian	50	Owned by Boulevard Theatre Co., Inc., of which West Coast Theatres, Inc., owns 50 per cent and Sidney Grauman owns 50 per cent.
Manchester	50	Owned by South Side Theatres, Inc., 50 per cent of whose stock is owned by West Coast Theatres, Inc., and 50 per cent by R. B. Grunauer.
York	50	Owned by John Sugar, West Coast Theatres, Inc., has 50 per cent interest in profits and operates theater.
Anaheim		
Fairyland	75	Leased by Anaheim Theatres, Inc., the other 25 per cent of whose stock is owned by G. T. Ingram.
Strand	75	Do.
Pomona		
California	100	Built by respondent upon land leased for 99 years from M. Potter.
Taft		
Hippodrome (old)	22½	Leased from F. Livingston, who holds 38¾ per cent of stock; C. L. Langley, who had similar share, sold to respondent, West Coast Theatres, Inc., which now owns 61¼ per cent of stock.
Redondo		
Art	50	Leased by Venice Investment Co., of whose stock West Coast Theatres, Inc., owns 50 per cent.
Pavillion	50	Do.
Ocean Park		
New Dome	50	Do.
San Pedro		
Cabrillo	100	
San Bernardino		
West Coast	100	Lease for 15 years

Theatre	West Coast percentage of interest	Remarks
Long Beach		
West Coast	100	
Liberty	100	
Palace	50	Sold.
Wilmington		
Granada	100	
Riverside		
Mission	50	West Coast-Langley Circuit owns other 50 per cent.
Regent	50	Do.
Loring	50	Do.
Orpheum	50	Other 50 per cent owned by Turner, Dahnken & Langley.
El Centro		
Palace	50	Leased from Mrs. Blackwell to Valley Theatre Co., West Coast Theatres, Inc., own 50 per cent and Arthur Brick, 50 per cent.
Valley	50	Do.
Airdome	50	Owned by Valley Theatre Co.
Tulane	50	Leased by Valley Theatre Co.
Hermosa Beach		
Metropolitan	50	Through Venice Investment Co. See Art Theatre, Redondo.
Santa Monica		
Criterion	50	Do.
Huntington Park		
Huntington	50	Through Huntington Park Theatre Co. See Roosevelt Theatre, Los Angeles.
California	50	Do.
Glendale		
Palace Grand (now Lincoln)	20	Leased by Glendale Theatre Co.; other 80 per cent of stock owned by West Coast-Langley Circuit.
Gateway	30.3	Owned by Gateway Theatre Co., in which Fred Miller, Roy Miller, and B. E. Loper, sr., own other 69.7 per cent of the stock.
San Diego		
Balboa	100	Building owned by Balboa Building Co., but leased to Silvergate Theatre, Inc., of which respondent West Coast Theatres, Inc., owns 100 per cent of the stock.
Cabrillo		Do.
Santa Barbara		
California	49	Leased by California Theatres Co., in which West Coast Theatres, Inc., acquired an interest of 49 per cent, but purchase was rescinded and interest now nil.
Potter		Do.
Mission		Do.
Granada		Same as California. (These theatres are leased by the California Theatre Co.; booked for West Coast.)

Besides the direct holdings detailed above, respondent, West Coast Theatres, Inc., has indirect interests in the following theatres:

Theatre	West Coast percentage of interest	Remarks
Los Angeles		
Alvarado	50	Leased by the West Coast-Langley Theatre Circuit—same as Mission Theatre, Riverside, Calif.
De Luxe	50	Do.
Theatorium (now Hollyway)	50	Do.
Rivoli	50	Owned by Holly-Western Theatres, Inc., 50 per cent of whose stock is owned by Hollywood Theatres, Inc., in which respondent West Coast Theatres, Inc., has a half interest; the other half is owned by Graff Brothers.
Carlton	50	Do.
Crescent	50	Do.
Iris	----------	Leased by Earl Sinks and Hollywood Theatres, Inc., with interests of 50 per cent each, West Coast Theatres, Inc., having 50 per cent interest in Hollywood Theatres, Inc.
Pasadena		
Pasadena	----------	Leased by West Coast-Langley Circuit Same as Alvarado Theatre, Los Angeles.
Florence	----------	Do.
Raymond	----------	Do.
Strand	----------	Do.
Inglewood		
Inglewood	----------	Leased by the Inglewood Theatre Co., which is owned 33⅓ per cent by D. B. Van Derlip, 33⅓ per cent by West Coast Theatres, Inc., and 33⅓ per cent by Venice Investment Co. West Coast Theatres, Inc., owns 50 per cent of the stock of Venice Investment Co.
Granada	----------	Do.

Respondent, West Coast Theatres, Inc., had an interest in certain other theatres construction of which had begun, or negotiations for the acquisition of an interest in which had begun, prior to the issuance of the complaint in this case, May 29, 1925, and which theatres subsequently have been opened and/or acquired. These theatres are as follows:

Theatre	West Coast percentage of interest	Remarks
Los Angeles		
San Carlos	100	
La Mirada	50	Leased by Hollywood Theatres, Inc., of whose stock 50 per cent is owned by West Coast Theatres, Inc.
Belmont	50	Leased by Huntington Park Theatres, Inc., of whose stock West Coast Theatres, Inc., owns 50 per cent, West Coast Theatres, Inc., of Northern California and C. L. Langley own 50 per cent.
Balboa	50	Owned by Southside Theatres, Inc., of whose stock West Coast Theatres, Inc., owns 50 per cent.
Mesa	66⅔	Owned by Mesa Investment Co., 66⅔ per cent West Coast Theatres, Inc., and 33⅓ per cent by Adolph Ramish.
Ritz	100	
South Pasadena		
Rialto	50	50 per cent Turner, Dahnken & Langley and 50 per cent by West Coast Theatres, Inc.
Santa Ana		
West Coast Walker	51	Owned by West Coast Walker Theaters, Inc.—51 per cent West Coast Theatres, Inc., and 49 per cent C. W. Walker.

Respondent, West Coast Theatres, Inc., through a corporation known as West Coast Junior Circuit, has an interest in the following theatres:

Theatre	West coast percentage of interest	Remarks
Los Angeles		
Royal	50	Owned 100 per cent by West Coast Junior Circuit, Inc., of whose capital stock West Coast Theatres, Inc., owns 50 per cent.
Jewel	50	Do.
Crystal	50	Do.
Redlands		
Majestic	50	Do.
Liberty	50	Do.
Wyatt	50	Do.
Ontario		
Granada	50	Do.
Burbank		
Victory	50	Do.

As of May, 1925, the New Central, Apollo, and Windsor of the original holdings in Los Angeles were closed. The Auditorium in Venice was destroyed by fire and the Neptune was closed. The American and Belvidere in Pomona were closed, as was the Opera House in Bakersfield. LaPetite in Ocean Park was dismantled. Of the later acquisitions in Los Angeles, the Tally's and Sunbeam were closed, as was also Miller's. Fairyland and Grand in Anaheim, and Pavillion in Redondo, were also closed, as were Palace in Long Beach, Mission in Riverside, and Palace, Valley, and Tulane in El Centro. Crescent in Los Angeles, in which respondent, West Coast Theatres, Inc., had an indirect interest, was also closed in May, 1925.

Respondents refused to give information as to theatre holdings later than May, 1925, except where negotiations leading to the acquisition of a theatre had been begun before that date, but there were indications that the processes of expansion are continuing as they continued between 1920 and 1925.

PAR. 4. While technically accurate, having in mind that the above lists set forth the direct ownership of respondent, West Coast Theatres, Inc., in the theatre-owning and operating corporations, said lists do not in fact give full information as to such virtual ownership. As of May, 1925, respondent, West Coast Theatres, Inc., owned directly 5,506.2 shares of the capital stock of the Taft Theatre Co. C. L. Langley and respondent, West Coast Theatres, Inc., of Northern California, a subsidiary of West Coast Theatres, Inc., owned 9,490.8 shares of such stock out of a total issue of 15,000 shares. With C. L.

Langley, its associate, tied to its policies by contract, it controlled all the stock. In the same way, respondent, West Coast Theatres, Inc., and its subsidiary, West Coast Theatres, Inc., of Northern California, together with C. L. Langley, owned 9,998 shares of stock in Glendale Theatre Co., out of a total issue of 10,000 shares. In the same way, West Coast Theatres, Inc., its subsidiary, and its associate, owned 4,997 shares of stock of the Huntington Park Theatre Co., out of a total issue of 5,000 shares.

The West Coast-Langley Theatre Circuit is the same as the partnership of Turner, Dahnken & Langley, named as a respondent in this case. Turner & Dahnken (now West Coast Theatres, Inc., of Northern California) owned a two-thirds interest in Turner, Dahnken & Langley, which interest was acquired by respondent, West Coast Theatres, Inc., when it bought over 90 per cent of the capital stock of Turner & Dahnken. Since that time, F. W. Livingston and C. L. Langley have sold their interests in the partnership to respondents, so at present respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California and Adolph Ramish own the West Coast-Langley Theatre Circuit.

PAR. 5. Respondent, West Coast Theatres, Inc., does the booking for all the theatres in which it has any interest. Booking for a theatre involves the purchase of motion picture films for exhibition in the theatre, the arranging of runs, play dates, etc. A commission of 10 per cent is charged for this service in practically every case, both for the theatres in which it has an interest, and those in which it has no interest.

In addition to booking for theatres in which it has an interest, respondent West Coast Theatres, Inc., also booked for thirty theatres in which it had no interest of any kind. It had terminated the purchase of films for eight of such theatres prior to the issuance of the complaint in this proceeding, and shortly thereafter, ceased booking for six other of such theatres. At the present time it is booking for sixteen theatres in which it is not an owner in whole or in part. By booking for theatres in which it has no interest of any kind, West Coast Theatres, Inc., is able to control to a great extent the policy of such theatres, and add to its influence and dominance in the film-purchasing market in Southern California.

Respondent, West Coast Theatres, Inc., when it acquires an interest of any kind in a theatre or theatre-owning company, usually requires that it shall keep the books and accounts of said theatre or theatre-owning company.

PAR. 6. A "first-run" theatre is one which exhibits a film for the first time in a particular city, town, or zone. Subsequent exhibitions of a film in the same city, town, or zone are called "second-run", "third-run", etc. Patrons of moving picture theatres usually prefer to attend first-run theatres, and such theatres charge higher admission prices than subsequent-run theatres. A large majority of the theatres owned, controlled and operated by respondent, West Coast Theatres, Inc., are first-run theatres in the cities, towns, and zones in which said theatres are located.

PAR. 7. Respondent, West Coast Theatres, Inc., of Northern California also owns and operates, or has an interest in, many theatres in the State of California.

At the time that respondent, West Coast Theatres, Inc., acquired the stock of Turner & Dahnken, the name at that time of the corporation afterward respondent West Coast Theatres, Inc., of Northern California, Turner & Dahnken had the following theatres:

Theatre	Turner & Dahnken percentage of interest	Remarks
San Francisco		
T. & D. (Tivoli)	100	
Oakland		
T. & D.	100	
Stockton		
T. & D. (California)	100	
Sacramento		
T. & D. (Capitol)	50	50 per cent Turner & Dahnken, and 50 per cent M. and J. A. Naify. Later a corporation called Sacramento Theatres, Inc., formed, 50 per cent of whose stock was owned by West Coast Theatres, Inc., of Northern California and 50 per cent by M. and J. A. Naify, and theatre transferred to that corporation.
Berkeley		
T. & D. (California)	100	
Richmond		
T. & D. (California)	100	
Richmond	100	
Salinas		
T. & D. (California)	$66\frac{2}{3}$	Turner & Daknken undivided two-thirds interest; other one-third owned by G. A. Turner.
Unnamed theatre	$66\frac{2}{3}$	
Watsonville		
T. & D.	100	
San Jose		
T. & D. (California)	100	
Alameda		
Unnamed theatre	100	Theatre under lease.

Prior to the date of the complaint in this proceeding, May 29, 1925, the T. & D. Theatre in Watsonville had burned down, and the lease on the Tivoli in San Francisco had expired. All the other theatres were operating as of that date.

From the date of the acquisition of more than 90 per cent of the capital stock of Turner & Dahnken by West Coast Theatres, Inc., February 3, 1923, down to May 29, 1925, the date of the complaint in this proceeding, respondent, West Coast Theatres, Inc., had acquired the following theatres, and interest in theatres:

Theatre	West Coast of Northern California, percentage of interest	Remarks
San Francisco		
Loew's Warfield	25	See paragraph 12, section 2 (pp. 458, 459).
Stockton		
State	100	
Fresno		
Hippodrome	100	
Kinema	100	
Liberty	100	
Strand	100	
White	100	
Sacramento		
Senator	50	Owned by Sacramento Theatres, Inc., of which West Coast Theatre, Inc., of Northern California owns 50 per cent of stock, M. and J. Naify, 50 per cent.
Berkeley		
U. C.	100	
Berkeley	100	
Watsonville		
California	100	
Oakland		
Grand Lake	50	Real property and theatre building leased by Bay District Theatres, Inc., of whose stock West Coast Theatres, Inc., of Northern California owns 50 per cent, A. C. Karshi, 50 per cent.
Senator	75	Owned by Trans. Bay Theatres, Inc., of whose capital stock West Coast Theatres, Inc., of Northern California owns 75 per cent and Louis Kaliski 25 per cent.
Roosevelt	75	

The lease on the Hippodrome Theatre in Fresno was terminated prior to May 29, 1925, and the Roosevelt Theatre in Oakland is no longer owned by respondent.

PAR. 8. Respondent, T. & D. Jr. Enterprises, Inc., on May 29, 1925, owned and operated numerous theatres in California, as follows:

Theatre	T. & D. Jr. percentage of interest	Remarks
Paso Robles		
T. & D. Jr	100	Leasehold.
Lodi		
T. & D. Jr	100	Do.
Tokay	100	Do.
Selma		
T. & D. Jr	100	Do.
Reno		
Rialto (Granada)	100	Do.
Majestic	100	Do.
Grand	100	Do.
Sacramento		
Godard's	100	Do.
Hippodrome	100	Do.
Liberty	100	Do.
Susanville		
Liberty	100	Owned in fee.
Orpheus (closed)	100	Leasehold.
Petaluma		
California	100	Owned in fee.
Hill Opera House	----------	

Respondent, T. & D. Jr., Enterprises, Inc., as of May 29, 1925, also owned stock in a number of other companies owning and operating theatres. It owned a 60 per cent interest in the Oakland & San Francisco Co., which owned 100 per cent leasehold, State Theatre, Oakland.

It had a 51 per cent interest in the Oak Park Theatre Co., which owned in fee 100 per cent Oak Park Theatre, Sacramento.

It had a 12½ per cent interest in the Oregon & California Amusement Co., which had interests in the following theatres:

Theatre	Per cent leasehold	Remarks
Oakland		
Palace	100	
Casino	100	
Fremont	100	
Flintdale	100	
Granada	50	100 per cent leasehold interest is in Monarch Theatre Co., of which Oregon & California Amusement Co. owns 50 per cent.
Rialto	50	100 per cent leashold interest is in San Pablo Theatre Co., of which Oregon & California Amusement Co. owns 50 per cent.
Liberty	50	100 per cent leasehold interest is in Dimond Theatre Co., of which Oregon & California Amusement Co. owns 50 per cent.
San Leandro		
Best	50	100 per cent leasehold interest is in East Bay Theatre Co., of which Oregon & California Amusement Co. owns 50 per cent.
Hayward		
Hayward	50	Do.

It owned a 12½ per cent interest in Monterey Theatres Co., which owned and operated the following theatres in Monterey, Calif.:

Monterey	100 per cent leasehold.
Strand	100 per cent leasehold.
Star (closed)	100 per cent leasehold.
Grove	100 per cent owned in fee.

It owned a 12½ per cent interest in West Oakland Theatres Co., which owned and operated in Oakland:

Lincoln	100 per cent leasehold.

It owned a 10 per cent interest in Consolidated Theatres, Inc., which owned and operated in San Francisco:

Royal	100 per cent leasehold.
Polk	100 per cent leasehold.

In general, the theatre companies named above in which respondent T. & D. Jr. Enterprises, Inc., had a stock interest were controlled by stockholders, or former stockholders, in this respondent who also hold stock in these theatre companies. Many of these stockholders had extensive theatre interests outside of this respondent's holdings. In the Oregon & California Amusement Co., T. & D. Jr. Enterprises, Inc., owns 1,250 shares of stock out of 10,000 shares, the remainder being owned by R. A. McNeil, E. H. Emmick, M. Naify, Charles Moser, M. Thomas, and M. Rosenberg. In the Oakland & San Francisco Co., T. & D. Jr. Enterprises, Inc., owns 60 per cent of the stock, R. A. McNeil 30 per cent, and M. Naify 10 per cent. In the West Oakland Theatre Co., T. & D. Jr. Enterprises, Inc., owns 25 shares of stock out of 200 shares, the remainder being owned by R. A. McNeil, E. H. Emmick, M. Naify, Charles Moser, M. Thomas, and M. Rosenberg. In Monterey Theatres Co., T. & D. Jr. Enterprises owns 37½ shares of stock out of 300 shares, the other stockholders being E. H. Emmick, R. A. McNeil, M. Naify, Charles Moser, and J. E. Moser. The names of the other stockholders in the Oak Park Theatre Co. and Consolidated Theatres, Inc., do not appear in the record. E. H. Emmick, M. Naify, J. A. Naify, R. A. McNeil, and William Nasser were all large stockholders in T. & D. Jr. Enterprises, Inc., on May 29, 1925.

Respondent, T. & D. Jr. Enterprises, Inc., also books for several theatres in which it has no interest. These theatres are the Merced, in Merced, Calif., Tulare, in Tulare, Calif., and Strand, in Alameda, Calif. It also keeps the books for the two last named, for which it is remunerated. The Tulare Theatre is owned by four individuals, of whom two, M. Naify and William Nasser, are officials of respondent; the Merced Theatre is owned by E. H. Emmick, R. A. McNeil, and M. Naify, large stockholders and officers of respondent; the Strand Theatre is owned by several individuals, including M. Naify and William Nasser, large stockholders in respondent.

T. & D. Jr. Enterprises, Inc., required that before any director or stockholder of the company should become interested in any theatre deal it must first be submitted to the corporation so that the corporation could decide if it wanted to participate in the deal. If the corporation did not, then any director or stockholder could personally acquire an interest.

PAR. 9. Respondent, Herbert L. Rothchild Entertainment, Inc., on May 29, 1925, the date of the issuance of the complaint herein, owned and operated the California, Granada, Imperial, and Portola theatres, all in San Francisco. At the time of its organization all except the Granada were owned and operated, the latter theatre having been built by the corporation shortly after its organization. All these theatres were first-run houses until December, 1923, when the policy of the Portola Theatre was changed, and it became a "grind" house, showing old pictures at a 15-cent admission price.

PAR. 10. Respondent Turner, Dahnken & Langley in July, 1921, declared itself the owner and operator of theatres in Taft, Pasadena, and Glendale, Calif., which are referred to as "closed and restricted towns owned by Turner, Dahnken & Langley." The partnership had at that time Jensen's Theatorium, Alvarado Theatre, and DeLuxe Theatre in Los Angeles, which are given a protection from respondent, West Coast Theatres, Inc., of 1½ miles closed zone. It had also a closed site for a theatre on the Bush property on the line of Santa Monica and Venice. In addition, respondent Turner, Dahnken & Langley, acquired theatres since July, 1921, in South Pasadena and Riverside, Calif. The theatres owned and controlled by Turner, Dahnken & Langley are all set forth in the theatre holdings of respondent, West Coast Theatres, Inc., in paragraph 3 herein, under the names of West Coast-Langley Circuit, Turner, Dahnken & Langley, or F. W. Livingston and C. L. Langley, and will not be repeated here.

PAR. 11. Respondents herein for three or more years prior to the issuing of the complaint in this proceeding, May 29, 1925, had been actual or potential competitors as exhibitors in the motion picture business among themselves and with exhibitors other than respondents, all of which exhibitors used motion picture films which were contracted for with owners outside the State of California, and shipped from States other than California into California for exhibition.

PAR. 12. Respondents herein made agreements among themselves, and with other exhibitors, intended to lessen, and which actually did lessen, competition among respondents, as well as, in some instances, between distributors.

(1) Under date of July 1, 1921, F. W. Livingston, Hattie M. Turner, Fred Dahnken, and C. L. Langley, partners doing business under the name and style of Turner, Dahnken & Langley, as parties of the first part, entered into a contract with respondent West Coast Theatres, Inc., and Mike Gore, A. L. Gore, Sol Lesser, and Adolph Ramish, as parties of the second part, in which contract it is recited:

Whereas, said parties of the first part, are the owners, controllers or operators of certain theatres in Southern California, hereinafter enumerated; and,

Whereas, in certain localities in Southern California the theatres of said parties hereto, respectively are in open and aggressive competition which threatens to be ruinous and unprofitable to said parties respectively and such parties are fearful that such competition may extend to other localities in Southern California where a theatre or theatres of said parties only is now owned, controlled, or operated, and the parties hereto for the purpose of their mutual benefit, and to avoid and prevent such ruinous and unprofitable competition, and for the further purpose of providing against the contingencies of the future as the business of the parties hereto may come in conflict have agreed as follows, to wit:

Following the above preamble, the parties to this contract agree to organize and incorporate the Hippodrome Theatre of Taft, Inc., and Palace Grand Theatre of Glendale, Inc., for the purpose of acquiring, operating, and dealing in theatres and kindred property. These corporations are to be made holding companies for the theatres and other kindred properties owned by the parties to the contract and located in the place indicated by the names of the corporations. Parties of the second part were to hold 22½ per cent of the stock of the Hippodrome corporation and 20 per cent of the stock of the Glendale corporation, and the corporations were to be given certain First National film franchises owned by parties of the second part. It is provided in such contract that each of the parties thereto shall have an equal number of stockholders on the boards of directors of the two companies, although West Coast Theatres, Inc., has a minority of the capital stock, and each shall have 50 per cent of the voting power both in the Hippodrome and the Glendale corporations. Said corporations were formed in accordance with the terms of the contract, on April 6, 1922, under the names "Taft Theatre Co.," and "Glendale Theatre Co.," and are now in existence.

It is recited in the agreement that parties of the second part (West Coast Theatres, Inc.) own theatres in Bakersfield, Pomona, Long Beach, Venice, Redondo, Anaheim, San Pedro, San Diego, and Taft, Calif., which are designated as "Closed and restricted towns owned by West Coast Theatres, Inc.," and that said parties of the second part also own eight theatres in Los Angeles, one in Gardner Junction, and three in Hollywood, Calif., which have "Protection of 1½ miles radius closed zone given." It is also recited that such parties of the second part own three theatres in Los Angeles—the Kinema, Alhambra, and Shamrock, designated as "Open and unrestricted communities." It is also recited that parties of the first part have three theatres in Los Angeles—Jensen's Theatorium, Alvarado, and DeLuxe theatres, which are designated as "Theatres owned by Turner, Dahnken & Langley wherein a protection of 1½ miles closed zone is given." It is further recited in the contract that Main Street, Los Angeles, is "open and unrestricted" in the block between Fourth and Fifth Streets. Also that on the Bush property, located on the line of Santa Monica and Venice, Turner, Dahnken & Langley propose to establish a theatre which shall be open and unrestricted.

Closed towns as understood in the motion picture industry are towns where one interest owns the theatres, and there is but one customer for films.

The contract further provides that the theatres already owned, controlled, operated or in the course of construction, belonging to either party to the contract, shall continue to serve the respective communities or zones set out in the foregoing paragraph of the contract, and the parties to the contract agree not to invade any such zone or community and to refrain from competition with each other therein. If new zones are created by either party during the life of the contract in any manner, the party creating such new zone or community must first give notice to the other party of the location of such new zone, proposed plans, etc., and said other party shall have the exclusive right and option for thirty days to acquire a 50 per cent interest in such enterprise at actual cost.

It is provided that whenever the parties of the first part create a new zone or zones subject to service by a First National franchise, parties of the second part agree to assign or cause to be assigned to the parties of the first part such franchise, if in their power so to do.

Another clause requires the parties to the contract to refrain from acquiring an interest in any new theatre within a 1½-mile radius of any theatre then owned or being constructed by either party, with certain exceptions.

Under the contract the options given to each of the parties to the contract to share in each new theatre enterprise of any of the other parties are limited to two years. If the parties undertaking such new enterprise fail to notify the other parties and offer them 50 per cent interest in the enterprise, then the other parties may give notice of a desire to participate and such notice gives the other parties an option under certain circumstances, during the life of the contract. This arrangement for the participation by all parties to the contract in the new enterprises of each party applies to any interest which either party may get in any new project.

It is also provided that the contract is effective in and binds the parties from the northern line of Kern and San Luis Obispo Counties, and takes in what is known as Southern California.

The words "invade" or "compete", or "invasion" or "competition" are defined by the parties to the agreement as including any interests, rights, and titles, indirect as well as direct, as copartners, stockholders, owners of units, under declaration of trust, or otherwise, "however acquired, or however direct or inconsequential."

The term of the contract is twenty-five years. The parties to said contract have adhered to and abided by the policies and provisions contained therein, and so far as necessary, said contract is still in effect. The acquisition of control over the Turner, Dahnken & Langley interests by respondent, West Coast Theatres, Inc., in February or March, 1923, made this contract unnecessary as a means of extending its control over theatres in Southern California, and in the suppression of competition between Turner, Dahnken & Langley and respondent West Coast Theatres, Inc., in such territory. Turner & Dahnken, the corporation afterward known as West Coast Theatres, Inc., of Northern California, when acquired by respondent West Coast Theatres, Inc., in February or March, 1923, owned a two-thirds interest in Turner, Dahnken & Langley, and this interest passed to respondent West Coast Theatres, Inc., with the other Turner & Dahnken holdings.

(2) An agreement between respondent, West Coast Theatres, Inc., and Loew's, Inc., was dated May 26, 1923. By this agreement the parties bound themselves to form a New Jersey corporation to be known as "Combined Theatres Corporation," the stock of which was to be shared by the parties to this agreement, and to place in the control of such corporation said Loew's theatres in Los Angeles and San Francisco, Calif. Combined Theatres Corporation was to be controlled by a board upon which both parties were represented. Under the agreement, the theatres were to be operated for joint account. The contract recites that Loew's, Inc., owns all the capital

stock of Metro Pictures Corporation, a New York corporation (now known as Metro-Goldwyn-Mayer), and that respondent West Coast Theatres, Inc., " is the owner of the exclusive franchise or right to the distribution in the State of California, of motion picture productions released by or through the Associated First National Pictures Corporation." By the agreement Combined Theatres Corporation was to have the pick of not less than twenty-two pictures per year released by Metro Pictures Corporation and Associated First National Pictures Corporation, respectively, for first-run exhibition in the two theatres covered by said contract, said pictures to be on the " play or pay " basis. The theatres covered by said contract are Loew's State Theatre, in Los Angeles, and Loew's Warfield Theatre, in San Francisco, both being leading downtown, first-run threatres in their respective cities, and their policies being the showing of a picture for seven days. Each concern, Loew's and respondent, West Coast Theatres, Inc., had share and share alike in the profits. Loew's, Inc., had general inspection rights and West Coast Theatres, Inc., was the actual operator. The California and Miller's theatres in Los Angeles were also acquired by Combined Theatres Corporation and operated under similar terms. The contract is still in force as to Loew's State Theatre in Los Angeles and Loew's Warfield Theatre in San Francisco.

Subsequent to the acquisition of the controlling interest in Turner & Dahnken, respondent, West Coast Theatres, Inc., entered into an agreement with said Turner & Dahnken, dated June 26, 1923, whereby it was agreed that Turner & Dahnken would carry out the provisions of the contract between West Coast Theatres, Inc., and Loew's, Inc., dated May 26, 1923, relating to the furnishing of not less than 22 Associated First National pictures for exhibition in Loew's Warfield Theatre, and that Turner & Dahnken would have exclusive management of said theatre, under the supervision of West Coast Theatres, Inc. It was also set forth that Turner & Dahnken owned the exclusive franchise from Associated First National Pictures, Inc., to the first-run exhibition of all pictures produced and/or distributed by Associated First National Pictures, Inc., for the city and county of San Francisco. For its services in the management of the theatre and for the privilege of the first-run pictures produced and/or distributed by Associated First National Pictures, Inc., respondent, West Coast Theatres, Inc., agrees to pay Turner & Dahnken one-half of the net profits made from the operation of Loew's Warfield Theatre, and Turner & Dahnken agree to bear one-half of any losses therefrom. The agreement is to continue in force during the life of the lease of Loew's Warfield Theatre to Combined Theatres Corporation unless

Turner & Dahnken shall sooner lose the said franchise to the first run of pictures produced and/or distributed by Associated First National Pictures, Inc., or unless West Coast Theatres, Inc., is superseded in the management of Loew's Warfield Theatre, as provided for in the agreement of May 26, 1923, between West Coast Theatres, Inc., and Loew's, Inc., which is made a part of this agreement.

From May 26, 1923, the date of the agreement between West Coast Theatres, Inc., and Loew's, Inc., to May 29, 1925, the date of the complaint, only eight films other than those produced by Metro Pictures Corporation and Associated First National Pictures, Inc., were exhibited in Loew's Warfield Theatre, and two of these pictures were distributed by All Star Feature Distributors, Inc., in which respondent, West Coast Theatres, Inc., owned a stock interest.

By this contract, competition between Loew's, Inc., and respondents, West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California as exhibitors was terminated in the cities of Los Angeles and San Francisco, as was also competition between Metro Pictures Corporation and Associated First National Pictures, Inc., in the leasing of films for first-run exhibition in said cities.

(3) Under date of November 21, 1924, respondent, West Coast Theatres, Inc., entered into a four-party agreement with Fredroy Amusement Co., Combined Theatres Corporation, and Loew's, Inc., by which for the year in which the contract was in force, Fredroy's Miller's Theatre was made a second-run theatre, running second to the Criterion, California, and Loew's State in Los Angeles. The contract states that Loew's, Inc., owns or controls all the stock of Metro-Goldwyn Distributing Corporation, and respondent, West Coast Theatres, Inc., is the owner of the exclusive franchise in the State of California of all pictures released by or through First National Pictures, Inc. Loew's, Inc., and West Coast Theatres, Inc., agree to make available as many pictures distributed by these two exchanges as are necessary, which pictures have previously been exhibited at the Criterion, California, or Loew's State theatres. The contract also states that Combined Theatres Corporation is also about to take over the management of the California Theatre, in Los Angeles. While the management of the theatre during the term of the agreement is given to Combined Theatres Corporation, respondent, West Coast Theatres, Inc., actually managed and operated the theatre, as under the contract between Loew's, Inc., and West Coast Theatres, Inc., by which Combined Theatres Corporation was formed to take over Loew's State Theatre, the management of theatres owned by Combined Theatres Corporation is given to respondent, West Coast Theatres, Inc. The term of this contract was from November 22,

1924, to October 31, 1925. This contract eliminated Miller's Theatre from competition with theatres owned or controlled by respondent, West Coast Theatres, Inc., as a first-run house.

(4) Hollywood Theaters, Inc., controlled by respondent, West Coast Theatres, Inc., under date of October 14, 1922, entered into a contract with Carl Graff and Joseph Graff, a partnership. At that time the corporation owned the Rivoli Theatre, and the partnership the Crescent Theatre, on Western Avenue, in the city of Los Angeles, Calif. In this contract the following recitation of facts and motive occurs:

> Whereas it is the desire of all the parties hereto that the competition in the operation of said theatres be terminated, and that they hereafter be run in conjunction with each other.

The agreement provides that the theatres should thereafter be conducted jointly for the benefit of the parties to the agreement, and that the partnership should get one-third and the corporation two-thirds of the profits. The parties also agreed that the partnership acquire and equip a new theatre at Fifty-fourth Street and Western Avenue, Los Angeles, and that when that theatre had equipment equal to the Rivoli, then a new corporation should be formed in which the partnership and the corporation should have equal holdings. Finally, the Crescent Theatre was to be sold and the Rivoli and the new theatre operated. Virtual control was given the Hollywood Theatres, Inc., and bookings were to be made for the theatres in conjunction with respondent, West Coast Theatres, Inc., which was to receive 10 per cent of the contract price of all films shown for this service. The partnership was to transfer its Associated First National franchise to the new corporation for mutual benefit of the parties, and the corporation was to pay to Graff Bros. 50 per cent of the cost of the franchise. The new corporation contemplated in this contract was formed and is now operating under the name of Holly-Western Theatres, Inc., the stock being held as provided for in the agreement. Holly-Western Theatres, Inc., owns the Rivoli, Crescent, and Carlton Theatres in Los Angeles. Respondent, West Coast Theatres, Inc., owns 50 per cent of the capital stock of Hollywood Theatres, Inc.

By this contract all competition between Graff Bros. and respondents, Hollywood Theatres, Inc., and the West Coast Theatres, Inc., in the business of owning and operating motion picture theatres has been eliminated.

(5) Under date of January 26, 1926, an agreement was entered into between M. Rosenberg, Harry Sugarman, and A. L. Bernstein, parties of the first part, and West Coast Theatres, Inc., party of the second

part, for the formation of a theatre-owning corporation to be called "West Coast Junior Circuit". The contract provides that Rosenberg, Sugarman, and Bernstein have purchased certain theatres "by mutual agreement with West Coast Theatres, Inc.", and that the interests of the respective parties are 50 per cent to respondent, West Coast Theatres, Inc., 16⅔ per cent to M. Rosenberg, 16⅔ per cent to Harry Sugarman, and 16⅔ per cent to A. L. Bernstein. It is stated that it is the desire and purpose of all the parties that other theatre properties be acquired, and that the theatre properties already acquired and hereinafter to be acquired shall be operated independent of the individual interests of any of the parties, and that for the purpose of convenience a new corporation had been theretofore organized under the name of Junior Theatres, Inc., and that as all the parties desire that the corporation known as Junior Theatres, Inc., and West Coast Theatres, Inc., should operate in harmony and for the best interests of each other, it was thereupon agreed that the name of the corporation should immediately be changed to West Coast Junior Circuit, Inc.; that upon the execution of the agreement all affairs of the parties should be transferred to said corporation, and that stock should be issued in accordance with the respective interests of the various parties. It was further provided for the organization of another corporation known as "The Holding Corporation", to which corporation Rosenberg, Sugarman, and Bernstein transfer any or all of their stock interests in the West Coast Junior Circuit, with a right to them to dispose of not to exceed 50 per cent of the capital stock of the Holding Corporation. It is then provided for the method of disposing of stock interests held by the parties if they so desired. The contract provides that the management of the West Coast Junior Circuit should be in Rosenberg, Sugarman, and Bernstein, subject to the supervision of the directors of West Coast Junior Circuit, so long as those parties should collectively own or control 50 per cent of the stock of the Holding Corporation or West Coast Junior Circuit. It is further provided that should such stock ownership cease, West Coast Theatres, Inc., should at its option take over and retain the management as long as desired. No theatres or real estate should be purchased by the Junior Circuit except through a vote of a majority of the directors of the corporation, and no theatres then being operated by the parties to the agreement should be taken over, leased or operated except by like consent. The share in the profits, losses, and expenses of the new circuit should be in the proportion of the stock holdings, and the directorate of the corporation should be composed of four directors selected by West Coast Theatres, Inc., and four selected by Rosenberg, Sugarman, and Bernstein. The method of paying for the stock is set forth, and it is provided that West Coast should pay for its interest and stock the same as the collective cost to Rosenberg, Sugarman, and Bernstein. It is provided that the bookkeeping of the Junior Circuit shall be carried on by the bookkeeping department of West Coast Theatres, Inc., at actual cost, and that West Coast shall have control of the buying of all pictures for the various theatres owned by the Junior Circuit, and that the Junior Circuit will bear a proportionate share of the actual cost of maintaining the buying department.

Prior to the entering into of the contract of January 26, 1926, the formation of West Coast Junior Circuit, Inc., had been presented to the board of directors of respondent West Coast Theatres, Inc., by a letter from M. Rosenberg, dated March 30, 1925. The minutes of the meeting of the board of directors of West Coast Theatres, Inc., dated April 7, 1925, show that Messrs. Rosenberg and Sugarman were present and presented the matter to the board. They stated that the new circuit intended to operate in smaller towns and districts such as Fullerton, Burbank, Compton, Maywood, etc., where West Coast Theatres, Inc., was not interested, and that they desired to cooperate with West Coast Theatres, Inc., in every way, and would not go into any opposition points against respondent or its affiliations. They would give respondent the right and privilege to approve or reject any location. Director Ramish was in favor of the proposition with the proviso that if West Coast Theatres, Inc., should decide against any location its decision would be final, that respondent owns 50 per cent of every proposition, and that if respondent did not want 50 per cent of any proposition it should be rejected so far as the new circuit was concerned. Reference was made to a location in Los Angeles the new circuit was considering at the time, and Rosenberg stated that as long as respondent, West Coast Theatres, Inc., was interested in the location the Junior Circuit would drop it. On April 28, 1925, A. L. Gore was appointed by the board of directors as a point of contract between West Coast Theatres, Inc., and the Junior Circuit.

The purpose and effect of this agreement is to eliminate competition between the parties to it in the ownership and operation of motion picture theatres. West Coast Junior Circuit, Inc., is under the control of West Coast Theatres, Inc., which respondent books for the theatres of the Junior Circuit, and keeps its accounts.

(6) On January 1, 1925, respondents, West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, and C. L. Langley, entered into an agreement showing the ownership of each party in the Mission, Regent, and Loring Theatres in Riverside, Calif., as

follows: West Coast Theatres, Inc., one-half; West Coast Theatres, Inc., of Northern California, two-sixths; and C. L. Langley, one-sixth. It is further provided that respondent, West Coast Theatres, Inc., shall have exclusive management, operation, and supervision of said theatres, and shall do the booking for, and keep the accounts of said theatres. In September, 1925, C. L. Langley sold his interest in these theatres.

(7) Henry C. Jensen, of Los Angeles, a theatre owner and exhibitor, under date of May 25, 1921, made three separate agreements with Hattie M. Turner, Fred Dahnken, and C. L. Langley, by which he agreed to refrain from carrying on the business of maintaining and operating any theatres within the corporate limits of the city of Pasadena, the city of Glendale, or within 1½ miles of the Theatorium Theatre, in Los Angeles, as long as respondent, Turner, Dahnken & Langley, or any or either of them, or any person or persons deriving title to the good will from any or either of them should carry on a like business in the same location. He had sold at a previous time Jensen's Pasadena Theatre, and Jensen's Raymond Theatre in Pasadena, Calif.; Palace Grand Theatre in Glendale, Calif., and Jensen's Theatorium in Los Angeles, Calif., to the parties. It is recited that at the time of sale, May 5, he had agreed to refrain from the theatre business in the territory in which the theatres had been located. The agreements of May 25, 1921, it is recited, were for the purpose of reducing the former agreements to writing. In this way, Mr. Jensen, a large theatre owner, was eliminated from the theatre field in some of the best theatre territory in California. July 1, 1921, respondent, West Coast Theatres, Inc., entered into contracts with the parties with whom Mr. Jensen had contracted, eliminating competition between them and respondent, West Coast Theatres, Inc. Afterward respondent, West Coast Theatres, Inc., secured a controlling interest in the Turner, Dahnken & Langley holdings.

(8) On June 11, 1923, an agreement was entered into between Ackerman & Harris, Inc., and respondent T. & D. Jr. Enterprises, Inc., by which the former agreed to sell to the latter "All of the issued and authorized capital stock of" Oakland & San Francisco Theatre Co., Stockton State Theatre Co., and Fresno Hippodrome Co., "together with all the leases and personal property to the said corporations and each of them belonging, and the good will thereof, and all other assets, benefits, emoluments, and advantages to which said corporations and each of them is entitled under their respective leases" for a total of $282,500, payable over a period of four years, with last payment due August 1, 1927. By supplemental agreements

between T. & D. Jr. Enterprises, Inc., and Turner & Dahnken (now West Coast Theatres, Inc., of Northern California), the latter company agreed to buy from T. & D. Jr. all the capital stock of the Stockton State Theatre Co. and the Fresno Hippodrome Co., and furnished $10,000 of the $20,000 required to be paid the day the agreement was entered into. The valuation placed on the stock of the two companies was $150,000, $110,000 being for the Stockton State Theatre Co. and $40,000 for the stock of Fresno Hippodrome Co. The conditions of the sale by T. & D. Jr. to Turner & Dahnken, and provision for payment of installments over a period from June 30, 1923, to September 1, 1927, are provided in an agreement between T. & D. Jr. Enterprises, Inc., and Turner & Dahnken, dated June 30, 1923.

The contract between Ackerman & Harris, Inc., and respondent T. & D. Jr. Enterprises, Inc., also conveyed to the latter a lease upon the Sacramento State Theatre, in Sacramento, and an exclusive franchise for its Oakland State Theatre of all vaudeville booked by Ackerman & Harris, Inc. The theatre referred to in the agreement as " Sacramento State Theatre " is in fact the Hippodrome Theatre, in Sacramento.

By an agreement between Ackerman & Harris, Inc., respondent T. & D. Jr. Enterprises, Inc., and respondent West Coast Theatres, Inc., of Northern California, dated May 20, 1925, or about the time of the issue of the complaint in this proceeding, arrangements were made by which respondent West Coast Theatres, Inc., of Northern California might pay directly for the stock of the Stockton State Theatre Co. and of the Fresno Hippodrome Co., and have it released from escrow, while that respondent was relieved of any possible liability for the stock of the Oakland and San Francisco Theatre Co.

By these agreements, respondent T. & D. Jr. Enterprises, Inc., and respondent West Coast Theatres, Inc., of Northern California were joined in a common motion picture enterprise from June 11, 1923, to May 20, 1925, or later. On the face of the contracts the association might be continued to 1927. Respondent West Coast Theatres, Inc., of Northern California acquired the State Theatre, in Stockton, and the Hippodrome Theatre, in Fresno; respondent T. & D. Jr. Enterprises, Inc., acquired the State Theatre, in Oakland, outright, and a lease on the Hippodrome Theatre, in Sacramento, as well as an exclusive franchise for the city of Oakland for Ackerman & Harris vaudeville; and Ackerman & Harris, Inc., was eliminated from competition in the exhibition field with these two respondents in the cities of Oakland, Fresno, Stockton, and Sacramento, and these two respondents placed to that additional extent in control of the field.

(9) By an agreement dated May 15, 1918, between Turner & Dahnken and J. Naify, it was provided that the parties to the contract should each own a 50 per cent interest in the T. & D. Theatre, in Sacramento, and that Naify should be manager. On November 10, 1922, another agreement was entered into between Turner & Dahnken and M. Naify and J. A. Naify, providing for a partnership between the parties, Turner & Dahnken having a 50 per cent interest, and M. and J. A. Naify 50 per cent. M. Naify was made manager of the theatre. The policy of the theatre was controlled by Turner & Dahnken. The contract contained a provision that should West Coast Theatres, Inc., of Northern California go into the theatre business in Sacramento in any other theatre or theatres during the life of the agreement, the Naifys should have an equal interest in the business as West Coast Theatres, Inc., of Northern California, upon payment of an equal amount of money as that paid by said West Coast Theatres, Inc., of Northern California.

The name of the T. & D. Theatre has been changed to the Capitol. The contract is still in effect, and respondent West Coast Theatres, Inc., of Northern California, holds a 50 per cent interest in this theatre. The provision in the clause above quoted has been carried out. In 1924 a theatre called the Senator was erected in Sacramento by a corporation, and leased to respondent West Coast Theatres, Inc., of Northern California, who transferred it to a corporation organized in November, 1924, known as Sacramento Theatres, Inc. Respondent West Coast Theatres, Inc., of Northern California owns 50 per cent of the capital stock of Sacramento Theatres, Inc., and M. and J. A. Naify own 50 per cent. Later the Capitol Theatre was transferred to said corporation. The partnership arrangement covered the ownership and joint operation of the Senator and Capitol theatres in Sacramento.

M. Naify is president and general manager, as well as a large stockholder, of respondent T. & D. Jr. Enterprises, Inc., and J. A. Naify is a large stockholder in that respondent. Respondent T. & D. Jr. Enterprises, Inc., also owns theatres in Sacramento.

(10) On October 3, 1923, an agreement was entered into between Emil Kehrlein, Katherine Kehrlein, his wife, Oliver Kehrlein and Frances C. Kehrlein, his wife, Emil Kehrlein, jr.; and Mary Osborn Kehrlein, his wife, and S. W. Molkenbuhr, who owned all the stock of the Kehrlein Investment Co., and Frank W. Purkett, whereby Purkett was given an option to purchase all the stock of the Motab Investment Co. and the Liberty Theatres Co. of California. The

Motab Investment Co. owned the Kinema Theatre, in Fresno, Calif., and Liberty Theatres Co. the Liberty and Strand theatres in that city. The purchase price of the stock, consisting of 10,000 shares of Motab Investment Co., and 750 shares of Liberty Theatres Co., was $334,000, and there were some other obligations. On October 6, 1923, Purkett assigned his option to Herbert L. Rothchild, president of respondent, Herbert L. Rothchild Entertainment, Inc., with the exception of a 25 per cent interest which he retained for himself. On November 20, 1923, the Kehrlein Investment Co. entered into an agreement with Purkett, setting forth the terms of the sale of the stock in the two theatre corporations. On November 27, 1923, Purkett assigned his interest in the agreement of November 20, 1923, to Herbert L. Rothchild. On December 18, 1923, Rothchild transferred and assigned to respondent, West Coast Theatres, Inc. of Northern California all his interest in the Purkett agreement which had been derived by him under the assignment of November 27, 1923. Purkett retained a 25 per cent interest in the stock.

On February 7, 1924, a written agreement was executed between West Coast Theatres, Inc., of Northern California and Purkett by which it was agreed that a new corporation, to be known as the Fresno or the Valley Amusement Co., should be formed, which was to take over the stock of the Motab Investment Co. and the Liberty Theatres Co., and operate the Kinema, Liberty, and Strand theatres, in Fresno. In one place in this agreement the amount of stock in the Motab Investment Co. is referred to as 1,000 shares, which is evidently an error. Various provisions covering the rights of the parties were included in the contract, but as the new corporation was never formed, it is not necessary to review them.

Included in the agreement of November 20, 1923, between Kehrlein Investment Co. and Purkett is a provision that, as part of the consideration of the contract, neither Kehrlein Investment Co., nor any of its stockholders would, directly or indirectly, engage in any similar business in the county of Fresno, in the future.

Herbert L. Rothchild had intended to extend his theatre holdings when he obtained the assignment from Purkett, but was unable to do so because of failing health, and assigned his interest to respondent, West Coast Theatres, Inc., of Northern California, on December 18, 1923.

Negotiations resulting in this assignment by Mr. Rothchild were with Mr. Schenck, a director of respondent West Coast Theatres, Inc., and took place on December 6, 1923, the same date that Mr. Schenck and Mr. Rothchild had also agreed to abrogate the Imperial Theatre contract, between Herbert L. Rothchild Entertainment, Inc., and respondent, West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California (Turner & Dahnken). The actual assignment was dated, however, December 18, 1923, and the formal abrogation of the Imperial Theatre contract did not take place until the following April. The record does not show any connection between the assignment and the abrogation other than contemporaneous negotiation by the same individuals.

At the present time respondent West Coast Theatres, Inc., of Northern California owns the Kinema, Strand, and Liberty theatres, in Gresno, 100 per cent, having acquired Purkett's contingent interest. By these several agreements respondent acquired these theatres, and all the stockholders in the Kehrlein Investment Co., were eliminated as competitors of it, directly or indirectly, for all time in the county of Fresno, State of California.

(11) Respondent, West Coast Theatres, Inc., of Northern California (Turner & Dahnken) under date of June 12, 1923, made an agreement in writing with respondent Herbert L. Rothchild Entertainment, Inc., by which these respondents jointly operated the Imperial Theatre in San Francisco as a long-run theatre.

The agreement recites that the Herbert L. Rothchild concern owns and operates motion picture houses in San Francisco known as the Granada, California, and the Imperial theatres, and that Turner & Dahnken owns and operates the theatre in San Francisco known as Loew's Warfield; that all said theatres are located in what is known as the downtown district, and are known to the motion picture business generally as first-run houses; that certain types of pictures are known generally as one-week pictures, and certain other and exceptional types of pictures are what are known generally as long-run pictures, that is to say, pictures that are of such a type as are calculated to be exhibited profitably in a first-run house in a down-town district for two weeks or more; that certain types of theatres are best adapted for the exhibition of long-run pictures; that the Imperial Theatre is well and peculiarly adapted for the exhibition of long-run pictures; that the number of long-run pictures available is limited; that both parties desire to make possible the continuous showing of long-run pictures in San Francisco; that Herbert L. Rothchild Entertainment, Inc., still owed Webber Bros. $171,438.56 as an unpaid part of the $400,000 purchase price for the Imperial Theatre, payable in annual installments of $57,142.86, the first payable January 1, 1924; that Herbert L. Rothchild Entertainment, Inc., owned and operated the Imperial Theatre under a lease.

Based upon these premises the contract went on to provide for joint operation and conduct of a motion picture business in the Imperial Theatre for the joint account of the parties, profits and losses to be divided two-thirds to the Rothchild concern, and one-third to Turner & Dahnken. Provision was made for determination of the profits and losses by agreeing upon what should be regarded as expenses, including an overhead of $250 a week. Settlements of profits and losses were to be made quarterly each year, the first on September 28, 1923. Payments upon the purchase price were to be carried as an expense amounting to $1,098.80 a week.

It was further agreed that all long-run pictures should be exhibited only in the Imperial Theatre, and that no long-run pictures shall be exhibited by either party in the Granada, California, or Loew's Warfield theatres, and that no pictures shall be shown in said theatres for a longer period than one week.

It was also agreed that neither party should acquire in any manner, directly or indirectly, an interest in any other theatre in the first-run, down-town district of San Francisco except by mutual consent, and all future expansion in such district should be for the joint and equal account of both parties. All profits and losses shall be borne equally by the parties.

The clause was not to apply to the Portola, of the Rothchild concern, or to the Tivoli, of Turner & Dahnken, which were not then operated as first-run houses.

Turner & Dahnken was to have the active management of any houses opened jointly, but the Rothchild concern was to be advised with as to policy.

All contracts for the showing of film in the Imperial Theatre, except with Paramount, Metro, Goldwyn, and First National, were to be signed by representatives of both parties.

Expansion of the theatre business in the residence or neighborhood districts of San Francisco was to be thereafter for joint account at the option of either party on a fifty-fifty basis.

The life of the contract was to coincide with the term of the lease held by the Rothchild concern on the Imperial, or of any extension of the lease.

Physical fittings of the theatre at the end of the joint control term were to be owned two-thirds by the Rothchild concern and one-third by Turner & Dahnken.

By another instrument executed the same day, respondent West Coast Theatres, Inc., became a party to the contract, since it "owns or controls practically all of the capital stock of the said Turner & Dahnken, and the said agreement is for practical purposes for the benefit of the said West Coast Theatres, Inc., as well as for the benefit of the said Turner & Dahnken."

The above agreement was verbally canceled December 6, 1923, by Mr. Joseph M. Schenck, on behalf of the respondent West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, and by Mr. Rothchild, on behalf of respondent, Herbert L. Rothchild Entertainment, Inc. It was formally canceled by action of the board of directors of West Coast Theatres, Inc., on March 4, 1924, and by the board of directors of West Coast Theatres, Inc., of Northern California, on April 2, 1924. During the life of the agreement no expansion in the first-run down-town district was made by either party, nor in the neighborhood or residence districts in San Francisco. No accounting was rendered by either party to the other.

PAR. 13. By purchase and construction of theatres, by contracts with competitors eliminating competition, by making partnerships with competitors, respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, have steadily progressed from the time of the organization of the former to the time of the hearing in this proceeding toward domination of the motion picture theatre field in California. In Southern California such domination is such as to tend strongly to monopoly in that portion of the State. In Northern California, the domination is shared with respondent T. & D. Jr. Enterprises, Inc., which has pursued a similar policy. Initially respondent T. & D. Jr. Enterprises, Inc., had some of the same backers as Turner & Dahnken, now West Coast Theatres, Inc., of Northern California. Both these respondents cooperated in acquiring additional theatres, and had common interests through some of the officers and stockholders of respondent T. & D. Jr. Enterprises, Inc.

PAR. 14. In addition to their power as exhibitors, respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, for five or six years last past, have been important motion picture film distributors in California, Nevada, Arizona, and in the Hawaiian Islands. They have had control in that territory of the distribution rights of Associated First National Pictures, Inc. By contract they have had refusal of the Goldwyn or the Metro-Goldwyn pictures for certain of their theatres. They have also had a large stock interest in Educational Film Exchange of Southern California and Educational Film Exchange of Northern California, distributing short reel pictures released by or through Educational Film Exchange.

(1) For several years Associated First National Pictures, Inc., a Delaware corporation, has produced, and/or purchased and dis-

tributed high-class motion picture films. Respondent West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California have had the added prestige and power given by control over their distribution in California, Arizona, Nevada, and the Hawaiian Islands, and their interest in the distribution in New York State. Distribution in Southern California and Arizona was made through Associated First National Pictures of Southern California, Inc., a Delaware corporation, which performed the function of an exchange. Respondent, West Coast Theatres, Inc., owned 51 per cent of its stock, stockholders of this respondent held the other 49 per cent. Respondent, West Coast Theatres, Inc., also held a block of the stock of the National company, Associated First National Pictures, Inc. Distribution in Northern California, Nevada, and Hawaiian Islands was made through Associated First National Pictures of Northern California, Inc., a Delaware corporation, which also performed the function of an exchange. Respondent, West Coast Theatres, Inc., of Northern California, succeeded to the interests of Turner & Dahnken in this exchange. Turner & Dahnken originally owned all of the capital stock of Associated First National Exchange of Northern California, Inc., and at the date of the complaint owned 51 per cent, the remaining 49 per cent being owned by Associated First National Pictures, Inc. Turner & Dahnken also owned 60 per cent of the issued and outstanding capital stock of First National Exchange of New York, a distributing corporation, which in turn owns 60 per cent of the capital stock of Associated First National Pictures, Inc., of New York, a corporation, which in turn owns 14½ per cent of the capital stock of Associated First National Pictures, Inc., the producing-distributing corporation, doing a nation-wide business. Said Associated First National Pictures, Inc., of New York, owns a franchise entitling it to distribute First National pictures throughout the State of New York. Turner & Dahnken also owned stock in Associated National Pictures, Inc.

Control over distribution of Educational Film Exchange pictures in California has also been exercised by these respondents. Associated First National Pictures, Inc., of New York, above referred to, owned an interest in Educational Film Exchange of New York, and Turner & Dahnken owned 60 per cent of the capital stock of that company, as heretofore set forth. In addition, Turner & Dahnken owned 1,579 shares of the issued and outstanding capital stock of New York Exchange for Educational Films, Inc., a corporation with 10,000 shares of authorized capital stock.

All of the stock holdings of Turner & Dahnken were acquired by respondent, West Coast Theatres, Inc., when it bought the controlling interest in Turner & Dahnken, now respondent West Coast Theatres, Inc., of Northern California.

(2) Ownership of the exclusive franchise for the distribution of First National pictures in the States of California, Arizona, Nevada, and Hawaiian Islands entitled respondents, West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, to grant subfranchises in those States.

Associated First National Pictures, Inc., of Northern California, controlled by respondent West Coast Theatres, Inc., of Northern California, has issued 96 subfranchises to theatres in Northern California and Nevada since its organization. At the time of taking testimony in this proceeding, July, 1927, all of these subfranchises had been canceled except 14, of which at least 10 of the theatres still holding subfranchises were owned by respondent, West Coast Theatres, Inc., of Northern California.

(3) An agreement in writing was made between Associated First National Pictures, Inc., a Delaware corporation, known in the agreement otherwise as Pictures Company, and Associated First National Pictures of Northern California, Inc., a Delaware corporation, known in the agreement otherwise as Exchange, dated July 1, 1920, by which Pictures Company granted to Exchange until January 1, 1945—

> the sole and exclusive right, license, and privilege to distribute within the territorial boundaries of the States of (sic) all counties in the State of California except San Luis Obispo, Santa Barbara, Kern, Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, and Imperial, the State of Nevada and Territory of Hawaii positive prints of all motion pictures, the distribution of which within said boundaries is or shall be controlled by Pictures Company, except such pictures as, under the terms of the contracts by which Pictures Company secures them, Pictures Company is not permitted to or can not distribute therein through Exchange.

Details of the arrangement were set out in the agreement, including obligation upon the part of Exchange to bear 3¾ per cent of the expense of securing pictures for distribution. Other exchanges were to supply the rest of the funds if called upon to do so. Pictures Company was authorized to bind Exchange by contracts for the procuring of pictures. Exchange undertook to maintain a local office, and to distribute picture films for Pictures Company and for other producer-distributors. Exchange undertakes to develop distribution in the whole territory assigned to it. Contracts with exhibitors, called subfranchise contracts, must be made in the name of and have the approval of the Pictures Company. Ownership of all picture films furnished by it to Exchange remains in Pictures Company. Films must not be copied. Exchange acts as agent for Pictures Company. Exchange must strictly account for all moneys received for picture film rentals. Pictures Company decides upon remuneration to Exchange other than expenses of Exchange. Exchange under the agreements succeeds to the rights of First National Exhibitors Circuit, Inc., its predecessor.

The contract may be terminated by Pictures Company on default of Exchange, in which case Pictures Company regains control of all rights and property granted to Exchange under the agreement. As security that it will perform its part of the contract, Exchange hypothecates 1,885$\frac{5}{7}$ shares of stock which it owns in Pictures Company. Pictures Company has an option to buy the interests of Exchange before these interests can be sold to any other purchaser.

(4) January 1, 1924, the contract of July 1, 1920, was amended by a supplementary agreement. Exchange is released from further assessments by Pictures Company. Exchange is given 884 shares of second preferred A stock in Pictures Company, of the par value of $88,400, and 355 shares of second preferred B stock, of a par value of $35,000. Exchange cancels its franchise rights and assigns its equipment to Pictures Company. Exchange relinquishes its right for fifty years to distribute pictures, or to use the name Associated First National Pictures Company of Northern California, Inc., unless with the written consent of Pictures Company. Exchange reclaims its stock in Pictures Company hypothecated as security in the franchise agreement.

(5) Under date of March 9, 1921, Associated First National Pictures, Inc., a Delaware corporation (called Pictures Company) entered into a contract with Associated First National Pictures of Southern California, a Delaware corporation (called Exchange) then controlled by respondent West Coast Theatres, Inc. By that contract a franchise was given Exchange for the exclusive distribution until 1945 in Southern California and Arizona of all films produced by Pictures Company. Exchange was to pay 2$\frac{27}{56}$ per cent of the exhibition value of the pictures. It was given power to issue subfranchises in its exclusive territory with the approval of Pictures Company. Exchange was made the agent of Pictures Company and was obligated to account to it periodically. Exchange deposited a voting trusts certificate for 1,489$\frac{2}{3}$ shares of its capital stock as security for the carrying out of the contract. This agreement was signed by Michael Gore and David Bershon for the Exchange.

(6) An amended agreement was made between the parties January 1, 1924. It was shown that Exchange had stock interests in the Pictures Company. It received 402 shares of preferred A stock and 280 shares of preferred B stock in the Pictures Company of an estimated aggregate value of $68,000. This was issued to respondent West Coast Theatres, Inc., Exchange was released from assessments by the Pictures Company. It relinquished its franchise agreement and gave up its former privilege of distributing films other than those of Pictures Company. Exchange got back its voting trust certificates for its own stock. This agreement was signed by J. M. Young and A. L. Gore for the Exchange, two officers of respondent West Coast Theatres, Inc.

Respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California did not lose their exclusive franchises for the distribution of First National pictures in California. On November 21, 1924, more than eleven months after the contract with Associated First National Pictures, Inc., whereby West Coast Theatres, Inc., relinquished its exclusive franchise for the distribution of First National pictures in Southern California, in a contract between respondent, West Coast Theatres, Inc., Fredroy Amusement Co., Combined Theatres Corporation, and Loew's, Inc. (referred to in par. 12, sec. 3), it is stated:

> Whereas, West Coast is the owner of the exclusive franchise in the State of California of motion pictures released by or through First National Pictures, Inc.

(7) Under date of November 27, 1919, the Pictures Company made a voting trust agreement with its stockholders by which Fred Dahnken, who afterward sold his motion picture interests to respondent West Coast Theatres, Inc., was one of five trustees who were to control the policies of the Pictures Company. This agreement discloses interest by respondents herein in the capital stock of the Pictures Company, through Thos. L. Tally, Turner & Dahnken, and indirectly through First National Exchange, Inc.

PAR. 15. First-run, as used in the Rothchild-Turner and Dahnken agreement hereinabove quoted, and as used generally in the motion picture business, means primarily the continuous showing of the picture in a motion picture theatre other than a road show house, in the city which is the center of distribution of motion picture films for that territory. When that continuous showing terminates, all other showings in that city and in that territory become subsequent runs. First-run is a definite thing. First-run is also used to designate the first continuous showing of a film in a motion picture theatre, other than a road show house, in any city, or in any zone. In that case it is the first-run for the city or the zone, although not the first-run for that film distribution territory. Theatres in which pictures are regularly shown first-run are known as first-run theatres.

PAR. 16. As a regular policy the California and the Granada, owned and operated by the Rothchild concern, and Loew's Warfield, operated by Turner & Dahnken, were weekly change, first-run houses. This was also true of the Portola theatre up to 1923, when it became a subsequent-run house. On the other hand, the Imperial Theatre, owned and operated by the Rothchild concern, extended the first run of a film as long as it was profitable to show it continuously. It was known as a long-run house. There was but one other long-run theatre in San Francisco at the time, the St. Francis. In 1925 the first-run houses in San Francisco numbered nine, the Granada, Warfield, Golden Gate, California, Cameo, Strand, now the St. Francis, Imperial, Hippodrome, and Pantages. Of these theatres the California, Granada, and Loew's Warfield were the leading first-run houses, and the St. Francis and Imperial were long-run houses. Three of the other theatres were vaudeville houses, with motion pictures as a minor part of the bill; and the Cameo Theatre usually showed pictures which could not get a first-run showing in the California, Granada, or Loew's Warfield theatres, and Western action pictures.

PAR. 17. Theatres with a fixed weekly change exhibition policy such as obtained in the California, Granada, and Loew's Warfield theatres in 1923, find it undesirable, if not impracticable to change policy. A consistent, fixed policy as to time of run in any theatre is considered by managers as the most desirable plan of operation.

Theatres with a weekly change policy used 52 pictures a year, and the Imperial used from 22 to 25 a year. About 700 feature picture films were released a year for the years 1923 to 1925, which were available for showing in first-run houses in San Francisco. The supply in numbers was amply sufficient for all motion picture theatres operating as first-run houses in San Francisco at the time. Occasionally a theatre showing other lines of entertainment made a first-run of a film. Road-show houses, of which there were three in San Francisco, made occasional showing of pictures not offered to the motion picture theatres at the time they were booked for the road shows. Booking of road-show pictures was done in New York. Road-show houses in San Francisco exhibited films at prices running to $2, as against charges by first-run houses of 50 cents to 65 cents for general admission. Usually such houses presented traveling companies in legitimate drama. After pictures had been some time on exhibition in the road-show theatres, they then had their first-runs in the San Francisco motion picture first-run houses.

PAR. 18. Respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, as indicated by the evidence in this proceeding, entered into the agreements of June 12, 1923, with Herbert L. Rothchild Entertainment, Inc., covering the Imperial Theatre in good faith for the purposes indicated in the agreements, and endeavored to carry out the plans of cooperation therein contemplated and initiated.

A. M. Bowles, general manager of respondent, West Coast Theatres, Inc., of Northern California, wrote Harry Arthur, jr., manager of respondent West Coast Theatres, Inc., Mr. Bowles's superior officer, complaining of lack of cooperation on the part of Jack Partington, who was in charge of the operation of the respondent, Herbert L. Rothchild Entertainment, Inc., theatres. Mr. Bowles refers to a matter which Mr. Arthur and Mr. Bowles "overlooked", and recalls an "unofficial" undertaking that Mr. Arthur and Mr. Bowles arrived at with Herbert L. Rothchild, in the presence of Mr. Partington, "regarding the elimination of vaudeville acts". Mr. Bowles writes: "It was very clear to me that these acts were to be discontinued". "We", writes Mr. Bowles, "immediately stopped putting on these acts and stuck to all the details of our understanding". But Mr. Partington, Mr. Bowles wrote, redoubled his effort in getting vaudeville acts, said he understood that a certain act booked by Famous Players only was to be eliminated, and he defied Bowles to do his worst. In turn Mr. Partington, with Mr. Rothchild's backing, complained of too much publicity by Loew's Warfield Theatre. There was also a difference as to Mr. Partington taking Mr. Bowles's orchestra leader at Oakland away from him. Mr. Bowles expressed his desire to live up to all provisions of the agreement.

Mr. Bowles considered it necessary to have an "ironclad" understanding with Rothchild himself that the Rothchild interests would carry out the agreement, or declare the policy of the three big houses wide open. He states that one of the principal benefits to be derived out of the Imperial partnership was the cooperation and strength West Coast Theatres, Inc., of Northern California would derive by closely affiliating its entire organization with the Rothchild company.

PAR. 19. By threatening to refuse to buy any films from motion picture producers and/or distributors, by tying in all of their theatres throughout the State of California with the first-run in San Francisco, by threatening not to show pictures in any of their theatres in the State of California unless they can have the pictures for first-run exhibition in San Francisco, and by attempting to influence certain of their competitors to cooperate with them by refusing to bid on pictures offered by the exchanges, respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California influence, coerce and compel motion picture producers and/or distributors to sell them pictures at lower prices than their competitors can buy them, and to refrain from selling pictures to their competitors which these respondents desire for their theatres.

PAR. 20. In the motion picture industry negatives of the pictures are first produced and tested out. From them positive prints of the pictures are made. These prints are leased by the producers and/or distributors to the exhibitors and are the pictures actually shown the public. Many of the negatives are made in California, in the neighborhood of Los Angeles. Some are made in the neighborhood of New York City. Some of these negatives are used in California to make positive prints of the pictures which are exhibited in California. The larger number are shipped out of California to other States, such as New York, New Jersey, and Illinois, where the positive prints are made and distributed in interstate commerce to points in the several States of the United States for exhibition. During the period covered by the evidence in this proceeding, far the larger volume of motion pictures exhibited in California were positive prints made in New York, New Jersey, and Illinois, and shipped to California for exhibition. In the greater number of instances where the picture is intended for exhibition in the northern half of California, in Nevada, a portion of Oregon, or in the Hawaiian Islands, the print is shipped to the San Francisco office of the producer or distributor, and from that point served to the theatres in that territory. In some instances, as in the case of the Pathe and Universal news reels and specialties, the prints are shipped directly from New York or New Jersey laboratories to the exhibitor in California, or elsewhere. Usually when the exhibitor has shown the picture for the run for which it has been leased, he returns it to the San Francisco office of the producer or distributor who has leased it to him. Occasionally the exhibitor when he has finished with the print ships it upon order from the producer or distributor to another exhibitor. The greater number of producers or distributors from their district headquarters in San Francisco serve Northern California, Nevada, Hawaii, and a portion of Oregon. Motion picture prints are never sold to exhibitors, but are leased for a single run, to be made in a certain theatre upon dates mutually agreed upon, and at the end of the run all exhibition interest of the lessee in the print ceases. It always remains the property of the producer and/or distributor. As a rule, the distributing concerns are subsidiaries or agents of the producers, and the property remains beneficially in the producer. Contracts involving leasing of pictures in San Francisco territory were almost invariably completed by approval in New York City.

Pictures distributed by the Pathe Exchange to respondents from and in San Francisco during the period covered by this proceeding were shipped as positive prints from laboratories located in Eastern States, or States other than California, to the San Francisco branch of the Pathe Exchange, and from that branch delivered to exhibitors, or were shipped directly from the Eastern laboratories to the exhibitors. They were leased and served to the theatres of respondents within California between the Tehachapis and the northern boundary, and in portions of Oregon and Nevada.

From its San Francisco exchange, Film Booking Office, a New York concern, distributed positive prints of motion pictures to respondents and to other exhibitors in Northern California, parts of Oregon and Nevada, and the Hawaiian Islands. These positive prints were shipped to San Francisco from New York, with the exception of the Bennett and the Ince pictures, which were made in California and shipped to San Francisco from other California points. The Bennett and Ince pictures were a small percentage of the pictures distributed from San Francisco by this exchange. Respondents with theatres in the territory indicated were served by this exchange from San Francisco.

From its San Francisco office Famous Players-Lasky corporation managed the distribution of films in the Pacific Coast States and in several other western States. Negatives of its pictures were produced in New York, upon Long Island, and in Southern California. Some of its positive prints sent to San Francisco were shipped from Southern California and some from the New York laboratories of the corporation. Respondents were served with such prints immediately from San Francisco.

Before the Goldwyn Exchange was consolidated with the Metro-Goldwyn-Mayer, until about 1924, it served respondents and other motion picture exhibitors in Northern California and Nevada from its San Francisco Exchange with positive prints of motion pictures. Some were made in and came from Southern California, and some from New York. Respondents' theatres in the territory were served with these positive prints from San Francisco.

Vitagraph Company distributed from San Francisco positive prints of motion pictures to respondents and the other exhibitors in California from Delano and Paso Robles on the south, to the northern boundary, and in Nevada. Some of the negatives from which these pictures were printed were made in Los Angeles, Calif., and some in the studio of the company in Brooklyn, N. Y., but the positive prints of the pictures were received in San Francisco from the laboratory of the company in Brooklyn. Leasing contracts were sent to New York, N. Y., for approval. This was the situation, at least, from 1921 to 1926, the period as to which there is testimony upon the point in this record.

Metro Film Exchange, later Metro-Goldwyn, still later Metro-Goldwyn-Mayer, prior to October, 1926, distributed from its office in San Francisco positive prints of motion pictures to respondents and to exhibitors in California north of Bakersfield and San Luis Obispo, to the northern boundary of California, in a small portion of southern Oregon, and to several towns in Nevada. Between 1922 and 1924 many of the positive prints of these pictures were shipped to San Francisco from the Rothacker laboratory in Los Angeles. Others came from New York. Contracts for the leasing of the pictures were systematically sent to New York for approval.

Universal Film Exchanges, Inc., between the years 1919 and 1927, distributed from its headquarters in San Francisco positive prints of motion pictures to respondents and to other exhibitors in California from Delano and Atascadero on the south, to the northern boundary of the State, to southern Oregon and to parts of Nevada. Between 1921 and 1925, the great majority of these prints were shipped to San Francisco from the Universal laboratories in Leonia, N. J. Some few came from Universal in Southern California. News reels distributed by this concern were shipped from the Hearst laboratories in the east to San Francisco. Often they were shipped from these laboratories direct to the exhibitor. It is the regular procedure with some of the prints.

Producers Distributing Corporation for three years immediately previous to the hearing in this proceeding in June, 1927, distributed from its headquarters in San Francisco positive prints of motion pictures to respondents and to other exhibitors in California from Bakersfield and Atascadero on the south, to the northern boundary, in southern Oregon, in parts of Nevada and in the Hawaiian Islands. These positive prints came from New York to San Francisco almost exclusively in 1924. Then for a time the printing was switched to Los Angeles, and the prints came from that point. Later there was another switch, and when the testimony was taken in June, 1927, the prints were being delivered one-half from New York and one-half from Los Angeles, to San Francisco. Prior to two years ago all the leasing contracts for pictures of this concern were sent to New York for approval. Recently some of the contracts are approved in California and some sent to New York for approval.

First National Pictures, Inc., between 1921 and 1925 inclusive, distributed from its headquarters in San Francisco positive prints of motion pictures to respondents and to other exhibitors in Northern California, part of Nevada, and the Hawaiian Islands. The negatives from which these prints were made were produced usually in Los Angeles, although some were produced in the East. The prints were made in Los Angeles and in Chicago, and were shipped to San Francisco from these points.

PAR. 21. Because of extensive ownership and control of theatres in California by respondents, and because of common interests of respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, with some of the producers and/or distributors doing business in California, respondents exert and have exerted great influence and power over the business of leasing motion picture films in that territory. Such power places these respondents in position either to give a producer and/or distributor a satisfactory business in the State of California, or to make it extremely difficult for the producer to find a satisfactory market in that territory for his motion picture films. Such influence and power has been used by respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, and T. & D. Jr. Enterprises, Inc., to prevent their competitors from securing films for their theatres which were desired by respondents, and to force producers and/or distributors by threats of boycott of their films, to refuse to lease films to their competitors, who had been customers of said producers and/or distributors for a long time, in certain cities and towns, and give said films to respondents for their theatres in said cities and towns.

(1) J. W. Di Stacio owned the Liberty Theatre, in Sacramento, from 1917 to April, 1925, at which time he sold the theatre to respondent, T. & D. Jr. Enterprises, Inc., and took stock in said respondent for payment, owning 1,250 shares at the time of taking testimony, in July, 1927. He became manager of the State Theatre, also owned by T. & D. Jr., and supervised the Liberty Theatre. In 1923, respondent T. & D. Jr. Enterprises, Inc., owned Godard's Theatre, in Sacramento, and at the time the complaint was issued, May 29, 1925, owned the State, Hippodrome, Liberty, and Godard's theatres, in Sacramento. It also owned a 51 per cent interest in the Oak Park Theatre, in a suburb of Sacramento, and Messrs. M. & J. A. Naify, officers and stockholders in T. & D. Jr., owned a 50 per cent interest in the Capitol and Senate Theatres, in Sacramento.

and respondent West Coast Theatres, Inc., of Northern California owned the other 50 per cent.

Mr. Di Stacio had been using Universal pictures, off and on, for some time. He applied to Carol A. Nathan, manager of Universal Exchange, in San Francisco, for that service for the season 1923-24. He received two pictures, "Kentucky Derby" and "The Flirt," which he showed in his theatre. Mr. Nathan informed him he could not have any more of the pictures because he was afraid that if he sold them to Di Stacio, T. & D. Jr. Enterprises, Inc., would not buy any pictures for their entire circuit. Mr. M. Naify, general manager of T. & D. Jr. told Nathan that if T. & D. Jr. could not get these pictures for their theatre in Sacramento they would not show the pictures in any other houses on their circuit. The two pictures were not shown in any T. & D. Jr. theatres.

Walter K. Kofeldt of Los Angeles, Calif., was branch manager for the Pathe Exchange at San Francisco, Calif., from 1921 to 1925, inclusive. He had been selling the Pathe service to J. W. Di Stacio, of Sacramento, for the Liberty Theatre. Mr. Di Stacio had purchased part of a series of comedy pictures known as "Our Gang" series, in 1924. Mr. Kofeldt refused to sell any more of the series to Mr. Di Stacio, because if he did, he could not sell these Pathe pictures to respondent, T. & D. Jr. Enterprises, Inc., theatres in that territory. He was told by Mike Naify, who booked for this respondent's theatres, that if he could not buy these comedies in all of their towns, he would not buy them in any. He was told this on numerous occasions when he visited Mr. Naify for the purpose of selling service. One occasion remembered was March or April, 1924. This was in Mr. Naify's offices in San Francisco.

(2) Albert H. Moore was an exhibitor in Berkeley for five years or more preceding 1923. In partnership with Mr. Dean he had owned and operated the U. C. Theatre and the Berkeley Theatre, in Berkeley, Calif. The U. C. Theatre had 1,750 seats, and the Berkeley Theatre 850 or 900. The former theatre was operated from 1917, and the latter from 1922 to January, 1924. They were both first-run theatres in competition with California Theatre, owned and operated by respondent, West Coast Theatres, Inc., of Northern California, theretofore known at Turner & Dahnken. There were also two second-run houses in Berkeley, the Lorin Theatre and the Strand Theatre, and a third-run house, the Varsity Theatre. Before he opened the Berkeley Theatre in July, 1922, Mr. Moore began to have difficulty in getting film service. He decided to run the more desirable features he could secure in the U. C., or large theatre, and to take mediocre pictures for the smaller house. He was able to get

between 200 and 300 pictures of this kind, and with them put a double bill on at the Berkeley Theatre and made it a success. In the larger house, Mr. Moore had been using the Goldwyn, Paramount, or Famous Players-Lasky, Hodkinson, Selznick services.

When Mr. Moore tried to get the Goldwyn service for the season 1923–24 for his theatres, he was told by G. C. Parsons, the San Francisco Exchange manager, that it had been taken away from Mr. Moore by the office in New York, and leased to the West Coast. A letter and telegram were shown Mr. Moore by Mr. Parsons to that effect. Mr. Parsons expressed regret. Moore had been using the Goldwyn service 100 per cent for some years. He was never able to get any films from the Goldwyn Exchange after that. Messrs. Bowles and Arthur, of respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, first approached Parsons to buy the 1923–24 service, and wanted a picture called "Enemies of Women", the first release on that service, but Parsons sold it to Moore. Bowles and Arthur demanded 100 per cent service for their entire territory, and said if he did not give it to them they would go to New York and get it. Arthur and Dave Bershon, officials of West Coast Theatres, Inc., went to New York and insisted that the service be taken away from Moore and given to respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, which was done. Parsons was willing to continue to selling Moore.

When the change was made from Moore to respondent West Coast Theatres, Inc., of Northern California there were four pictures left over from the previous year's service which Moore had not exhibited. The Goldwyn-Cosmopolitan Co., insisted that West Coast Theatres, Inc., pay for these pictures. West Coast Theatres, Inc., of Northern California did pay for the pictures but did not exhibit them in their theatre in Berkeley.

Some time in 1923, Ben Simpson, manager for the Hodkinson Exchange, had promised Mr. Moore the picture "Down to the Sea in Ships". The price for the picture had been agreed upon as $500. Mr. Moore went away for a time. When he returned after two weeks he was told by Mr. Simpson that the picture had been sold to the West Coast.

Prior to May, 1923, Federated Film Corporation, which exchange distributed Warner Bros. pictures in the San Francisco territory, had sold all Warner Bros. pictures in Berkeley to Moore. Some time subsequent to May, 1923, Moore applied to Mr. Morgan Walsh, manager of the exchange, for two Warner Bros. pictures, called "Brass" and "Main Street". Prices for the pictures were agreed upon, but play dates were to be set after Moore's return from a trip. Upon his return he was told he could not have the pictures as they had been sold to West Coast. At the time of the sale the T. & D. Theatre in Berkeley was owned by respondent West Coast Theatres, Inc., of Northern California, and Walsh negotiated with Mr. Bowles, manager of that company, with whom he had never had prior dealings, for these pictures. From that time respondent West Coast Theatres, Inc., of Northern California became the Federated Film Corporation account in Berkeley.

At about the same time Moore applied to Mr. Quive, manager of Silznick Exchange, for two pictures entitled "Common Law" and "Rupert of Hentzau". He had been using Selznick pictures in the U. C. Theatre previous to that time. The pictures were promised to him and prices agreed upon, but he did not receive them. Mr. Quive told him they had been sold to West Coast Theatres, Inc., by the head office in New York.

Moore had been using Paramount pictures, released by Famous Players-Lasky, ever since 1917, in his U. C. Theatre. Before opening the Berkeley Theatre, he was assured by the exchange manager he could continue to have the entire service. A short time before the opening he was advised that he would have to split the service with the California Theatre (T. & D.), owned by respondent West Coast Theatres, Inc., of Northern California.

(3) Because of the difficulties they had in getting a supply of films for their theatres, Messrs. Moore and Dean sold them, in January, 1924, to E. H. Emmick, of respondent T. & D. Jr. Enterprises, Inc., upon Mr. Emmick's terms. In the latter part of 1923, Messrs. Emmick, Naify, and McNeil, all connected with T. & D. Jr., offered to buy the theatres. The theatres had not been on the market for sale. The contract of sale with Emmick was executed in January, 1924, and provides for the formation of two corporations, one to own and operate the U. C. Theatre, under the name Berkeley Theatres, Inc., and the other to own and operate the Berkeley Theatre, under the name Progress Theatre Co. Said corporations were formed, and the theatres transferred to them. Respondent T. & D. Jr. Enterprises, Inc., held one half the capital stock in each of them, and Messrs. E. H. Emmick, R. A. McNeil, M. Naify, and William Nasser owned the other half. About two weeks after the sale to Emmick, the theatres were transferred to respondent West Coast Theatres, Inc., of Northern California, by the sale to that corporation of the capital stock of the two companies, for the price paid by Emmick and his associates, plus 10 per cent. All payments under the contract of sale have been made by respondent West Coast Theatres, Inc., of

Northern California. A. M. Bowles, manager of this respondent, is president and director of both companies.

During 1923, Messrs. A. L. Gore, Bowles, and Arthur, of respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, had sought to buy the theatres from Messrs. Moore and Dean, or to become a partner in them. Mr. Dean refused to have any dealings with the West Coast companies. Several months before the sale of the theatres, and about the time Messrs. Moore and Dean were having difficulty in securing a supply of films for their theatres respondent West Coast Theatres, Inc., directed Bowles, manager of respondent West Coast Theatres, Inc., of Northern California to arrange for the purchase of the Moore and Dean theatres at whatever price was necessary to pay for them, so that these respondents could " close " the town.

Respondent, T. & D. Jr. Enterprises, Inc., at its inception, had in the organization Mrs. Turner, who was also interested in Turner & Dahnken, predecessor to respondent West Coast Theatres, Inc., of Northern California. Albert H. Moore, who was an owner of the U. S. and Berkeley theatres, was also interested in respondent T. & D. Jr. Enterprises, Inc., for a time and was a member of the board. In the early history of T. & D. Jr. it did not compete with Turner & Dahnken, but avoided the towns in which the latter had theatres. As has been indicated already, there were common holdings involving Turner & Dahnken and its successor, and persons interested in T. & D. Jr. Respondents, T. & D. Jr. Enterprises, Inc., had been cooperating with it on other occasions to acquire theatre property wanted by respondent, West Coast Theatres, Inc., interests.

(4) Allen E. King, president of the King Realty & Amusement Co., Oakland, Calif., for about thirteen years prior to May, 1925, was a motion picture exhibitor, doing business in Oakland, Calif. At the time of the taking of his testimony in this proceeding, June, 1927, he still operated the Gem Theatre in Oakland. At that time he owned the Lincoln and the Palace theatres in Oakland. He leased the Palace in 1923, to the Oregon & California Amusement Co., owned by respondent, T. & D. Jr. Enterprises, Inc., and the individuals associated with it. He sold the lease on the Lincoln to the West Oakland Theatre Co. in 1923, also owned by T. & D. Jr., and individuals associated with it. The Palace Theatre was a 1,250-seat house; the Lincoln about 1,000.

King began construction of the Palace Theatre in the early part of 1923. At that time there was a small theatre across the street called the Globe, which was running very old pictures, in a small poorly constructed building. Before the Palace was completed, in February, 1923, the Globe Theatre, together with four other theatres in the neighborhood, was acquired by the Oregon & California Amusement Co.

Before opening the Palace Theatre Mr. King applied for picture film service to the Famous Players-Lasky, Universal, Goldwyn, Federated, Educational, Pathe, and other exchanges or distributors. He had made written application upon contract forms furnished by the exchanges with the Educational Film Exchange, with the Universal Film Exchange, Jewell Productions, and Fox Film Corporation, and it was his understanding that they were contracts for the service, as were other verbal arrangements with the local managers of other exchanges.

Early in 1923, prior to the contemplated opening of the Palace Theatre by Mr. King, he asked Mr. Kofeldt, district manager for the Pathe Exchange in San Francisco for the Pathe service for the new theatre, and was assured by Mr. Kofeldt that there would be no trouble upon that score when Mr. King was ready to make contracts for the service.

When Mr. King asked booking dates for the Jewell productions of the Universal Film Exchange, for which he had signed applications or tentative contracts, which had been approved and recommended by Mr. Nathan, the exchange manager, he was informed by Mr. Nathan that he could not give dates under the applications, since Messrs. Emmick, McNeil, and Naify, then connected with respondent, T. & D. Enterprises, Inc., threatened to cancel their entire bookings if Mr. King were supplied with film for his new theatre, and it would cost Nathan his job if he gave the bookings to Mr. King. Prior to the season of 1923–24, Nathan had been selling a large proportion of his product to King.

Mr. King applied to Mr. Sheehan, manager of Fox Film Exchange for the 1923–24 service, but was told it had been sold to Oregon & California Amusement Co. Fox had two years' supply of films available for Oakland, because the company was building a new theatre in Oakland. King signed a contract for the 1922–23 service, but did not use it because the 1923–24 service had been sold the Oregon & California Amusement Co., to be shown in the Globe Theatre across the street from the Palace, and the pictures would have been more than a year old and he could not have competed with the current product in the Globe Theatre.

Mr. King had been using the Goldwyn film service in his other theatres 100 per cent, and when he was about to open the Palace Theatre in the summer of 1923, he applied for the service for that theatre, but was denied it. Mr. Parsons, the district manager at

San Francisco, told him at the time of the refusal that Messrs. Emmick, McNeil, and Naify, the day before had told him that they would cancel their entire service if Mr. King were supplied with any service whatsoever for the Palace. Mr. Parsons said that to give Mr. King the service would cost him his job. The films were shown later in Oakland houses owned by respondent, T. & D. Jr. Enterprises, Inc.

Mr. King signed applications and leasing contracts for the picture films "Brass" and "Main Street", on forms furnished him by the Federal Film Exchange, for the Palace Theatre in July, 1923. He had negotiated for the pictures with Morgan Walsh, the local manager. Mr. Walsh wrote him a letter and asked him to come to Mr. Walsh's office. He told Mr. King that if the pictures which he had applied for were given him, the T. & D. Jr. circuit officers had told him that they would cancel its contract, the office would want to know why, and it would lose Mr. Walsh his job.

Sidney J. Goldman, district manager of Film Booking Office, with headquarters in San Francisco, had sold the service between 1922 to 1925, to respondent T. & D. Enterprises, Inc., having dealt with Messrs. McNeil and Naify in that connection. Mr. Goldman had sold to Mr. King for the Palace Theatre "Remittance Woman" and "Divorce". He was told at the time by Mr. McNeil that if Mr. Goldman sold to the Palace Theatre Mr. McNeil would not buy for the balance of his circuit, since the Palace would cut off three or four of his houses. The pictures were subsequently shown at the Palace Theatre, after it was acquired by Oregon & California Amusement Co.

Prior to the construction of the Palace, the Globe Theatre had been operated by Mr. and Mrs. Thomas in a small poorly constructed wooden building. It was immediately across the street from the Palace. It had been showing very old pictures. In February, 1923, when the construction of the Palace Theatre was in progress, the Globe Theatre and three or four others in the immediate neighborhood, including the Casino and Fruitvale, were acquired by Oregon & California Amusement Co., controlled by respondent T. & D. Enterprises, Inc., and individuals associated with it. The Globe Theatre was dismantled very soon after Mr. King had sold his Palace Theatre to Oregon & California Amusement Co.

After Mr. King had found that he could not secure film service for the Palace Theatre he was approached by a Mr. Saul with an offer of purchase. He signed a contract of sale with Mr. Saul early in August. Mr. Saul signed as agent for the Oregon & California Amusement Co., a corporation allied in interest with respondent

T. & D. Jr. Enterprises, Inc., and the former corporation proved to be the purchaser.

Several months later Mr. King also sold a lease upon the Lincoln Theatre, through Mr. Saul, to the West Oakland Theatre Co., another corporation allied in interest with respondent, T. & D. Jr. Enterprises, Inc., Messrs. Emmick and McNeil, at that time holding 11,978 shares of stock in respondent T. & D. Jr. Enterprises, Inc., appeared in connection with the purchase and sale.

PAR. 22. Respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, for the purpose of preventing their competitors in certain cities and towns in which said respondents and competitors operate theatres, from securing supplies of films for their theatres, buy more films than they can use in their theatres in said cities and towns. Said respondents also have agreements with their competitors in certain competitive points covering the negotiating for, and bidding on, of film services to be used in their theatres and the theatres of their competitors at such points.

PAR. 23. Respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California and T. & D. Jr. Enterprises, Inc., consult together regarding the negotiating for and leasing of motion picture films to be exhibited in cities and towns where two or more of them operate theatres, and agree as to a division of film services in said cities and towns.

PAR. 24. Competition in the leasing or sale, and their exhibition in California, of motion picture films leased from persons or companies located in States other than the State of California, and shipped to the State of California for exhibition from States other than the State of California, has been lessened by acts of respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, the T. & D. Jr. Enterprises, Inc., and H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston, partners doing business under the trade name and style of Turner, Dahnken & Langley, by contracts among such respondents and/or between such respondents and other persons looking to the concentration of motion picture theatres in the hands of respondents, or to the lessening of competition in the operation of such theatres, including the leasing and exhibition of such motion picture films. Such competition was lessened by the successful activities of respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, and T. & D. Jr. Enterprises, Inc., inducing, by threats or otherwise, distributors of such motion picture films to withhold their films from theatres in competition with the theatres of these respondents and thus to compel such competitors to sell their theatres to respondents, or to persons or interests affiliated with respondents, or to close said theatres and retire from the motion picture theatre field, or to cease exhibiting motion picture films in said theatres.

PAR. 25. That under the circumstances set out in the foregoing findings of fact the affiliations and relationships existing between respondents and their purposes, policies, and practices as described and set out in said findings of fact constitute a combination and common course of action, as alleged in paragraph 4 of the complaint[5] in this proceeding.

CONCLUSION

The practices of respondents West Coast Theatres, Inc., and the other respondents herein, except Herbert L. Rothchild Entertainment, Inc., under the conditions and circumstances set forth in the foregoing findings of fact, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and the testimony taken and upon briefs filed herein, and the Commission having made its findings as to the facts and 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 West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, The T. & D. Jr. Enterprises, Inc., and H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston, partners doing business under the trade name and style Turner, Dahnken & Langley, and each and all of them and their officers, agents, representatives, and employees, and all other persons acting under, through, by or in behalf of them, or any of them, forever cease and desist, from:

(1) Combining, agreeing, or cooperating among themselves or with others to induce, persuade, coerce, or compel purchasers and/or distributors of motion picture films to refuse to sell or lease, in interstate commerce, to a competitor or competitors of respondents, or any one of them, motion picture films, or a particular film, by threats of refusal to purchase or lease films, or a particular film, for all or

[5] See p. 439 et seq.

part of the theatres owned, operated or controlled by respondents, or any one of them.

(2) Combining, agreeing, or cooperating among themselves or with others, through control by respondents or any one of them of the distribution of the motion picture films of a producer or producers, to refuse to sell or lease in interstate commerce to a competitor or competitors of respondents or any one of them motion picture films or a particular film.

(3) Combining, agreeing, or cooperating among themselves or with others to hinder, obstruct, or prevent producers and/or distributors of motion picture films from selling or leasing films, or a particular film, in interstate commerce, to a competitor or competitors of respondents, or any one of them, by intimidation, coercion, withdrawal, or threatened withdrawal of patronage, or by promises or agreements or assurances to increase the patronage of respondents, or any one of them.

(4) Combining, agreeing, or cooperating among themselves or with others to hinder, obstruct, or prevent motion picture exhibitors from freely purchasing or leasing motion picture films, in interstate commerce, or from freely competing, in the purchase or lease of motion picture films, in interstate commerce, with respondents, or any one of them, by communicating directly or indirectly with any producer and/or distributor of motion picture films or any agent or representative thereof for the purpose of inducing, persuading, coercing, or compelling such producers and/or distributors not to sell or lease motion picture films to such exhibitors.

(5) Combining, agreeing, or cooperating among themselves or with others to hinder, obstruct, or prevent competitors or a competitor in any city, town, or zone from securing a supply of films in interstate commerce for theatres or theatre owned and operated by said competitors or competitor, by leasing a larger number of films for the theatres or theatre of respondents or any one of them than can be shown in said theatres or theatre.

It is further ordered, That the respondents above named, and each of them, within 60 days from the date of the notice hereof, file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

ORDER OF DISMISSAL

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and the testimony taken, and upon briefs filed herein,

It is now ordered, That complaint as to respondent Herbert L. Rothchild Entertainment, Inc., be, and the same is hereby dismissed.

IN THE MATTER OF

SAM RHEINGOLD, AN INDIVIDUAL TRADING AS MAID-RITE DRESS COMPANY

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

Docket 1582. Complaint, Mar. 19, 1929—Decision, May 27, 1929

Where an individual engaged in the sale of women's dresses direct to the consumer, in advertising the same described certain dresses as "This regular $10 Style Satin Finish Dress for only $1.69", "Silk Lustre Effect Pongee—Smashing Prices $7.50 down to $1.69", "$10 Style Silk Lustre Charmeuse Dress $1.95", "This $5 Style for only $1.69", "This regular $7.50 Silk Pongee Lustre Dress for only $1.69" and "Wool Embroidered Flannel Dress", the facts being that the first three dresses referred to, and last but one, contained no silk, that the so-called flannel dress contained no wool other than certain wool yarn embroidery, and that the implied reduced prices were the usual and customary prices for the garments in question; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into believing the garments to be respectively composed of silk and wool, and to be a better quality and usually sold for a higher price than indicated by the price at which offered, and to induce the purchase thereof in such mistaken beliefs:

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

Mr. R. H. Winn for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale and distribution of women's dresses to purchasers in other than the State of origin of such shipments, and with principal office and place of business in Philadelphia, with advertising falsely or misleadingly as to composition and prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in his advertisements in newspapers and periodicals of general circulation among various States, describes, represents, and refers to certain dresses containing no silk as "Satin Finish Dress", "Silk Lustre Charmeuse Dress", and "Silk Pongee Lustre Dress"; certain dresses containing no wool as "Biggest Bargain Ever Advertised by us in This Beautiful Jersey Dress"; and certain dresses containing no wool except for certain wool yarn embroidery as "Wool Embroidered Flannel Dress"; with the effect of misleading and deceiving the purchasing public into believing said dresses first referred to to be manufactured of silk and said other dresses to be composed of wool and of inducing them to purchase the aforesaid various dresses in such beliefs and with the capacity and tendency so to do.[1]

Respondent further, as alleged, in his advertisements in newspapers and periodicals of general circulation misrepresents the regular contemplated prices of his products by such statements as: "Let us send you this regular $10 style satin finish dress for only $1.69"; "Silk lustre effect pongee—Smashing prices $7.50 down to $1.69"; "$10 style silk lustre charmeuse dress $1.95"; "This $5 style for only $1.69"; and "Let us send you this regular $7.50 silk pongee lustre dress for only $1.69"; when in truth and in fact the aforesaid and/or similar dresses had not theretofore been sold nor were they intended to be sold at the prices represented in said advertisements or advertising matter and the prices at which the dresses were offered for sale were not in truth and in fact reductions as represented, but were the usual and customary prices at which the aforesaid dresses were and are sold in the course of trade."

According to the complaint "the above alleged acts and practices of respondent are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Sam Rheingold, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent thereafter having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed

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[1] As alleged in the complaint—

The words "Satin", "Charmeuse", and "Pongee" as used in said advertisements signify to and are understood by a substantial part of the purchasing public to represent or describe fabrics composed wholly or in part of silk.

The word "Jersey" used in said advertisements signifies to and is understood by a substantial part of the purchasing public to represent or describe a fabric composed of wool.

The word "Flannel" used in said advertisements signifies to and is understood by a substantial part of the purchasing public to represent or describe a fabric composed entirely of wool.

by the respondent and the Federal Trade Commission that the Federal Trade Commission shall take such agreed statement as to the facts in this case and in lieu of testimony and proceed forthwith with said agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sam Rheingold, is an individual doing business under the name and style of Maid-Rite Dress Co., with its principal places of business in the city of Philadelphia, in the State of Pennsylvania. For a period of one year prior to March 19, 1929, he was engaged in the business of selling direct to the consumer women's dresses, upon orders solicited through advertisements inserted by him in newspapers and periodicals circulated in interstate commerce and received from such consumers through the United States mail in response to such advertisements. The dresses thus sold by respondent were shipped by him from his place of business in the city of Philadelphia, in the State of Pennsylvania, into and through other States of the United States to the purchasers thereof located in States other than the State of Pennsylvania. In the course and conduct of this business respondent was at all times in competition with other individuals, partnerships, and corporations also engaged in the sale and transportation in interstate commerce of women's dresses.

PAR. 2. In the advertising matter used by respondent in connection with the sale of certain of his said women's dresses, respondent represented and described certain of said dresses respectively in the following language:

Let us send you this regular $10 style satin finish dress for only $1.69.
Silk lustre effect pongee—Smashing prices $7.50 down to $1.69.
$10 style silk lustre charmeuse dress $1.95.
This $5 style for only $1.69.
Let us send you this regular $7.50 silk pongee lustre dress for only $1.69.
Wool embroidered flannel dress.

The dresses described above as "$10 style satin finish dress", "Silk lustre effect pongee", "Silk lustre charmeuse", "Silk pongee lustre", contained no silk, but were composed entirely of a product or products other than silk.

The dresses described above as "Wool embroidered flannel dresses" contained no wool whatsoever except for certain wool yarn embroidery embroidered thereon, but were otherwise composed of a product or products other than wool.

The word "flannel" signifies and means, and is generally understood by the public to signify and mean a fabric or material composed of wool.

The words "pongee" and "charmeuse" signify and mean, and each is generally understood by the public to signify and mean a fabric derived from the product of the cocoon of the silkworm.

The dresses described above as "$10 style—$1.69", "$7.50 down to $1.69", "$10 style $1.95", "$5 style $1.69", "$7.50 dress for only $1.69", referred to dresses which were not actually sold nor were they contemplated to be sold in the general course of trade at the prices represented in the said advertisements; and the prices at which the dresses were offered for sale were not reductions, but were the usual and customary prices at which the aforesaid dresses were sold in the course of trade.

PAR. 3. The use of the terms "satin finish", "silk lustre effect pongee", "silk lustre charmeuse", "silk pongee lustre", respectively, in the advertising matter used by respondent to represent and describe the dresses referred to in paragraph 2 hereof, is false and misleading, and has the capacity and tendency to mislead and deceive a substantial part of the purchasing public into the erroneous belief that said dresses are composed of silk, and to induce customers to purchase the same in that belief.

PAR. 4. The use of the word "flannel" in the advertising matter used by respondent to represent and describe the dresses referred to in paragraph 2 hereof is false and misleading, and has the capacity and tendency to mislead and deceive a substantial part of the purchasing public into the belief that said dresses are composed of wool, and to induce purchasers to purchase the same in that belief.

PAR. 5. The quotation of prices which indicate that the prices at which the dresses are offered for sale are actual and bona fide reductions, when in fact there has been no such reduction as is implied, in the advertising matter used by respondent to represent and describe the dresses referred to in paragraph 2 hereof, is false and misleading, and has the capacity and tendency to mislead and deceive a substantial part of the purchasing public into the belief that said dresses are actually of a better quality and usually sell for a higher price than the selling price indicates and to induce purchasers to purchase the same in that belief.

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

It is now ordered, That respondent, Sam Rheingold, his agents and employees cease and desist, in connection with the sale or offering for sale of women's dresses in interstate commerce, from:

(*a*) Using the words "satin", "pongee", or "charmeuse" to represent and describe dresses which are composed of a material or materials other than silk, the product of the cocoon of the silkworm;

(*b*) Using the words "wool" or "flannel" alone or in combination with any other word or words to represent and describe dresses which are composed of a material or materials other than wool;

(*c*) Quoting prices which indicate that the prices at which the dresses are offered for sale are actual and bona fide reductions, when in fact the dresses, were not actually sold, nor were they contemplated to be sold in the course of trade at the prices represented, the prices at which the dresses were offered for sale being the customary prices at which the dresses were and are sold in the course of trade.

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

IN THE MATTER OF

HOBOKEN WHITE LEAD & COLOR WORKS, INC.

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

Docket 1565. Complaint, Feb. 19, 1929—Decision, June 7, 1929

Where a corporation engaged in the manufacture of paint and paint materials and in the sale thereof to dealers and consumers through letters, telephonic, and other communications, salesmen and agents, and advertisements in circulars, pamphlets, magazines, newspapers, and similar publications of general circulation,

(*a*) Conspicuously branded or labeled as "White Lead" containers of one of its products resembling white lead in general appearance of color, consistency and commercial packing, but inferior thereto in quality, and so advertised, represented, offered, and sold the same, and as a product with pigment composed wholly or in greater part of lead carbonate or lead sulphate; the facts being that the pigment thereof contained approximately 80 per cent of barium sulphate, together with a small percentage of lead sulphate, zinc, and siliceous matter; with the capacity and tendency to cause dealers therein to offer, sell, and distribute the same under the aforesaid name and designation and as and for white lead and a product composed as above set forth, and to mislead and deceive a large and substantial part of the purchasing public in respect of the composition thereof and cause its purchase as and for white lead or a product with pigment chiefly composed as above set forth, and containing neither barium sulphate nor any substantial quantity of other inert material; and with the effect of so doing;

(*b*) Conspicuously branded as "Zinc Lead" a paint material and so represented, advertised, described and sold the same, and as a product with a pigment composed in whole or in greater proportion of lead carbonate or lead sulphate or zinc or a mixture thereof, the facts being that said product consisted principally of barium sulphate and similar inert materials, contained no lead carbonate, and only a small proportion of zinc and lead sulphate, and was inferior in quality to zinc lead as understood by the trade and purchasing public; with the capacity and tendency to mislead and deceive a substantial part of said trade and public and cause the purchase by them of said product as and for zinc lead or with the pigment thereof composed as above set forth, and with the effect of so doing;

With the result of placing in the hands of dealers in said products a means for defrauding and deceiving the public, and of unfairly diverting trade from competitors dealing without misrepresentation in genuine white lead and zinc lead and similar materials with pigment composed of lead carbonate or lead sulphate and zinc or a mixture thereof; and with the capacity and tendency so to do;

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

Mr. Henry Miller for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New Jersey corporation engaged in the manufacture of paint and paint materials and in the sale thereof to dealers and consumers, in various States and particularly in New York and New Jersey, through letters, telephonic, and other oral and written communications, salesmen, and advertisements in circulars, pamphlets, magazines, newspapers, and similar publications of general circulation and with offices and place of business in Hoboken, with misbranding or mislabeling as to composition of product and advertising falsely or misleadingly and misrepresenting same in regard thereto in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than three years last past, has branded, advertised, represented, offered and sold as "white lead" and as a product with a pigment composed wholly or in greater part of lead carbonate or lead sulphate, a white paint material similar in general appearance of color consistency and commercial packing to white lead, but not in fact white lead nor with a pigment composed in whole or in greater part of lead carbonate or lead sulphate, as above set forth, but an inferior product, with a pigment containing approximately 80 per cent of ingredients other than lead carbonate or lead sulphate, namely barium sulphate (the remainder consisting of a small percentage of lead sulphate, zinc, and siliceous matter), an inert ingredient, the predominating part of said product.

As alleged by the complaint, respondent's aforesaid practices in branding, advertising, representing, describing and selling its product hereinabove referred to "as and for white lead and as and for a product whose pigment is composed in whole or in greater part of lead carbonate or lead sulphate is false, misleading, and deceptive and had and has the capacity and tendency to, and did mislead and deceive a large and substantial part of the purchasing public into, and thereby cause them to purchase said product in and because of, the erroneous beliefs that said product is in fact white lead, or is a product whose pigment is composed in whole or in greater part of lead sulphate or lead carbonate, and that said product does not contain said barium sulphate or any substantial quantity of inert material".

Respondent further, as charged, has similarly branded, advertised, represented, offered and sold as "zinc lead" and as a product with a pigment composed in whole or greater proportion of lead carbonate or lead sulphate and zinc, or a mixture thereof, a product which is not "zinc lead" (meaning to the paint trade and purchasing and consuming public a paint pigment consisting of zinc and lead in approximately equal proportion), nor white lead nor with a pigment composed, as above set forth, but with a pigment consisting principally and predominantly of barium sulphate and similar inert materials and with no lead sulphate and only a small and minor proportion of zinc and lead sulphate, not exceeding in the aggregate approximately 20 per cent, and a product inferior in quality to zinc lead as understood as above set forth.

As further alleged by the complaint, respondent's advertising, branding, representing, and describing its product immediately hereinabove referred to "as 'zinc lead', and as and for a product whose pigment consists solely or in greater part of lead carbonate, or lead sulphate and zinc, or a mixture thereof, is false, misleading and deceptive, had and has the capacity and tendency to, and did, mislead and deceive a substantial part of the trade and purchasing and consuming public into, and thereby cause them to purchase said product in and because of, the erroneous beliefs that said product is zinc lead as understood in the paint trade and by the purchasing and consuming public, or that the pigment of said product is composed of lead carbonate, or lead sulphate and zinc, or a mixture thereof".

According to the complaint "The acts and practices of respondent of selling, advertising, branding, and representing its so-called 'white lead' and 'zinc lead', as hereinabove set forth, has the capacity and tendency to, and does, place in the hands of dealers in said products a means and instrument for committing fraud and deception upon the public, and a means and instrument by which said products may be and are sold and delivered to and purchased by the purchasing and consuming public under and because of the respective erroneous beliefs set forth", and have the capacity and tendency to and do unfairly divert trade from competitors many of whom sell and distribute in competition with respondent and in interstate commerce, "paint materials similar in general appearance to respondent's so-called 'white lead' and 'zinc lead', but which are in fact not white lead and zinc lead, and similar materials whose pigment is composed of lead carbonate, or lead sulphate and zinc, or a mixture thereof, and which competitors in no wise misrepresent the character of said material or its ingredients"; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint the Commission made the following

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 19th day of February, A. D. 1929, issued its complaint against Hoboken White Lead & Color Works, Inc., respondent above mentioned, and on February 20, 1929, caused the same to be served upon respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. By notice contained in said complaint respondent was notified and required within thirty days from aforesaid date of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of the Commission's Rules of Practice with respect to answer and failure to answer, said provisions being set forth in haec verba in said notice and providing in part as follows (Rule III, subdivision 3):

3. Failure of the respondent to file answer within the time as above provided for shall be deemed an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused its appearance to be entered in this proceeding, nor has it during said thirty-day period specified in said notice, or at any time, made or filed answer to said complaint. It has at no time requested that the time within which it may file answer be extended, nor has the Commission granted any such extension of time. Upon the expiration of said thirty-day period specified in said notice for filing answer to said complaint, the Commission, on March 27, 1929, caused to be served upon the respondent by registered mail a further notice signed by its secretary and reading as follows:

Federal Trade Commission,
Washington, March 25, 1929.

Hoboken White Lead & Color Works, Inc.,
Hoboken, N. J.

In the matter of Hoboken White Lead & Color Works, Inc.

Docket 1565

Dear Sirs: You are informed that the complaint in the above-entitled matter pending before the Federal Trade Commission having been served upon you by registered mail on February 20, 1929, the thirty-day period, therein specified, from the date of said service within which you were required to file answer has expired. No application for extension of the time within which you may file answer to the complaint has been received or granted by the Commission.

The Rules of Practice of the Commission provide that such failure to answer shall be deemed to be an admission of all the allegations of the complaint, to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint. Notice of these provisions in the Commission's Rules of Practice is contained in the complaint which was served upon you; and accordingly, it will be deemed that by such failure to answer you have elected to, and do, admit the allegations of the complaint, authorize the Commission to find them to be true, and waive hearing on the charges set forth therein.

Very truly yours,

OTIS B. JOHNSON, *Secretary.*

Respondent failed to avail itself of opportunity to be heard on, or to make answer to, the charges set forth in said complaint, or with respect to aforesaid notice as to answer and failure to answer.

Thereupon this proceeding came on for decision, and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid Rules of Practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Hoboken White Lead & Color Works, Inc., is a corporation organized in the year 1919, and existing under and by virtue of the laws of the State of New Jersey. It is and at all times since said date of its organization has been engaged as hereinbelow set forth in the business of manufacturing, selling and distributing paint and paint materials to dealers and consumers, with its offices and place of business in the city of Hoboken, N. J. Respondent manufactures its product at Hoboken, N. J., where it also causes the same to be packed in commercial containers of the customary type and sizes commonly and widely used for such purpose in the paint industry. It offers for sale and sells said products, (*a*) through and by means of letters, telephonic, and other oral and written communications sent by it from time to time from its place of business in Hoboken, N. J., to its customers and prospective customers in various States of the United States, particularly the States of New York and New Jersey; (*b*) also through and by means of salesmen and agents who, on behalf of respondent, solicit and take purchase orders for respondent's products from dealers and users thereof in various States, particularly the States of New York and New Jersey, and (*c*) through and by means of advertisements of its products published by it from time to time in circulars and pamphlets and in magazines, newspapers, and similar publications of general circulation among the trade and consuming public throughout various States of the United States, particularly the States of New York and New Jersey. As a result and because of said solicitation and offering for sale by respondent, many dealers and consumers purchase said products from respondent, and in so doing, transmit their purchase orders for such merchandise and make remittances in payment thereof from States other than the State of New Jersey to respondent at its place of business in Hoboken, N. J., where respondent receives such remittances and purchase orders and thereupon causes its products so ordered by its customers and sold by it to be transported from its place of business in Hoboken, N. J., to the respective purchasers thereof in States other than New Jersey; and in so conducting its business, respondent engages in and carries on a constant current of commerce between and among the State of New Jersey and other States contiguous thereto, particularly the State of New York. In the course and conduct of said business respondent is, and at all times since the aforesaid date of its organization has been, engaged in interstate commerce and in direct, active competition with many individuals, partnerships, and other corporations similarly engaged in the sale and distribution of paint and paint materials in commerce in and between the various States of the United States, particularly the States of New Jersey, New York, and other States contiguous thereto.

PAR. 2. Among the products manufactured, sold, and distributed by respondent, as set forth in paragraph 1 hereof, is a white paint material of the consistency of stiff paste, which material respondent brands, designates, and describes as "white lead." For more than three years last past respondent has offered for sale and sold and continues to offer for sale and sell said product packed in steel pails or containers of the respective capacities of 12½ pounds, 25 pounds, 50 pounds, and 100 pounds, all conspicuously branded with the words "white lead"; and it has further caused and still causes said product to be advertised, represented, offered for sale, and sold as and for, and under the brand, designation, and description of "white lead," and as and for a product whose pigment is composed wholly or in greater part of lead carbonate or lead sulphate. Said describing, branding, offering for sale, and selling of said product as and for white lead and as and for a product whose pigment is composed in whole or in greater part of lead carbonate or lead sulphate, has the capacity and tendency to and does cause dealers in said product to offer for sale, sell and distribute said product to the public under the name, designation, and description of, and as and for, white lead, and as and for a product whose pigment is composed in whole or in greater part of lead carbonate or lead sulphate. Said product when marketed by respondent and by other dealers is similar in general appearance of color, consistency, and commercial packing to white lead, but in truth and in fact said product is not white lead, and its pigment is not composed in whole or in greater part of lead carbonate or lead sulphate. Respondent's said product is inferior in quality to white lead, and its pigment contains approximately 80 per cent of ingredients other than lead carbonate or lead sulphate, to wit, barium sulphate. The remaining part of said pigment consists of a small percentage of lead sulphate, zinc, and siliceous matter. Said barium sulphate and siliceous matter are inert ingredients and comprise the greater and predominating part of said product of respondent.

PAR. 3. Aforesaid practices of respondent of branding, advertising, representing, describing, and selling its product, referred to in paragraph 2 hereof, as and for white lead and as and for a product whose pigment is composed in whole or in greater part of lead carbonate or lead sulphate is false, misleading, and deceptive and had and has the capacity and tendency to, and did mislead and deceive a large and substantial part of the purchasing public into, and thereby cause them to purchase said product in and because of, the erroneous beliefs that said product is in fact white lead, or is a product whose pigment is composed in whole or in greater part of lead sulphate or lead carbonate, and that said product does not contain said barium sulphate or any substantial quantity of inert material.

PAR. 4. Another product sold and distributed by respondent, as set forth in paragraph 1 hereof, is a paint material in paste form denominated, described, and branded by respondent as "zinc lead," which product is packed, sold, and distributed by respondent to the trade and consuming public in steel pails and containers of the respective capacities of 12½ pounds, 25 pounds, 50 pounds, and 100 pounds. In extensively marketing said product in the trade and to the purchasing and consuming public, respondent has caused for more than three years last past and still causes said product to be conspicuously branded on said containers with the words "zinc lead"; and further, to be represented, advertised, described, and sold as and for "zinc lead," and as and for a product whose pigment is composed in whole or in greater proportion of lead carbonate or lead sulphate and zinc or a mixture thereof. Whereas, in truth and in fact, said product is not zinc lead, nor white lead, nor is it a product whose pigment is composed in whole or in greater proportion of lead carbonate, or lead sulphate and zinc, or a mixture thereof, but the pigment of said product consists principally, predominantly, and in greater proportion of barium sulphate and similar inert materials; and further, said product contains no lead carbonate and only a small and minor proportion of zinc and lead sulphate, the aggregate of which zinc and lead sulphate does not exceed the approximate proportion of 20 per cent. The words "zinc lead" in the paint trade and to the purchasing and consuming public mean a paint pigment consisting of zinc and lead in approximately equal proportions. Respondent's so-called "zinc lead" product is inferior in quality to said zinc lead as understood by the trade and purchasing public.

PAR. 5. Respondent's advertising, branding, representing, and describing its product, referred to in paragraph 4 hereof, as "zinc lead", and as and for a product whose pigment consists solely or in greater part of lead carbonate, or lead sulphate and zinc, or a mixture thereof, is false, misleading, and deceptive, had and has the capacity and tendency to, and did, mislead and deceive a substantial part of the trade and purchasing and consuming public into, and thereby cause them to purchase said product in and because of, the erroneous beliefs that said product is zinc lead as understood in the paint trade and by the purchasing and consuming public, or that the pigment of said product is composed of lead carbonate, or lead sulphate and zinc or a mixture thereof.

PAR. 6. The acts and practices of respondent of selling, advertising, branding, and representing its so-called "white lead" and "zinc lead", as hereinabove set forth, has the capacity and tendency to, and does, place in the hands of dealers in said products a means and instrument for committing fraud and deception upon the public, and a means and instrument by which said products may be and are sold and delivered to and purchased by the purchasing and consuming public under and because of the respective erroneous beliefs set forth in paragraphs 3 and 5 hereof.

PAR. 7. There are, among the competitors of respondent mentioned in paragraph 1 hereof, many individuals, partnerships, and corporations which sell and distribute in competition with respondent, and in interstate commerce, paint materials similar in general appearance to respondent's so-called "white lead" and "zinc lead", but which are in fact white lead and zinc lead, and similar materials whose pigment is composed of lead carbonate, or lead sulphate and zinc, or a mixture thereof, and which competitors in no wise misrepresent the character of said material or its ingredients. Respondent's acts and practices hereinabove set forth have the capacity and tendency to, and do, unfairly divert trade from said competitors.

CONCLUSION

Aforesaid acts and practices of respondent in the sale and distribution of its so-called "white lead" and "zinc lead", under the circumstances and conditions set forth herein, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, and the Commission having made its report in which it stated its findings as to the facts and conclusion that respondent Hoboken White Lead & Color Works, Inc., has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Hoboken White Lead & Color Works, Inc., its officers, agents, representatives, servants, and employees, cease and desist in the course or conduct of the sale of paint material or paint pigment in interstate commerce:

(1) From using the words "white lead", or word or words of like import, upon the containers of, or with which to brand, label, represent, advertise, or describe, any such paint material or paint pigment which contains less than 50 per cent white lead, lead carbonate or lead sulphate; and, if and when said paint material or paint pigment is not composed wholly of white lead or of lead carbonate or lead sulphate or of the two in combination, but contains white lead, lead carbonate, or lead sulphate as its principal and predominant ingredient to the extent of not less than 50 per cent by weight of the product, from similarly using said words "white lead" or word or words of like import unless immediately preceded in equally conspicuous form and color by a word or words clearly indicating that said paint material or paint pigment is not composed wholly of white lead.

(2) From using the words "zinc lead", or word or words of like import, upon the containers of, or with which to advertise, brand, label, represent, or describe, any such paint material or paint pigment when said product is not in fact zinc lead or is not in fact wholly composed of zinc in combination with lead carbonate or lead sulphate.

It is further ordered, That respondent, Hoboken White Lead & Color Works, Inc., shall within thirty days after 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 hereinabove set forth.

ORDERS OF DISMISSAL

THE NATIONAL ASSOCIATION OF STATIONERS, OFFICE OUTFITTERS AND MANUFACTURERS, ITS OFFICERS, BOARD OF GOVERNORS, AND MEMBERS. Complaint, April 9, 1924. Amended, Nov. 25, 1924. Order, February 9, 1928. (Docket 1153.)[1]

Charge: Combination or conspiracy to establish and maintain uniform prices on commercial and office supplies, to control the channels of distribution, and to hamper and obstruct the business of competitors not in harmony with the purposes of the combination.

Dismissed, after answer and trial, without assignment of reasons.

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

Mr. Mortimer W. Byers, of New York City, for The National Association of Stationers, etc.; Atlanta Stationers' Club; Boston Stationers' Association; Buffalo Stationers' Club; Kansas Book Dealers' Association; Northwestern Stationers' Association; Omaha Stationers' Association; Philadelphia Stationers' Association; Stationers' Association of New York; and Stationers' Club of Buffalo; and various officers and members of the said clubs.

Mr. Taylor B. Wyrick, of St. Louis, Mo., and *Mr. Mortimer W. Byers*, of New York City, for William Schmiederer and others; *Mr. Wyrick* also appearing for St. Louis Stationers' Association, its officers and members and T. B. Wyrick, individually and as chairman of said association.

Mr. Morris Popper, of New York City, for Wholesale Stationers Association of the United States and the Stationers and Publishers Board of Trade of New York and the officers and members of the said clubs.

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[1] There were joined in the case, in addition to the aforesaid respondent, National Association of Stationers, etc., and to the various individuals joined as members or officers of respondent associations, the Wholesale Stationers Association of the United States, and the following local trade associations of stationery dealers and manufacturers affiliated with the aforesaid respondent, National Association of Stationers, Office Outfitters & Manufacturers, and its predecessor, The National Association of Stationers & Manufacturers of the United States: Atlanta Stationers' Club; Baltimore Stationers' Association; Boston Stationers' Association; Buffalo Stationers' Club; Chicago Stationers' Association; Colorado Stationers' Association; Kansas Book Dealers' Association; Louisville Stamp & Stationery Club; Northwestern Stationers' Association; Omaha Stationers' Association; Pacific Northwest Stationers' Association; Philadelphia Stationers' Association; Pittsburgh Stationers' Club; Richmond Stationers' Association; St. Louis Stationers' Association; Stationers' Association of California; Stationers and Publishers Board of Trade, Inc., of New York; Stationers' Association of New York; Stationers' Association of New Orleans; Stationers' Club of Buffalo; Stationers' Association of Southern California; Stationers' Club of Toledo.

Young & Crothers, of Baltimore, Md., for Baltimore Stationers' Association, its officers and members.

Mr. W. C. Wermuth, of Ogren & Wermuth of Chicago, Ill., for Chicago Stationers' Association and various officers and members thereof.

Mr. E. A. Zimmerman, of Chicago, Ill., for Chas. A. Stevens.

Mr. Samuel B. Kirby, of Louisville, Ky., for Louisville Stamp & Stationery Club, its officers and members and George H. Koerner, individually, and as secretary of said club.

Roberts & Skeel, of Seattle, Wash., for Pacific Northwest Stationers' Association, its officers and members.

Mr. Edmund W. Arthur, of Pittsburgh, Pa., for Pittsburgh Stationers' Club, its officers and members.

Scott, Lloyd & Scott, of Richmond, Va., for Richmond Stationers' Association, its officers and members and Albert A. Schwartz, individually and as secretary of said association.

Mr. H. Arthur Dunn, of San Francisco, Calif., for Stationers' Association of California, its officers and members and Henry P. Dimond, individually and as chairman of said association.

Henry & Cooper, of New Orleans, La., for Stationers' Association of New Orleans, its officers and members and W. E. Eldridge, individually, and as secretary of said association.

Loeb, Walker & Loeb, of Los Angeles, Calif., for Stationers' Association of Southern California, its officers and members, and J. L. Garner, individually, and as secretary of said association.

Doyle & Lewis, of Toledo, Ohio, for Richard D. Logan, individually and as chairman of said club.

THE READING SADDLE & MANUFACTURING CO., March 5, 1928. (Docket 1387.)

Charge: Naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly; in connection with the manufacture and sale of tools.

Dismissed, after answer, by the following order:

The above-entitled proceeding coming on for final determination, and the Commission now being fully advised in the premises,

It is ordered, That the complaint in the above proceeding be and the same is hereby dismissed, without prejudice to the right of the Commission to take such further action as may be appropriate in the public interest in case the respondent shall resume the use of the word "steel" in connection with the manufacture and sale of the tools referred to in the complaint herein.

Appearances: *Mr. William A. Sweet* for the Commission.

SUFFOLK KNITTING MILLS, FRANK COHEN, SAM CAPLAN, PAUL COHEN. Complaint, Dec. 14, 1927. Order, May 16, 1928. (Docket 1490.)

Charge: Misbranding or mislabeling; in connection with the manufacture and sale of sweaters and other knit goods composed of shoddy wool mixed with cotton.

Dismissed, after answer and trial, for the reason that respondent "was dissolved by a special act of the General Court of Massachusetts approved April 15, 1927."

Appearances: *Mr. Alfred M. Craven* for the Commission; *Mr. Martin Witte*, of Boston, Mass., for respondents.

THE FIGARO CO. Complaint, July 21, 1927. Order, June 11, 1928. (Docket 1471.)

Charge: Advertising falsely or misleadingly; in connection with the manufacture and sale of a product called "Figaro Smoked Salt" and "Figaro Liquid Smoke" for use in curing meats.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission upon memorandum by the chief counsel recommending dismissal of the complaint, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. W. T. Chantland* for the Commission; *Mr. H. H. Shelton*, of Washington, D. C., for respondent.

M. W. SAVAGE CO. Complaint, February 5, 1927. Order, June 12, 1928. (Docket 1436.)

Charge: Advertising falsely or misleadingly; in connection with the sale of various kinds of merchandise by mail.

Dismissed, after answer, stipulation and trial, by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and it appearing that the subject matter of the complaint had been disposed of satisfactorily to the Commission by stipulation whereby the respondent agrees to cease and desist from the practices alleged in the complaint, and not to resume the same, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Mr. Mortimer H. Boutelle*, of Minneapolis, Minn., for respondent.

DOUGLASS CARAMEL CO. Complaint, March 19, 1927. Order, June 12, 1928. (Docket 1446.)

Charge: Employing a lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Dismissed, after answer and stipulation, without assignment of reasons.

Appearances: *Mr. William A. Sweet* for the Commission; *Dickson, Butler & McCouch*, of Philadelphia, Pa., for respondent.

CONTINENTAL SUGAR CO. Complaint, March 2, 1928. Order, June 23, 1928. (Docket 1497.)

Charge: Acquiring stock in competitor in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of beet sugar.

Dismissed by the following order:

The above-entitled proceeding coming on for consideration upon the complaint of the Commission, report of the board of review, and the record herein, and the Commission having considered the same and being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

WILLIAM F. DRUEKE AND ALBERT F. DICKINSON, PARTNERS TRADING UNDER THE NAME AND STYLE OF WILLIAM F. DRUEKE & CO. Complaint, July 27, 1926. Order, July 5, 1928. (Docket 1410.)

Charge: Advertising falsely or misleadingly and misrepresenting product; in connection with the manufacture and sale of household furniture including bookcases, end tables, secretaries, spinet desks, magazine racks, etc.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard on motion of the chief counsel for dismissal of the complaint in the above-entitled matter and the Commission having duly considered the record and now being fully advised in the premises,

It is ordered, That the said complaint be and the same hereby is, dismissed.

Appearances: *Mr. James M. Brinson* for the Commission; *Knappen, Uhl & Bryant*, and *Mr. Francis D. Campau*, of Grand Rapids, Mich., for respondents.

GRAND RAPIDS SHOW CASE CO. Complaint, July 27, 1926. Order, July 9, 1928. (Docket 1399.)

The charge and order of dismissal in this case, relating to office furniture and equipment, are similar to those in the preceding case, the same attorneys appearing for the Commission and for respondent, as in that case.

INDEPENDENT INDUSTRIES, INC. Complaint, December 14, 1826. Order, July 9, 1928. (Docket 1335.)

Charge: Naming product misleadingly, advertising falsely or misleadingly, misbranding or mislabeling and misrepresenting products; in connection with the manufacture and sale of knitted and other garments for women.

Dismissed by the following order:

The above-entitled proceeding coming on for consideration upon the recommendation of the chief counsel for dismissal, and the Commission having considered the same and being now fully advised in the premises,

It is ordered, That the complaint in the above-entitled proceeding be and the same is hereby dismissed.

Appearances: *Mr. A. R. Brindley* for the Commission.

H. WENTZEL TENT & DUCK CO. Complaint, July 26, 1927—Order, October 8, 1928. (Docket 1476.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling; in connection with the manufacture and sale of tents, tarpaulins and various other canvas or duck products.

Dismissed, after answer and trial, by the following order:

The testimony in this matter, upon the issues raised by the complaint of the Commission and answer of respondent having been taken, and the matter having been submitted to the Commission for decision on the recommendation of the chief counsel that same be dismissed, and the Commission being fully advised in the premises,

It is ordered, That this matter be, and the same is, hereby dismissed.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Anderson, Gilbert & Wolfort*, of St. Louis, Mo., for respondent.

MOTOR WHEEL CORPORATION, Complaint, August 6, 1924—Order, December 8, 1928. (Docket 1215.)

Charge: Acquisition of stock of competitor in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of automobile wheels, especially steel disc wheels.

Dismissed, after answer and trial, without assignment of reasons.[a]

Appearances: *Mr. A. R. Brindley* and *Mr. William A. Sweet* for the Commission; *Thomas, Shields & Silsbee*, of Lansing, Mich., and *Stevenson, Butzel, Eaman & Long*, of Detroit, Mich., for respondent.

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[a] The Commission's publicity "release" announcing this dismissal states that counsel for respondent appeared at the final argument, and declared that Forsythe Bros. Co. had necessarily gone out of business and at the time of executing its contract with respondent was not in any sense a competitor of it.

E. B. Knickerbocker, trading under the name and style of Wayne Machine Co., Complaint, March 8, 1928—Order, December 10, 1928 (Docket 1500.)

Charge: Simulation of trade name, advertising matter and business stationery of a competitor; in connection with the buying and selling of new and used machinery and tools and the remaking or rebuilding of used machinery and tools.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Fitzpatrick & Fitzpatrick*, of Indianapolis, Ind., for respondent.

Edmond Waterman & Charles Waterman, doing business under the trade name and style of E. Waterman & Co., Complaint, October 10, 1927—Order, December 11, 1928. (Docket 1481.)

Charge: Threatening competitors with infringement suits unfairly, in violation of section 5 of the Federal Trade Commission Act, as extended by section 4 of the Export Trade Act; in connection with the exportation and sale of apples, pears and other fruits.

Dismissed, after answer, without assignment of reasons, other than that the case came on to be heard on respondent's answer and report of the chief counsel for the Commission.[8]

Appearances: *Mr. M. A. Morrison* for the Commission; *Mr. Fayette B. Dow* and *Mr. Horace L. Lohnes*, of Washington, D. C., for respondents.

Bell International Tailors, Inc., Michael Heller, S. R. Robins, and Simon Heller. Complaint, July 23, 1927—Order, December 13, 1928. (Docket 1473.)

Charge: Adopting and using misleading corporate name, advertising falsely or misleadingly, misrepresenting products offered and offering deceptive inducements to purchase; in connection with the sale and distribution of men's and boys' ready-made clothing.

Dismissed, after answer and stipulation, by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and it appearing that the subject matter of the complaint had been disposed of satisfactorily to the Commission by stipulation whereby the respondent agrees to cease and desist from the practices alleged in the complaint and not to resume the same, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

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[8] The Commission's publicity "release" stated that dismissal followed the company's assignment and surrender of its trade-marks to an export trade corporation duly organized under the Export Trade Act, with the result that such marks were no longer respondent's exclusive property but were available for the equal protection of American exporters to the Argentine markets.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Mr. George R. Jackson*, of Washington, D. C., for Bell International Tailors, Inc., and *S. R. Robins* and *Heller & Atler*, of Denver, Colo., for Michael Heller and Simon Heller.

NATIONAL CASH REGISTER CO. Complaint, June 23, 1925—Order, December 15, 1928. (Docket 1328.)

Charge: Spying on competitor, disparaging and misrepresenting competitor or its product, tampering with the product of competitor, inducing breach of competitor's contracts and enticing competitor's employees; in connection with the manufacture and sale of cash registers and other machines similar in character.

Dismissed, after answer and trial, without assignment of reasons, Chairman Myers not participating in the consideration of the case, or the decision.

Appearances: *Mr. William A. Sweet* for the Commission; *Dinsmore, Shohl & Sawyer* and *Mr. George H. Warrington* of Cincinnati, Ohio, *Sullivan & Cromwell*, of New York City, and *Mr. Ezra M. Kuhns*, of Dayton, Ohio, for respondent.

GENERAL ELECTRIC CO., ET AL.[4] Complaint January 26, 1924. Amended, January 31, 1928—Order, December 19, 1928. (Docket 1115.)

Charge: Combining and conspiring for the purpose and effect of restraining competition and creating a monopoly; in connection with the manufacture, purchase and sale of radio devices and apparatus, and other electrical devices and apparatus, and in domestic and transoceanic radio communication and broadcasting.

Dismissal, after answer and trial, by the following order:

This matter coming on to be heard on the motion of the respondents to dismiss the complaint herein as amended, and the Commission having heard oral argument in support of said motions and oral argument in opposition to said motions, and the Commission having considered briefs filed in support of and in opposition to said motions and the Commission being fully advised in the premises,

It is hereby ordered, That the said motions be and the same are hereby granted, and that the said complaint as amended be and the same is hereby dismissed.

Appearances: *Mr. Edward L. Smith* and *Mr. Wm. T. Chantland* for the Commission; *Mr. Darius E. Peck*, of Schnectady, N. Y., and *Mr. John Walsh*, of Washington, D. C., for General Electric Co.; *Davis, Polk, Wardwell, Gardiner & Reed* (by *Mr. John W. Davis* and

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[4] The other respondents, in this, the Commission's so-called Radio case, were American Tel. & Tel. Co., Western El. Co., Inc., Westinghouse El. & Mfg. Co., The International Radio Tel. Co., United Fruit Co., Wireless Specialty Apparatus Co., and Radio Corporation of America.

Mr. Harold G. Hathaway), *Mr. N. T. Guernsey*, and *Mr. William P. Sidley*, of New York City, for American Telephone and Telegraph Co. and Western Electric Co., Inc.; *Cravath, DeGersdorff, Swaine & Wood* (by *Mr. Frederick H. Wood* and *Mr. John J. McCloy*), of New York City, for Westinghouse Electric & Manufacturing Co. and International Radio Telegraph Co.; *Covington, Burling & Rublee*, (by *Mr. J. Harry Covington*), of Washington, D. C., (with *Mr. William K. Jackson*, of Boston, Mass.) for the United Fruit Co., and (with *Mr. John L. Warren* of Boston, Mass.) for Wireless Specialty Apparatus Co.; and *Cotton & Franklin* (by *Mr. Joseph P. Cotton, Mr. Thurlow M. Gordon* and *Mr. Wilton Lloyd-Smith*), of New York City and *Mr. I. E. Lambert* of New York City, for Radio Corporation of America.

AMERICAN CAR & FOUNDRY CO. Complaint, May 14, 1928—Order, December 22, 1928. (Docket 1514.)

Charge: Acquisition of stock of competitor in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of railroad cars, car wheels, repair parts, equipment, and supplies.

Dismissed by the following order:

The above-entitled proceeding coming on for consideration by the Commission upon supplemental report of the board of review, dated November 16, 1928, of the hearing before the board on June 21, 1928, and the Commission now being fully advised in the premises,

It is ordered, That the complaint in this proceeding be and the same is hereby dismissed.

Appearances: Mr. Charles J. Hardy, general counsel, and *Mr. Noah A. Stancliffe*, of New York City, for respondent.

W. U. BLESSING AND M. S. GOHN, copartners, doing business under the trade name and style of W. U. BLESSING & CO. and A. E. WALLICK. Complaint, March 5, 1926—Order, February 4, 1929. (Docket 1369.)

Charge: Misbranding and mislabeling and advertising falsely or misleadingly; in connection with the manufacture and sale of cigars.

Dismissed, after stipulation and trial, by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and it appearing that the subject matter of the complaint had been disposed of satisfactorily to the Commission by stipulation, whereby the respondent agrees to cease and desist from the practices alleged in the complaint and not to resume the same, and the Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Mr. Marvin Farrington*, of Washington, D. C., for respondents.

PENNSYLVANIA SALT MANUFACTURING CO. Complaint, April 21, 1928—Order, February 4, 1929. (Docket 1511.)

Charge: Acquiring stock of competitor in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of caustic soda, bleaching powder, liquid bleach, liquid chlorine (and especially the first two).

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. William T. Kelley* for the Commission; *Roberts & Montgomery*, of Philadelphia, Pa., for respondent.

FACTORY STORES, INC. Complaint, December 1, 1928. Order, April 6, 1929. (Docket 1550.)

Charge: Misrepresenting business status as to dealer being manufacturer; in connection with the sale of furniture.

Dismissed by the following order:

This matter having come before the Commission upon the memorandum of the chief counsel of the Commission showing abandonment by respondent of its name, and a legal alteration of its name to "The Furniture Mart, Inc.", and there being no other charge contained in the complaint against the respondent, and the Commission being now fully advised in the premises,

It is ordered, That this proceeding be, and the same hereby is dismissed, upon the ground that respondent has caused its corporate name to be changed.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Mr. Ernest L. Miller*, of Clinton, Iowa, for respondent.

E. T. STILLE & CO., Complaint, February 11, 1929. Order, May 23, 1929. (Docket 1559.)

Charge: Misbranding or mislabeling and misrepresenting products; in connection with the manufacture and sale of shellac.

Dismissed, after answer, by the following order:

Prior to the issuance of the complaint in this case on February 11, 1929, the respondent, on November 8, 1928, signed and agreed to abide by the resolutions of the Trade Practice Conference of the Paint, Varnish and Lacquer Industry, as covered by the Commission's statement of October 29, 1928. The Commission now being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed without prejudice to the right of the Commission to later reopen this case and proceed under the complaint herein.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Black Varian & Simon*, of New York City, for respondent.

The TULLOSS SCHOOL Co., Complaint, September 29, 1928. Order, June 3, 1929. (Docket 1535.)

Charge: Misrepresenting business, size, advantages, and prices and offering deceptive inducements to purchase; in connection with the conduct of a correspondence school offering course of shorthand, typewriting, and allied subjects.

Dismissed, after answer, for the reason that "respondent corporation has been dissolved".

Appearances: *Mr. Henry Miller* for the Commission; *Martin & Corry*, of Springfield, Ohio, for respondent.

CHARLES S. LENNON AND W. R. PATTERSON, COPARTNERS, TRADING UNDER THE FIRM NAME AND STYLE OF SHERWIN CODY SCHOOL OF ENGLISH, Complaint, November 6, 1928. Order, June 3, 1929. (Docket 1547.)

Charge: Advertising falsely or misleadingly as to prices; in connection with the conduct of a correspondence school of instruction in English.

Dismissed, after answer and trial, without assignment of reasons.

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

JOSEPH B. BLOCK AND BERNARD LEVIN, COPARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE LA FRANCE JEWELRY MFG. Co., Complaint, February 20, 1929. Order, June 3, 1929. (Docket 1566.)

Charge: Using misleading trade name, misrepresenting business status or advantages, and advertising falsely or misleadingly; in connection with the sale of jewelry.

Dismissed, after stipulation, without assignment of reasons and "without prejudice to the right of the Commission to later reopen this case and proceed under the complaint herein".

Appearances: *Mr. William T. Kelley* for the Commission; *Saperston, McNaughtan & Saperston*, of Buffalo, N. Y., for respondents.

DIGESTS OF STIPULATIONS PUBLISHED AFTER DELETING NAME OF RESPONDENTS[1]

STIPULATION OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST

241. **False or Misleading Advertising and Brands or Labels—Pine Lumber.**—Respondent, a corporation, engaged in the importation of lumber from abroad and in the sale and distribution of the same in the United States of America, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

White pine, botanically designated *Pinus strobus*, is well known to the purchasing and consuming public and is characterized chiefly for its extreme softness, ease of working, strength, durability, its ability to stay in place after once being fitted, its freedom from pitch or objectionable acids, and its consequent remarkable qualities of endurance as a structural wood, especially for outside uses when exposed to the elements. These peculiar characteristics have become so identified with white pine, as above described, for such a long period of time as to result in the same being sought after by contractors, builders, and the purchasing public desiring a lumber possessing the aforesaid qualities, especially when exposed to varying climatic conditions, and by reason of which the said wood has become popular for building purposes and demands a price on the market in excess of that charged for the product manufactured and sold by the respondent.

Respondent, in the course and conduct of its business, obtained lumber products from business interests located in a certain country in Europe, which said lumber products were caused to be branded or labeled as "white pine," and with the said brands or labels affixed thereto were shipped and imported into the United States of America and there sold to purchasers located in the United States of America,

[1] Published to inform the public of those unfair methods and practices condemned by the commission and to establish precedents that will serve to eliminate unfair business methods of interest to the public and injury to competitors.

The digests published herewith cover those accepted by the commission during the period covered by this volume, namely, Jan. 30, 1928 to June 11, 1929. Digests of all previous stipulations of this character accepted by the commission—that is, numbers 1 to 240, inclusive—may be found in Vol. X at pp. 461 et seq., and Vol. XI at p. 494 et seq.

while in certain of its advertising matter inserted in trade journals having circulation between and among various States of the United States the said respondent caused its said products to be represented, designated, referred to, and described as "white pine," when in truth and in fact the said lumber was not white pine, botanically known and designated *Pinus strobus*, but was lumber manufactured from a variety of pine botanically known and designated as *Pinus sylvestris*.

Respondent, in soliciting the sale of and selling in the United States of America lumber obtained from abroad and imported into the United States of America, agreed to cease and desist forever, in its advertisements circulated in interstate commerce, or as a brand or label for said products, from the use of the words "white pine" either independently or in combination with any other word or words which import or imply that the said lumber is that product botanically known and designated as *Pinus strobus*, and the said respondent also agreed to cease and desist forever from the use of the words "white pine" either independently or in connection or conjunction with any other word or words, or in any other way, that may have the capacity and tendency to mislead or deceive the purchasing public into the belief that its aforesaid products are in truth and in fact white pine, botanically known and designated as "white pine" or *Pinus strobus*.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 8, 1928.)

242. **False or Misleading Advertising and Trade Name—Underwear; Lingerie.**—Respondent, an individual, engaged in the sale and distribution of underwear or ladies' lingerie in interstate commerce, and in competition with other individuals, firms, partnerships and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, used the word "Manufacturing" as part of his trade name in the sale and distribution of his products in commerce between and among various States of the United States, and said respondent caused his trade name, containing the word "Manufacturing" to be used in advertisements inserted in newspapers having circulation between and among various States of the United States, and also used said trade name, containing the word "Manufacturing" on his letterheads, envelopes, and other printed matter circulated in interstate commerce in soliciting the sale of and selling his products, while in circulars and other advertising matter distributed in interstate commerce respondent made use of such words and/or phrases as "manufacturers of," "knitting our own cloth," "cutting and sewing them up in our mill," "manufacturing from the raw yarns to the finished garments," "direct from manufacturer," when in truth and in fact the said respondent does not own, operate, or control a mill or factory manufacturing the products sold and distributed by him in interstate commerce, and the said respondent filled orders for products from stock purchased by him from mills or factories which he neither owned, operated, nor controlled.

Respondent also in the course and conduct of his business secured the services of agents or representatives in different States of the United States through the insertion by him of advertisements in newspapers having circulation between and among various States of the United States, and through such agents or representatives sold and distributed in interstate commerce his products to the purchasing public, causing said products to be represented, designated, referred to and described as "silk underwear," "Rayon silk," "The finest and the best ladies' rayon art silk lingerie," when in truth and in fact the said products so represented, designated, and referred to were not made of silk, the product of the cocoon of the silkworm, but were composed of fabrics or materials other than silk.

Respondent agreed to cease and desist forever from the use of the word "Manufacturing" as part of or in connection or conjunction with his trade name in the sale and distribution of his said products in interstate commerce, and from the use of the trade name containing the word "Manufacturing," and the use of the word "manufacturers," and the words "direct from manufacturers," "knitting" and "mill" in his advertisements, and from the use of said representations on letterheads, envelopes, and other printed matter circulated and distributed in interstate commerce in soliciting the sale of and selling said products, and from the use of any other word or words which import or imply that said respondent is the manufacturer of the product sold and distributed by him, or which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said respondent either owns, operates or controls a mill or factory wherein are made the products which he sells and distributes in interstate commerce; or until such time as said respondent does actually own, operate, or control a mill or factory manufacturing the products which he sells and distributes in interstate commerce.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 10, 1928.)

243. **False or Misleading Brands or Labels—Hosiery.**—Respondent, a corporation, engaged in the manufacture of hosiery and in the sale and distribution of the same in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, manufactured a certain brand of hosiery from a product or products other than silk, with the exception of a very narrow stripe of silk encircling the said hosiery at or near the garter welt, and caused the same to be marked, stamped, branded, or labeled on the toe thereof as "Guaranteed Pure Silk and Rayon made in U. S. A.," and, with the aforesaid mark, stamp, brand or label affixed thereto, caused its said products to be sold and distributed in commerce between and among various States of the United States, when in truth and in fact the said hosiery was not manufactured in such substantial part of silk, the product of the cocoon of the silk worm, so as to be properly and accurately designated silk and rayon, but was manufactured almost wholly of a material or materials other than silk. The said respondent also caused to be affixed to the toe portion of said hosiery a label bearing the words "Fashioned hosiery," and with the aforesaid label affixed thereto sold the said products in interstate commerce, when in truth and in fact the said products were not manufactured in accordance with that process used in the manufacture of "fashioned" hosiery and were not that product known to the trade and purchasing public as "fashioned" hosiery.

Respondent agreed to cease and desist forever, in soliciting the sale of and selling its products in interstate commerce, from the use of the word "silk" either independently or in connection or conjunction with any other word or words as a trade brand or designation for hosiery which is not composed wholly of silk, the product of the cocoon of the silk worm; or unless, when said hosiery is composed in substantial part of silk, the product of the silk worm, and the word "silk" is used as a trade brand or designation for said hosiery, in which case the said word "silk" shall be employed in connection or conjunction with some other word or words which shall be displayed in type equally as conspicuous as that in which the word "silk" is printed so as to clearly indicate that such hosiery is not made wholly of silk, and which shall otherwise properly and accurately represent, define or describe the said hosiery so as to clearly indicate that the same is composed in part of a material or materials other than silk, The said respondent also agreed to cease and desist forever, in soliciting the sale of and selling its products in interstate commerce, from the use of the word "fashioned" either independently or in connection or conjunction with any other word or words on its labels, or in any other way as descriptive of its products which import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief, that the said products are manufactured in accordance with that process used in the manufacture of "fashioned" hosiery and as being that product known to the trade and purchasing public as "fashioned hosiery."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 15, 1928.)

244. **False or Misleading Advertising as to Composition of Product—Reducing Belts.**—Respondent, copartners, engaged in the sale and distribution of elastic reducing belts in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their products in interstate commerce, caused the said products to be represented, designated, described, and referred to in their circulars and other advertising matter distributed in interstate commerce as "silk," when in truth and in fact the products so represented, described, and referred to in their said advertising matter were not manufactured from silk, the product of the cocoon of the silkworm, but were manufactured from a fabric or material other than silk.

Respondents agreed to cease and desist forever from the use of the word "silk," either independently or in connection or conjunction with any other word or words, in their circulars or other printed matter distributed in interstate commerce which import or imply that the products sold by said respondents are manufactured from silk, the product of the cocoon of the silkworm, and from the use of the word "silk" in any other way as descriptive of the aforesaid products that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products are manufactured from silk, the product of the cocoon of the silkworm.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (February 15, 1928.)

245. **False or Misleading Advertising as to Composition of Product—Concentrates and Sirups.**—Respondent, an individual, engaged in the manufacture of concentrates and sirups from which beverages are made, and in the sale and distribution of the same in interstate

commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused advertising matter to be distributed among the retail and other trade located in different States of the United States, said advertising matter being in the form of posters and/or pasteboards for public display in the business establishments of said retailers and containing the words "A delightful and refreshing drink with the aroma of the vineyards of France," and in letters written by him, in soliciting the sale of and selling his said products respondent referred to the concentrates manufactured by him as a "grape drink," while in periodicals and magazines having circulation between and among various States of the United States the said products were advertised as "A grape drink of fine quality and distinctive flavor," while in the left-hand margin of said advertisements was pictorially represented a bunch of grapes. In other advertising matter circulated in interstate commerce the aforesaid product was referred to as "grape concentrate" and/or as "grape beverage," and as a result of the circulation and distribution in interstate commerce of the said posters or pasteboards and advertising matter the said respondent enabled the retail trade to sell drinks made or prepared from the said concentrates to the public in various States of the United States, when in truth and in fact the said products were not manufactured from the juice of the grape or the fruit of the same so as to be properly represented, designated, described, or referred to by the use of the word "grape," but were made of ingredients which contained no portion of the grape whatsoever.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "grape" either independently or in connection or conjunction with any other word or words, pictorial representation, or representations in his advertisements or advertising matter circulated in interstate commerce which import or imply that the products manufactured and sold by him are manufactured from the juice of the grape or the fruit of the same, and from the use of the word "grape" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are manufactured from the fruit of the grape or the juice of the same, and to cease and desist forever from from putting into the hands of retailers or other persons advertising matter containing the word "grape" either independently or in connection or combination with any other word or words or pictorial representation that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said product so advertised and described is in truth and in fact a beverage composed of the juice or the fruit of the grape.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 24, 1928.)

246. **Resale Price Maintenance—Candy.**—Respondent, a corporation, engaged in the manufacture of candy and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, adopted and employed a system, involving the cooperation of the jobbing and retail trade, for the maintenance and enforcement of certain resale prices established by it, and as a method of effecting obedience to such system the said respondent, cooperating with the trade as aforesaid, employed the following means, to wit:

Caused it to be generally known to the trade, through the issuance of price lists, by means of letters and circulars, through its salesmen, and by other means, that it expected and required its customers to maintain said suggested resale prices;

Solicited and obtained by letters, through its salesmen and by other means, agreements, promises, and assurances from its jobbing and other trade that they would cooperate in the observance and maintenance of said resale prices;

Threatened to refuse and refused to sell products to dealers who ignored or failed to observe and maintain said suggested resale prices or who sold to other dealers who failed to observe and maintain said suggested resale prices;

Solicited and obtained from customers, salesmen, and otherwise reports of the names of retail, jobbing, and other dealers who ignored or failed to observe and maintain said suggested resale prices, and upon securing such reports advised said retail, jobbing, and other dealers by letters and otherwise that the said suggested resale prices must be adhered to under the threat or penalty that said reported price cutters would be removed from the direct list should they fail to cease selling below the suggested resale prices;

Sought and secured promises and assurances from such offenders that they would thereafter maintain said resale prices as a condition to further supplying them with products; and

Caused dealers to be enrolled upon black lists of undesirable purchasers who were not to be supplied with products unless and until they should give satisfactory assurances of their purpose to observe and maintain said suggested resale prices.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from—

(*a*) Soliciting or obtaining by letters, through its salesmen, or by other means, agreements, promises or assurances from its jobbing or other trade that they would cooperate in the observance and maintenance of any system of price fixing established by said respondent;

(*b*) Threatening to refuse or refusing to sell to dealers because of the failure of such dealers to adhere to any such system of resale prices;

(*c*) Soliciting and obtaining from its customers, salesmen or others reports of the names of dealers who do not observe and maintain such resale prices;

(*d*) Seeking and securing promises and assurances from offending dealers that they will maintain such resale prices as a condition to further supplying them with products;

(*e*) Maintaining a black list or causing dealers to be enrolled upon lists of so-called undesirable purchasers who are not to be supplied with products unless and until they shall give satisfactory assurances of their purpose to observe and maintain such resale prices; and

(*f*) Directly or indirectly carrying into effect by cooperative methods any system of resale prices in which respondent, its customers and agents undertake to prevent others from obtaining products of the said respondent at less then the prices designated by said corporation.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 29, 1928.)

247. **False or Misleading Advertising and Brands or Labels—Fruit Drink Powders.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of supplies and equipment to concessionaires and other trade, the said products including powder preparations for use in the making of drinks or beverages, and in competition with other individuals, firms, partnerships and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his said powder preparations in interstate commerce, caused the same to be advertised in periodicals and other publications having circulation between and among various States of the United States as "Double-strength fruit drink powders. Natural flavor and cloudy color. Orangeade, lemonade, cherry, grape, strawberry, loganberry." Further in the course and conduct of his business said respondent caused each of his said powder products to be branded or labeled with the name of the particular fruit which it was supposed to represent, such as orangeade, lemon or lemonade, cherry, grape, strawberry and loganberry, and with the aforesaid brands or labels affixed thereto caused said products to be sold and distributed among the retail and other trade located in various States of the United States, when in truth and in fact none of the powder preparations or products referred to was manufactured in whole or in part from the fruit or juice of the orange, lemon, cherry, grape, strawberry, or loganberry so as to be properly represented, designated, described, or referred to by the use of the words "orange," "lemon," "cherry," "grape," "strawberry," or "loganberry."

Respondent agreed to cease and desist forever, in soliciting the sale of and selling his products in interstate commerce, from the use of the words "orange," "lemon," "cherry," "grape," "strawberry," or "loganberry" either independently or in connection or conjunction with any other word or words in his advertisements or advertising matter, or on his brands or labels affixed to products distributed in interstate commerce, so as to import or imply that the products manufactured and sold by him are composed in whole of the juice or fruit of either the orange, lemon, cherry, grape, strawberry, or loganberry, or the fruit or the juice thereof in such substantial quantity so as to justify the use of the aforesaid words, or any of them as descriptive of the said products. Respondent also agreed to cease and desist forever from the use of any or all of the words "orange," "lemon," "cherry," "grape," "strawberry," or "loganberry" either independently or in connection or conjunction with any other word or words, or in any other way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that any of the said products are in truth and in fact beverages composed wholly or in substantial part of the juice or fruit of either the orange, lemon, cherry, grape, strawberry, or loganberry; or unless, when any one or more of the words "orange," "lemon," "cherry," "grape," "strawberry" or "loganberry" are used as a trade brand or designation for products containing in substantial part the juice or fruit so indicated, in which case the said word or words so used must be accompanied by a word or words printed in type equally as conspicuous as that in which the said word or words indicating the name of the fruit are printed so as to properly represent, define or describe said product, and to clearly indicate that the same is composed in part of ingredients other than the fruit so indicated.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 2, 1928.)

248. **False or Misleading Brands or Labels—Candles.**—Respondent, a corporation, engaged in the manufacture of candles for use in churches and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

"Altar" candles are candles used by various religious denominations and churches in religious ceremonies and are made so as to conform to the ecclesiastical requirements for the purpose designated.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused certain of its candles to be branded or labeled as "Bees-wax candles" or as "Altar brand wax candles," each of the said brands or labels having depicted thereon a bee and/or a beehive, and with the said brands or labels affixed thereto sold and distributed the said candles in commerce between and among various States of the United States, when in truth and in fact the said candles so branded, labeled, and sold in interstate commerce were not manufactured wholly of beeswax and/or did not conform to the ecclesiastical requirements so as to be properly and accurately represented, designated, and referred to by the use of the word "altar."

Respondent agreed to cease and desist forever from the use of the word "beeswax" and/or the word "wax" either independently or in connection or conjunction with any other word or words, pictorial representation or representations, or in any other way as a brand or label for its candles sold in interstate commerce so as to import or imply that the said product is composed of beeswax; or unless when said candles are composed in substantial part of beeswax, and the word "beeswax" or the word "wax" is used as a trade brand or designation for said products, in which case the said word "beeswax" or the word "wax" shall be employed in connection, conjunction or combination with some other word or words which shall be displayed in type equally as conspicuous as that in which the word "beeswax" or the word "wax" is printed so as to clearly indicate that such candles are not made wholly of beeswax, and that will otherwise properly and accurately represent, designate or describe said candles so as to clearly indicate that the same are composed in part of a product or products other than beeswax. The said respondent also agreed to cease and desist forever from the use of the word "beeswax" or the word "wax" either independently or in connection or conjunction with any other word or words, pictorial representation or representations, or in any other way in connection with the sale and distribution of candles not manufactured from beeswax so as to confuse, mislead, or deceive the purchasing public into the belief that the said candles are in truth and in fact beeswax candles; and to cease and desist forever from the use of the word "altar" either independently or in connection or conjunction with any other word or words, pictorial representation or representations, to define, represent, or describe its candles sold in interstate commerce, unless the candles so represented, designated, and referred to are made to conform to the established ecclesiastical requirements so as to be properly and accurately represented, designated, and referred to as "altar" candles.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 5, 1928.)

249. **False or Misleading Advertising—Printed Products.**—Respondent, an individual, engaged in the business of printing stationery and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair practices as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused advertising matter consisting of circulars, form letters, and pamphlets to be distributed in interstate commerce, said advertising matter containing the following language, in part, "If you have ever had any desire to use refined embossed stationery write us to-day," and on sample letterheads sent to prospective customers located in various States of the United States were printed price lists setting forth the costs of letterheads of different sizes and in each instance featuring the word "embossed," and on certain of his price lists and other advertising matter circulated in interstate commerce said respondent made use of the word "electrobossed" in soliciting the sale of and selling his said products between and among various States of the United States, when in truth and in fact the process used or the method employed was not the process of producing an impression on such stationery from inked plates in which have been stamped, cut, or carved sketches, designs, or inscriptions from which impressions or reproductions are made known as "engraving" and/or "embossing," but were the result of the use of a chemical in powdered form applied to type printing while the ink is wet, and in passing through a baking process the heat causes the same to fuse and present a raised-letter effect so as to resemble in appearance or simulate the impression made from inked engraved plates, known as "engraving" and/or "embossing."

Respondent agreed to cease and desist forever from the use of the words "embossed" or "bossed" to define or describe his products in circulars, form letters, pamphlets, or other advertising matter circulated and distributed in interstate commerce, and the use of the word "embossed," "bossed," "embossing," or "emboss," either independently or in connection or conjunction with any other word or words, syllable, or syllables, letter, or letters which import or imply that the said products printed and sold by said respondent are the results of impressions made from inked engraved plates commonly known to the trade and purchasing public as "engraving" and/or "embossing," and from the use of the words "embossed," "bossed," "embossing," or "emboss" either independently or in combination with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the products printed and sold by respondent are engraved or embossed, or until such time as said respondent, if the words "embossing," "embossed," "bossed," or "emboss" are used, does actually emboss and/or engrave the products so designated and described which he sells in commerce between and among various States of the United States.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 16, 1928.)

250. **False or Misleading Advertising and Brands or Labels—Plated Ware.**—Respondent, a corporation, engaged in the manufacture of plated ware and metal goods and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused certain of its products to be marked, stamped, branded, or labeled "Solid electric silver" and, with such marks, stamps, brands, or labels affixed thereto, sold said products in commerce between and among various States of the United States, the said products being placed or packed in paste-board or other containers bearing a label containing the word "silver," and said respondent in soliciting the sale of and selling its products in interstate commerce also caused its products to be advertised as "Solid electric silver" in its catalogues, circulars, and other printed matter circulated in interstate commerce, when in truth and in fact said products were not manufactured of silver and were not manufactured so as to contain nine hundred and twenty-five one-thousandth parts of silver and seventy-five one-thousandth parts of copper or other metal.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use in advertisements and advertising matter, or as a brand or label for its products, of the word "Silver" either independently or in connection or conjunction with any other word or words which import or imply that said products are manufactured of that product known to the trade and purchasing public as "silver," and from the use of the word "silver" in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said products were manufactured of silver.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 23, 1928.)

251. **False or Misleading Advertising and Brands or Labels—Malt Extracts and Sirups.**—Respondents, copartners, engaged in the manufacture of malt extracts and malt sirups, and in the sale and distribution thereof in interstate commerce and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, caused advertisements to be inserted in newspapers and other periodicals having circulation between and among various States of the United States, and in catalogues and other printed matter distributed in interstate commerce, the said advertisements featuring such statements as "Hop-flavored Bohemian malt extract," "Imported Bohemian hop-flavored malt," "Germania malt (imported)," "Bohemian hop-flavored Puritan malt," while on labels affixed to the containers of said products appeared the following: "Bohemian, hop-flavored malt," "Germania malt. Imported. Bohemian. Hop-flavored," when in truth and in fact said products so advertised, labeled, and sold was not obtained from or manufactured in Bohemia or Germany, but was manufactured in the United States of ingredients obtained in substantial part from local sources in the United States, said ingredients including American grown hops in substantial quantity.

Respondents agreed to cease and desist forever, in soliciting the sale of and selling their products in interstate commerce, from the use of the words "Imported," "Bohemian," and "Germania," either independently or in connection or conjunction with any other word or words in their advertisements, or as a trade brand or designation for their products, or in any other way so as to mislead or deceive the purchasing public into the belief that the products are of foreign manufacture and have been imported into the United States, or have been obtained from Bohemia or from Germany, or have been manufactured of ingredients, all of which were obtained from said countries or either of them; unless, when said malt products are composed in part of an ingredient or ingredients which have been actually obtained from Bohemia or from Germany, and imported into the United States; and the word "Bohemian" or "Germania" and/or "Imported" is used to describe said products, in which case the said word or words shall be used so as to accurately and properly designate, describe, and refer to said products.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 23, 1928.)

252. **False or Misleading Advertising—Shirts.**—Respondent, a corporation, engaged in the sale and distribution of shirts in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce, advertised through the medium of letterheads, order blanks, sample books, and by other means, and also by sales agents engaged in house-to-house canvassing in various States of the United States. In its advertising medium respondent caused its products to be represented, designated and referred to as "English broadcloth shirts," "Imported from England," "Fiber silk shirts," "Genuine Marquis sport flannel shirts," and "French flannel shirts," and which said products, so represented, designated, and referred to, it caused to be sold and distributed in commerce between and among various States of the United States, when in truth and in fact the said products described as "English broadcloth" or as "Imported from England" were manufactured in the United States of domestic materials; the said products described as "Fiber silk" were not made wholly of silk, the product of the cocoon of the silk worm, so as to be properly and accurately represented, designated, and referred to as "silk"; and said products described as "flannel" were not manufactured wholly of wool, but were made of a material or materials in varying quantities other than wool.

Respondent in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from (1) the use of the words "English" and "imported" either independently or in connection or conjunction each with the other, or with any other word or words which import or imply that the products to which they, or either of them, refer are manufactured in England, or manufactured from broadcloth which has been imported from England, and from the use of the words "English" and "imported" either independently or in connection or conjunction each with the other, or in any other way in its advertising matter which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are of English manufacture or are made of broadcloth which has been imported from England; (2) the use of the word "silk" either independently or in connection or conjunction with any other word or words which import or imply that the products so designated are made of silk, the product of the cocoon of the silkworm, and the use of the word "silk" in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made of silk; or unless, when said products are composed of a substantial part of silk, the product of the cocoon of the silkworm, and the word "silk" is used in the advertisement of, or as a designation for said products, in which case the word "silk" shall be employed in connection, conjunction, or combination with some other word or words which shall be printed in type equally as conspicuous as that in which the word "silk" is printed, so as to clearly indicate that such products are not made wholly of silk that will properly and accurately represent, define, and describe said products so as to clearly indicate that the same are composed in part of a material or materials other than silk; (3) the use of the word "flannel" either independently or in connection or conjunction with any other word or words which import or imply that the products designated thereby are made of wool, and the use of the word "flannel" in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made of wool; or unless when said products are composed of a substantial part of wool, and the word "flannel" is used in the advertisement of, or as a designation for, said products, in which case the word "flannel" shall be employed in connection, conjunction, or combination with some other word or words which shall be printed in type equally as conspicuous as that in which the word "flannel" is printed, so as to clearly indicate that such products are not made wholly of wool, and that will properly and accurately represent, define, and describe said products so as to clearly indicate that the same are composed in part of a material or materials other than wool.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 26, 1928.)

253. **False or Misleading Advertising and Trade Name—Knitted Clothing.**—Respondents, copartners, engaged in the sale and distribution of outerwear in wholesale quantities in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

In the course and conduct of their business respondents adopted a trade name containing the word "Knitting," which said trade name, containing the word "Knitting," they used in the sale and distribution of their products in interstate commerce, and caused the said trade name, containing the word "Knitting" to be used in advertisements inserted in magazines and trade journals having circulation between and among various States of the United States and on their letterheads, envelopes and other printed matter distributed in interstate commerce. Said respondents used the word "Manufacturers," together with their trade name containing the word "Knitting," in soliciting the sale of and selling their products in interstate commerce, when, in truth and in fact, said respondents did not own or operate a mill or factory in which was manufactured or knitted the clothing sold by them in commerce between and among various States of the United States, and the said respondents filled said orders from clothing manufactured in a mill or factory which they neither owned or operated.

Respondents agreed to cease and desist forever from the use of the word "Knitting" as part of, or in connection or conjunction with their trade name in the sale and distribution of their products in interstate commerce, and from the use of their said trade name containing the word "Knitting" in advertisements inserted in magazines and trade journals having circulation between and among various States of the United States; and from the use of the word "Knitting" in their said trade name either independently or in connection or combination with the word "Manufacturers" on their letterheads, envelopes, and other advertising matter distributed in interstate commerce in soliciting the sale of and selling their products, or the use of the word "knitting" or the word "manufacturer" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said respondents either own or operate a mill or factory in which was manufactured or knitted the clothing sold and distributed by them in interstate commerce; or until such time as the said respondents do actually own or operate a mill or factory wherein is manufactured all of the knitted clothing sold by them in interstate commerce.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (April 2, 1928.)

254. **False or Misleading Advertising—Tractors.**—Respondent, an indivudual, engaged in the manufacture of garden tractors and in the sale of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business caused certain of the products of his manufacture—namely, tractors—to be equipped with motors, and in soliciting the sale of and selling said products caused the same to be advertised and described in circulars and other printed matter distributed in interstate commerce as being equipped with "4 cycle, 1¼–2½ horsepower, air-cooled engine" or with "2½ H. P. S. A. E.," while in magazines and other publications having circulation between and among various States of the United States the motors with which said products were equipped were described as "PB-type motor, 2½ horsepower" or as the "Q-type motor, 2½ and 3¾ horsepower," when in truth and in fact the said products described as aforesaid were not equipped with motors having the horsepower specified, but were equipped with motors of lessor power than that indicated in such advertisements and descriptions.

Respondent agreed to cease and desist forever from the use of any word, letters, or numerals to represent, designate, or describe the horsepower of the motors with which his products are equipped which import or imply that the motive power or pulling force of such motors is other than that of which the said motors are capable, and from the use of any of the aforesaid methods, or of any other means to represent, designate, describe or refer to the horsepower of said motors which may have the capacity and tendency to mislead or deceive the purchasing public into an erroneous belief as to the actual horsepower of said motors.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 6, 1928.)

255. **False or Misleading Advertising and Brands or Labels—Cuticle Remover.**—Respondent, a corporation, engaged in the manufacture of toilet preparations, including cuticle remover, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused its product to be branded or labeled under a trade name containing the word "oil," and with the aforesaid brand or label affixed thereto sold said product in commerce between and among various states of the United States. Said respondent also caused its product to be advertised in newspapers having circulation between and among various states of the United States, when in truth and in fact the said product was not manufactured from oil and contained no oil whatever, but was manufactured from ingredients other than oil and which were not adapted to or capable of admixture with oil.

Respondent agreed to cease and desist forever from the use of the word "oil" either independently or in connection or conjunction with any other word or words as a trade brand or designation for its cuticle remover sold in interstate commerce or in its advertising matter circulated in interstate commerce which import or imply that the product sold by said respondent is manufactured from or contains oil; said respondent also agreed to cease and desist from the use of the word "oil" either independently or in connection or conjunction with any other word or words, or in any other way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said product is manufactured from, or contains oil so as to be properly and accurately designated, described, and referred to as "cuticle oil."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 18, 1928.)

256. **False or Misleading Advertising and Brands or Labels—Bed Ticking.**—Respondents, copartners, engaged in the sale and distribution of cotton goods, including bed ticking, in wholesale and/or retail quantities in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, caused certain of their ticking products to be advertised as "Bohemian" ticking in trade papers having circulation in commerce between and among various States of the United States. Said respondents also caused the said products to be labeled and branded as "Bohemian," and with such labels and brands affixed thereto sold and distributed said products in commerce between and among various States of the United States; when in truth and in fact said products so advertised, branded, labeled, and sold in interstate commerce were not imported from Bohemia or Czechoslovakia but were products manufactured in the United States.

Respondents agreed to cease and desist forever from the use, as a trade brand, label, or designation for their product, or in trade papers or other advertising matter circulated in interstate commerce, of the word "Bohemian," either independently or in connection or conjunction with any other word or words which import or imply that the said products so marked, branded, labeled, or advertised were manufactured in Bohemia or in Czechoslovakia, and said respondents further agreed to cease and desist forever in soliciting the sale of and selling their products in interstate commerce from the use of the word "Bohemian," either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead, confuse, or deceive the purchasing public into the belief that said products are of foreign manufacture and/or have been imported into the United States from abroad, or have been obtained from Bohemia or from Czechoslovakia.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (April 18, 1928.)

257. **False or Misleading Advertising and Corporate Name—Automobile Seat Covers.**—Respondent, a corporation, engaged in the business of selling and distributing seat covers for automobiles in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, adopted as part of its corporate or trade name the word "Mills" and caused said trade name, containing the word "Mills," to be used in connection with the sale and distribution in interstate commerce of its products. It also caused its said trade name, containing the word "Mills," to be set forth and/or displayed in catalogues distributed by it in interstate commerce, when in truth and in fact the said respondent did not own, control, or operate a mill or factory for the manufacture or fabrication of seat covers for automobiles, but filled orders for such covers from products manufactured or fabricated by a mill or factory which it neither owned, controlled, or operated.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with its trade name so as to import or imply that said respondent either owns, controls, or operates a mill or factory in which is manufactured or fabricated the product sold by it in interstate commerce; and from the use of the word "Mills" as part of, or in connection or conjunction with, its trade name, or in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent owns, controls, or operates a mill or factory wherein is manufactured or fabricated the product sold by it in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 27, 1928.)

258. **False or Misleading Advertising and Trade Name—Fountain Pens.**—Respondent, an individual, engaged in the mail-order business, selling fountain pens in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale and of selling his products in interstate commerce, caused said products to be advertised in magazines and other publications having circulation between and among various States of the United States, said advertisements containing such printed matter as: "Save $5.00. Buy direct from maker," "A genuine $7.50 value for $2.50," "Direct to you," "Give YOU the $5.00 we would otherwise pay the middlemen," and describing the fountain pens as having "Diamond-hard iridium nib," while on his letterheads and other printed matter distributed in interstate commerce respondent caused his trade name containing the word "Manufacturing" to be used, when in truth and in fact said respondent did not own, control and/or operate a mill or factory for the manufacture of the fountain pens sold by him in interstate commerce, but filled orders for said products from merchandise manufactured in factories which he neither owned, controlled nor operated; and the said fountain pens were labeled with a valuation figure which was much in excess of the price at which they were intended to be sold and much in excess of the actual price at which they were sold in the usual course of business; and the said fountain pens were not equipped with nibs of iridium, but were manufactured so as to contain nibs or pen points made of a metal or substance other than iridium.

Respondent agreed to cease and desist forever from the use of the word "Manufacturing" or "Mfg." as part of or in connection or conjunction with his trade name in the sale and distribution of his products in interstate commerce, and from the use of his said trade name containing the word "Manufacturing" in advertisements inserted by him in magazines and other publications having circulation among various States of the United States, and on his letterheads and other printed matter distributed in interstate commerce in soliciting the sale of and selling his products, and from the use of the word "Manufacturing" in any other way which imports or implies that the said respondent owns, operates, or controls a mill or factory wherein are made the products which he sells, or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that said respondent owns, operates, or controls a mill or factory in which his products are made. Said respondent also agreed to cease and desist forever from the use of any means of describing or illustrating his fountain pens, together with any false, fictitious, or misleading statements of, or concerning his price of said products, or together with any false, fictitious, or misleading statements as to the value of said products. Respondent further agreed to cease and desist forever from the use of the word "Iridium" either independently or in connection or conjunction with any other word or words, or in any other way in his advertisements or advertising matter, or in soliciting the sale of and selling his products in interstate commerce which imports or implies that the said products are provided with nibs or pen points made of that rare metallic element known to the trade and purchasing public as iridium, or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the nibs or pen points of said products are made of iridium.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 27, 1928.)

259. **False or Misleading Brands or Labels—Knife and Chain Sets.**—Respondent, a corporation, engaged in the business of manufacturing novelties, including knife and chain combination sets and in the sale and distribution of the same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of

facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused the products of its manufacture, namely knife and chain sets, to be placed in boxes or other containers on which said containers were displayed the following stamps, brands, or labels: "Knife and chain combination, price $2.50"; when in truth and in fact the valuation or resale price of $2.50 indicated a fictitious price which was much in excess of the price at which the aforesaid articles were intended to be sold or contemplated to be sold, and much in excess of the actual price at which the said articles were sold in the usual course of wholesale or retail trade.

Respondent agreed to cease and desist forever from stamping, branding, or otherwise marking knife and chain combination sets or other articles of jewelry or novelties, together with any false, fictitious, or misleading statements of or concerning the price of said articles of jewelry or novelties, or together with any false, fictitious, or misleading statement as to the value of said articles, or any of them, and said respondent also agreed to cease and desist from selling or supplying its customers with knife and chain combination sets or other articles of jewelry or novelties on which are stamped, branded, labeled, or otherwise marked false, fictitious, or misleading prices known to be in excess of the prices at which said articles, or any of them, are intended to be and usually are sold at retail.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 27, 1928.)

260. **False or Misleading Advertising and Corporate Name—Bedspreads—Hosiery.**—Respondent, a corporation, engaged in the sale and distribution of bedspreads and ladies' hosiery in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair practices as set forth therein.

Respondent, in the course and conduct of its business, adopted as a part of its corporate or trade name the word "Mills" and which trade name, containing the word "Mills" it used in the sale and distribution of its products in commerce between and among various States of the United States. The said corporation caused its said trade name, containing the word "Mills" to be used in advertisements inserted in newspapers, magazines, and other publications having circulation between and among various States of the United States. Said respondent also caused its trade name containing the word "Mills" to be used on its letterheads and other printed matter distributed in interstate commerce in soliciting and/or obtaining the services of agents to sell its products among and to the purchasing public in various States of the United States, said agents making house-to-house canvasses and selling its products in accordance with representations and suggestions contained within circulars, letters, advertising, and other printed matter such as "Selling direct from mill to millions" and "Direct from mill," when in truth and in fact said respondent did not own, control, or operate a mill or factory in which were manufactured the products sold and distributed by it in interstate commerce, and said respondent filled orders for said products from materials manufactured in mills or factories which it neither owned, controlled, nor operated.

Respondent further in the course and conduct of its business secured the services of agents in different States of the United States by means of advertisements inserted in newspapers, magazines, and other publications having circulation between and among various States of the United States, which said advertisements read as follows: "Agents—men or women—$90 weekly easily made selling silk bedspreads and hosiery"; while in circulars distributed by said corporations among prospective agents in various States of the United States, reference was made to "Our silk spreads and ladies' silk hosiery," "Novelty designed silk and rayon spreads," and "Pure thread silk plated over rayon," when in truth and in fact said bedspreads were not manufactured of silk, the product of the cocoon of the silkworm, but were made of a material or materials other than silk, and the said hosiery was not manufactured wholly of silk obtained from the cocoon of the silkworm, but was composed in substantial part of fabrics or materials other than silk.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with its trade name in the sale and distribution in interstate commerce of its bedspreads and hosiery, and from the use of the word "Mills" as a part of or in connection or conjunction with its trade name in its advertisements inserted in newspapers, magazines, and other publications having circulation between and among various States of the United States and on its letterheads, circulars, and other printed matter distributed in interstate commerce in soliciting and/or obtaining the services of agents to sell its products, or otherwise offering for sale and selling its products that import or imply that respondent is the manufacturer of the bedspreads and hosiery which it offers for sale, sells, and distributes, and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said respondent either owns, controls, or operates a mill or factory wherein are manufactured the products sold by it in interstate commerce, or until such time as said respondent does actually own, operate, or control a mill or factory wherein are made the said products.

Respondent also agreed to cease and desist forever from the use of the word "silk" either independently or in connection or conjunction with any other word or words which import or imply that the products sold by it, as aforesaid, are manufactured from "silk" the product of the cocoon of the silkworm, or the use of the word "silk" in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the products sold by said respondent are manufactured from silk; or unless, when said products are made in substantial part of silk, the product of the cocoon of the silkworm and the word "silk" is used to designate the same, it shall be accompanied by a word printed in type equally as conspicuous as that in which the word "silk" is printed indicating that the said products are not made wholly of silk.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 27, 1928.)

261. **False or Misleading Advertising—Remnants.**—Respondent, an individual, engaged in the mail-order business in the sale and distribution of remnants in interstate commerce and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused advertisements to be published in magazines and other publications having circulation between and among various States of the United States, and in such advertisements made use of various statements and representations, including the following "As large manufacturers of ladies' wear * * *," "Dress pattern free," "Direct from mills at wholesale prices," "Free thread, free thimble, and 25-cent needle set free," and "Double premiums," when in truth and in fact said respondent did not own, operate, or control a mill or factory for the manufacture or fabrication of the products which he advertised, sold, and distributed in interstate commerce, but filled orders from remnants obtained by him from mills which he neither owned, operated, or controlled, and the articles offered as being given "free" are not in truth and in fact given free, but their cost is included in the cost of the remnants purchased.

Respondent agreed to cease and desist forever, in soliciting the sale of and selling his products in interstate commerce, from the use in his advertisements in magazines and other publications having circulation between and among various States of the United States (*a*) of the word "manufacturers" and the words "Direct from mills at wholesale prices," or any other word or words that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent owned, controlled, or operated a mill or factory wherein the products so advertised, sold, and distributed are actually manufactured or fabricated; (*b*) of the word "free" either independently or in connection or conjunction with any other word or words which import or imply that the products to which the same refer are in truth and in fact given as a gratuity, and the word "free" in any other way which would have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products so offered as "free" are in fact given free, and that their cost is not included in the purchase price of the remnants ordered.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 27, 1928.)

262. **False or Misleading Advertising and Brands or Labels—Shoes.**—Respondent, a corporation, engaged in the manufacture of shoes and in the sale and distribution of such products in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair practices, as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce described its products in catalogues circulated in interstate commerce as "Men's Army shoes," "Regulation Munson last shoes. Here are seven Army shoes with which to take care of the steady demand for shoes built over the popular Munson (broad toe) last," "U. S. A.—Men's tan Army blucher, regulation Army pattern, Munson last," "U. S. A.—Munson last," "U. S. A.—Army last," "Army last," "U. S. A. regulation Army pattern, Munson last" and "Regulation garrison Army pattern" and on the boxes or other containers in which the products were shipped in interstate commerce respondent caused the letters "U. S. A." to be prominently displayed, when in truth and in fact the products represented, advertised, and sold as aforesaid and/or containing the marks, stamps, brands, or labels featuring the various words and/or letters aforesiad were not manufactured by the said respondent for the United States Army in accordance with Army specifications or Government requirements.

Respondent agreed to cease and desist forever from the use, in its catalogues in soliciting the sale of and selling its products in interstate commerce, of the words or letters "Army," "U. S. A.," "Regulation Army," "Regulation garrison," or "Garrison" either independently or in connection or conjunction each with the other, and with any other word or words in its advertising matter or as a brand or label for its products so as to import or imply that the products so advertised, marked, stamped, or labeled are made under Government contract in accordance with United States Army specifications or Government requirements, and from the use of the word or letters "Army," "U. S. A.," "Regulation Army," "Regulation garrison," or "Garrison" in its advertising matter, or as a brand or label for its products either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products so advertised, marked, stamped, or labeled are manufactured for the United States Army in accordance with Army specifications or Government requirements.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 2, 1928.)

263. **False or Misleading Advertising—Patent Roofing Material.**—Respondent, a corporation, engaged in the manufacture of patent roofing and in the sale and distribution of the same in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused certain of its said roofing products to be advertised in circulars and other printed matter distributed in interstate commerce, said advertising matter containing such words and phrases purporting to describe said products, as follows: "A roof that not only makes your house more beautiful and more valuable, but which affords well-nigh perfect fire protection," and/or "affords perfect fire protection against flying sparks and embers," when in truth and in fact the said products were not incombustible, or fireproof so as to be properly and accurately described and advertised as affording "well-nigh perfect fire protection" or "perfect protection against flying sparks and embers."

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "perfect fire protection" or "perfect protection against flying sparks and embers" to describe its products which are not in truth and in fact incombustible or fireproof as that expression is commonly and generally understood to mean by fire underwriters, the trade, and by the purchasing public, and from the use of the words "perfect fire protection" or "perfect protection against flying sparks and embers" either independently or in connection or conjunction with any other word or words, or in any way which import or imply that the said products are incombustible or fireproof or secure against fire, or which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said products so described are fireproof or secure against fire when such is not the case.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 4, 1928.)

264. **False or Misleading Advertising and Brands or Labels—Concentrates or Sirups.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of concentrates or beverage sirups and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products, caused its products to be advertised by means of circulars distributed in interstate commerce and to describe the various kinds or flavors of said products, made use in said circulars of the words "orange," "grape," "loganberry," "cherry," "lime," "lemon," and "raspberry," and in selling its products so advertised caused them to be placed in bottles or other containers having affixed thereto brands or labels bearing the words "Grape syrup" or "Orange syrup" or "Lemon syrup" or the name of some other fruit or fruits as indicative of the flavor of the particular sirup, and with such labels or brands affixed thereto, caused said products to be shipped in commerce between and among various States of the United States, when in truth and in fact none of the products so advertised, designated, described, and referred to was manufactured from the juice or the fruit of the orange, grape, loganberry, cherry, lime, lemon, or raspberry, so as to be properly represented, designated, described, or referred to by the use of the words "orange," "grape," "loganberry," "cherry," "lime," "lemon," or "raspberry" or any of them.

Respondent agreed to cease and desist forever from the use of the words "orange," "grape," "loganberry," "cherry," "lime," "lemon," or "raspberry," either independently or in connection or conjunction with any other word or words as a trade brand or designation in the sale and distribution in interstate commerce of a product which is not composed of the juice or the fruit of either the orange, grape, loganberry, cherry, lime, lemon, or raspberry, unless when said product is composed in substantial part of the juice or fruit of the orange, grape, loganberry, cherry, lime, lemon, or raspberry, and the word "orange," "grape," "loganberry," "cherry," "lime," "lemon," or "raspberry," is used as a trade brand or designation for said product, which case the said word "orange," "grape," "loganberry," "cherry," "lime," "lemon," or "raspberry," shall be employed in connection, conjunction, or combination with some other word or words which shall be displayed in type equally as conspicuous as that in which the aforesaid designating word is printed so as to clearly indicate that such product is not made wholly from the juice of the fruit or fruit designated, and that will otherwise properly and accurately represent, define, and describe said product so as to clearly indicate that the same is composed in part of a product or products other than the juice or the fruit of either the orange, grape, loganberry, cherry, lime, lemon, or raspberry. The aforesaid respondent further agreed to cease and desist from the use of the words "orange," "grape," "loganberry," "cherry," "lime," "lemon," and "raspberry," in any other way in connection with the sale and distribution of a synthetic product so as to confuse, mislead, or deceive the purchasing public into the belief that the said product is the juice or the fruit of either the orange, grape, loganberry, cherry, lime, lemon, or raspberry.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 18, 1928.)

265. **False or Misleading Brands or Labels—Soap.**—Respondent, a corporation, engaged in the manufacture of soap and in the sale and distribution of the same in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its soap products in interstate commerce, caused certain of the products sold by it to be marked, stamped, branded, or labeled "Pure buttermilk soap," and with the aforesaid brand or label affixed thereto caused said products to be sold in commerce between and among various States of the United States, when in truth and in fact the said products were not manufactured from buttermilk so as to be properly and accurately described as "Buttermilk soap."

Respondent agreed to cease and desist forever from the use of the word "buttermilk" as a brand or label for its products either independently or in connection or conjunction with any other word or words so as to import or imply that the products so branded or labeled and sold by it in interstate commerce are in truth and in fact products manufactured from buttermilk so as to be properly and accurately designated "Buttermilk soap," and from the use of the word "buttermilk" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are soaps manufactured from buttermilk so as to be properly and accurately designated, described, and referred to as buttermilk soap.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 21, 1928.)

266. **False or Misleading Advertising—Lumber Substitute or Building Material.**—Respondent, a corporation, engaged in the manufacture of a building material other than that sawed or cut from trees or logs of wood into boards, planks, timbers, or other shapes generally understood and recognized by the purchasing public as and to be "lumber," and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent in the course and conduct of its business in soliciting the sale of and selling its product in interstate commerce caused the same to be represented, designated, and described by using the word "lumber" in connection or conjunction with its trade brand or designation, and also caused said product to be advertised in newspapers and magazines having circulation between and among various States of the United States, and in catalogues and other printed matter distributed in interstate commerce, the said advertising matter containing the word "lumber"; when in truth and in fact the said product so represented, designated, described, and sold in interstate commerce is not lumber, a material sawed or cut from trees or logs of wood into boards, planks, timbers, or other shapes generally understood and recognized by the purchasing public as and to be lumber.

Respondent agreed to cease and desist forever, in its advertisements inserted in newspapers and other publications having circulation between and among various States of the United States, and in catalogues and other printed matter distributed in interstate commerce in soliciting the sale of and selling its product, from the use of the word "lumber" either independently or in connection or conjunction with any other word or words as descriptive of its product so as to import or imply that the same is "lumber," a product sawed or cut from trees or logs of wood into boards, planks, timbers, or other shapes generally understood and recognized by the purchasing public as and to be lumber, and from the use of the word lumber in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the product so designated and advertised is lumber sawed or cut into boards, planks, timbers, or other shapes from trees or logs of wood.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 21, 1928.)

267. **False or Misleading Advertising and Offering Deceptive Inducements to Purchase—Medical Plasters.**—Respondent, a corporation, engaged in the manufacture of plasters alleged to relieve rheumatic troubles, lameness, coughs, colds, and other ailments, and in the sale and distribution of the same in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product in interstate commerce, caused advertisements to be inserted in rural and household magazines having circulation between and among various States of the United States, and by means of representations and inducements therein set forth, secured the services of agents to sell its products to the purchasing public located in various States of the United States, the said representations and inducements comprising offers in such phraseology as "GIVEN." Sell only 12 handmade plasters (as per special offer No. 907) at 25 cents each, and get this "Decorated 31-piece dinner set," "Will you accept this set free? Thirty-one piece dinner set given," when in truth and in fact the articles offered as premiums in the said advertisements were not given for only selling the exact amount of merchandise specified in the advertisements but there was required as a further consideration the payment of an additional sum of money. The aforesaid respondent also caused certain products offered as premiums for the sale of its plasters to be represented, designated, and referred to in its catalogues distributed in interstate commerce as follows: Pictorial illustrations of rings, each of which was described as being set with either a ruby, an opal, or an emerald, when in truth and in fact said rings were not set with ruby, an opal, or an emerald. Another of its premium products was described in said catalogues as "silk," when in truth and in fact said product was not manufactured wholly from silk, the product of the cocoon of the silkworm so as to be properly and accurately designated as silk.

Respondent in soliciting the sale of and selling its merchandise in interstate commerce, agreed to cease and desist forever from the use of the words "given" and "free" either independently or in connection or conjunction each with the other, or with any other word or words so as to import or imply that the products to which the same refer are given as a gratuity or as a premium or prize for the sale of a specified amount of merchandise and without consideration other than such sale of merchandise, and from the use of the words "given" and "free" in any way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products to which the same refer are given free or as a premium or prize for the sale of a specified amount of merchandise when such is not the case. Respondent also agreed to cease and desist forever from the use of the words "ruby," "opal," and "emerald," either independently or in conjunction or connection with any other word or words as descriptive of the settings of rings, which rings are not in truth and in fact set, respectively, with rubies, opals, or emerald. And said respondent further agreed to cease and desist forever from the use of the word "silk" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so described are manufactured of silk, the product of the cocoon of the silkworm; or unless, when said products are composed in substantial part of silk, and the word "silk" is used as descriptive thereof, it shall be accompanied by a word or words printed in type equally as conspicuous as that in which the word "silk" is printed so as to clearly indicate that the said products are composed in part of a material or materials other than silk.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 1, 1928.)

268. **False or Misleading Brands or Labels—Salt.**—Respondent, a corporation, engaged in the business of manufacturing salt and in the sale and distribution of the same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The word "Kanawha" when used as a trade name, brand, or label in the sale of salt, or the use of the word "Kanawha" in connection with or in any way descriptive of salt has, because of long usage and due to the geographical signification of the said word, derived a secondary meaning in the mind of a substantial part of the purchasing public as indicating salt produced from mines, fields, or other sources located in or about that district which includes Malden and Charleston, W. Va., on the Kanawha River.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its salt in interstate commerce caused its product to be invoiced under a brand or label containing the word "Kanawha" and also caused such brand or label to be placed on the sacks and other containers, and with the aforesaid brand or labels affixed thereto caused its product to be sold to purchasers in various States of the United States, when in truth and in fact said product branded or labeled as aforesaid was not obtained from or produced in that district which includes Malden and Charleston, county of Kanawha, State of West Virginia, on the Kanawha River, but was obtained from or produced in a district or districts other than the aforesaid district on the Kanawha River.

Respondent agreed to cease and desist forever from the use of, by advertisement or as a trade brand or designation for its product the word "Kanawha" either independently or in connection or conjunction with any other word or words which import or imply that the said product is that product produced from mines, fields, wells, or other sources located in or about that district which includes Malden and Charleston, W. Va., on the Kanawha River, and from the use of the word "Kanawha" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said salt is that product produced from mines, fields, wells, or other sources located in or about that district which includes Malden and Charleston, W. Va., on the Kanawha River.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 1, 1928.)

269. **False or Misleading Brands or Labels—Salt.**—Respondent, a corporation, engaged in the business of manufacturing salt and in the sale and distribution of the same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and

agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The word "Kanawha" when used as a trade name, brand, or label in the sale of salt, or the use of the word "Kanawha" in connection with or in any way descriptive of salt has, because of long usage due to the geographical signification of the said word, derived a secondary meaning in the minds of a substantial part of the purchasing public as indicating salt produced from mines, fields, or other sources located in or about that district which includes Malden and Charleston, W. Va., on the Kanawha River.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its salt in interstate commerce caused certain of its salt to be invoiced as "Kanawha salt" and also caused such salt to be placed in sacks or other containers bearing the brands or labels containing the word "Kanawha," and with the aforesaid brands or labels affixed to such containers caused said product to be shipped to purchasers thereof located in various States of the United States, when in truth and in fact the said salt branded or labeled as aforesaid was not obtained from, or produced in that district which includes Malden and Charleston, W. Va., on the Kanawha River, but was obtained from or produced in a district or districts other than the aforesaid district on the Kanawha River.

Respondent agreed to cease and desist forever from the use in advertisements, or as a trade brand or designation for its said product, the word "Kanawha" either independently or in connection or conjunction with any other word or words which import or imply that said product is produced from mines, fields, or other sources located in or about that district which includes Malden and Charleston, W. Va., on the Kanawha River, when in truth and in fact said product so advertised, branded, or designated and sold in interstate commerce is not produced from that district known to the trade and purchasing public as the Kanawha district, on the Kanawha River, and from the use of the word "Kanawha" either independently or in connection, conjunction, or combination with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said product is produced from mines, fields, or other sources located in or about that district which includes Malden and Charleston, W. Va., on the Kanawha River, when in truth and in fact said product is not produced in or about said district or locality.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 1, 1928.)

270. **False or Misleading Advertising—Clothing—Fabrics—Jewelry.**—Respondent, a corporation, engaged in the mail-order business, and in the sale and distribution of its products in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused its said merchandise to be designated, described, represented, and referred to in its catalogues distributed in interstate commerce as "All wool polo," "All wool cassimer," "Wool mixed cassimer," "Duvetyn flannel," "Serge suiting," when in truth and in fact the said garments were not made wholly of wool, but were composed in part of a material or materials other than wool. In the said catalogues, other garments were referred to as "Silk mixed crêpe," "Rayon silk," "Rayon fiber silk," "Pongee" or "Pongette," "Satin," or "Silk tussah," when in truth and in fact the said garments were not made of silk, the product of the cocoon of the silkworm but were composed in whole or in part of a material or materials other than silk. Dresses were described in said catalogues as "linene" or "linine" or as "linet," when in truth and in fact said dresses were not made of flax or of hemp, but were made of a material or materials other than flax or hemp. Jewelry was described as having "Ruby stone set," "Genuine ruby doublet stone," "Snappy white sapphire and two blue sapphires" while birthstone rings were described as being set with "diamond" or "ruby" or "emerald" or other stone appropriate to each month of the year, when in truth and in fact the said jewelry was not set or ornamented with a genuine stone or gem of the particular kind or type described, but contained sets or ornaments other than those specified. The said catalogues also featured coats which were described as "Muskrat coney fur" or as "Marmink fur"; when in truth and in fact said coats were not made of the fur of either the muskrat or the mink.

Respondent, in soliciting the sale of and selling its products in commerce between and among various States of the United States, agreed to cease and desist forever from the use in its catalogues or other advertising matter distributed in interstate commerce:

(*a*) Of the words "wool," "cassimer," "flannel," or "serge" or any of them either independently or in connection or conjunction each with the other, or with any other word or words which import or imply that the products so designated, described, represented or referred to are made of wool, and from the use of the aforesaid quoted words, or any of them, either independently or in connection or conjunction with each other or with any other word or words, or in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products so represented or described are made of wool; or unless, when the products are composed in part of wool, and the word "wool," "cassimer," "flannel," or "serge" is used as descriptive thereof such word shall be accompanied by another word or words which shall be printed in type equally as conspicuous as that in which the descriptive word is printed so as to clearly indicate that the said products are not made wholly of wool;

(*b*) Of the words "silk," "pongee," "pongette," "satin," or "tussah" or any of them either independently or in connection or conjunction each with the other, or with any other word or words which import or imply that the products so described, designated, represented or referred to are made of silk, and from the use of the aforesaid quoted words, or any of them, either independently or in connection or conjunction with each other, or with any other word or words, or in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products so represented or described are made of silk; or unless, when the products are composed in part of silk, and the word "silk," "pongee," "pongette," "satin," or "tussah" is used as descriptive thereof, such word shall be accompanied by another word or words which shall be printed in type equally as conspicuous as that in which the said descriptive word is printed so as to clearly indicate that the said products are not made wholly of silk;

(*c*) Of the words "linene" or "linine" or "linet" either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply, or which may have the capacity and tendency to mislead and decieve the purchasing public into the belief that the products so designated, represented, described or referred to are made of linen, a product prepared from flax or hemp;

(*d*) Of the words "ruby," "sapphire," "diamond," or "emerald" to describe products which are imitations of a "ruby," "sapphire," "diamond," or "emerald";

(*e*) Of the words "muskrat" or "mink" either independently or in connection or conjunction with any other word or words, syllable or syllables, letter or letters to designate and describe products which are not made of the skins of the muskrat or mink, respectively, and from the use of the said words "muskrat" or "mink" in any way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products so represented and described are made from the skins of the muskrat or the mink, respectively.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 12, 1928.)

271. **False or Misleading Advertising—Wire Fence.**—Respondent, a corporation, engaged in the fabrication of fences from wire purchased by it from various manufacturers, and in the sale and distribution of the same in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused its said products to be advertised in trade journals having circulation between and among various States of the United States, and in its catalogues and other printed matter distributed in interstate commerce among the trade and purchasing public, the said advertising matter containing the following statement: "The fence Uncle Sam recommends"; together with the pictorial representation of the character known and recognized as "Uncle Sam." Another statement appearing in the said advertising matter was that the wire from which the said fences was made was "just double the strength" of ordinary wire, and the said wire was represented as "Double galvanized"; when in truth and in fact the said products so advertised and sold in interstate commerce (*a*) had not been at any time manufactured by said respondent subject to the inspection of any United States Government official and had not been approved or indorsed, expressly or otherwise, by a department of the said Government; (*b*) and did not have the comparative tensile strength as indicated by the advertising matter aforesaid; and (*c*) was not galvanized so as to have an outer coating which was double in thickness to that of the galvanized wire usually and customarily sold in the competitive market.

Respondent agreed to cease and desist forever from the use in the advertisement, sale, and distribution of its products in interstate commerce (*a*) of the words "Uncle Sam" either independently or in connection, conjunction, or combination with any other word or words, pictorial representation or representations which import or imply that the said products have been approved or indorsed in any manner whatsoever by a department of the United States Government, and from the use of the said words "Uncle Sam" either independently or in connection or conjunction with any other word, pictorial representation, or in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the aforesaid products have been approved or indorsed by a department of the United States Government or were manufactured in accordance with Government specifications or requirements; and (*b*) of any word or words, pictorial representation or representations, or of any method of representing, designating, or describing its products which import or imply or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the tensile strength of the said products is greater than is actually the case; and (*c*) of the words "Double galvanized" either independently or in connection or conjunction with any other word or words, as a designation or as descriptive of said products which import or imply, or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products are provided with a galvanized outer coating which is double in thickness of that of the galvanized wire usually and customarily sold in the competitive market, when in truth and in fact such is not the case.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 11, 1928.)

272. **False or Misleading Advertising—Roofing Product.**—Respondent, a corporation, engaged in the manufacture of patent paper roofing materials and in the sale and distribution of the same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce, caused certain of its products to be advertised in its catalogues, bulletins, and other printed matter distributed in interstate commerce by means of descriptive matter such as "Fire safe, lower insurance," when in truth and in fact the said products are not incombustible or fireproof so as to be properly and accurately described and advertised as "Fire safe" or secure against fire.

Respondent agreed to cease and desist forever from the use of the words "Fire safe" to describe its products which are not in truth and in fact incombustible or fireproof as that expression is commonly and generally understood to mean by fire underwriters and the purchasing public, and from the use of the word "safe" in connection, conjunction, or combination with the word "fire" or with any other word or words to describe its products which import or imply that said products are incombustible or fireproof, or which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that the products so described are fireproof, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 11, 1928.)

273. **False or Misleading Advertising and Brands or Labels—Rice.**—Respondent, a corporation, engaged in the business of milling rice, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Orange Rice Mill Co. is a corporation engaged in the milling and distribution of rice and rice products, with its principal place of business located in the city of Orange, in the State of Texas. Since about December of 1923 it has been selling and distributing rice products in foreign commerce and, more particularly, has caused a portion of its said products to be shipped or transported from its place of business located in the State of Texas to purchasers thereof located in Buenos Aires, Argentina, South America. In the course of its business and at diverse times after the date aforesaid, the said Orange Rice Mill Co. caused its rice products to be shipped to and marketed in the said Buenos Aires, Argentina, under the trade brand or designation "Monaco" and had thereby established for itself a rice business under the said trade brand or designation "Monaco" which was well and favorably known to the trade and purchasing public at Buenos Aires, Argentina.

Respondent in the course and conduct of its business, in soliciting the sale of and selling its products in interstate and/or foreign commerce, caused varying quantities of its rice products in bags to be stenciled, branded, or labeled "Monaco" and shipped said product to various purchasers located in the city of Buenos Aires, Argentina, and said respondent also caused its rice products to be designated or referred to as "Monaco" on its bills of lading, invoices, and other printed matter circulated and/or shipped in foreign commerce, when in truth and in fact said respondent was not the first to use the word "Monaco" and to establish the same as a trade brand or designation in the sale and distribution of rice products in interstate and/or foreign commerce, and said respondent did, by its use of said brand or designation encroach and trespass upon the rights previously acquired and established in said trade brand or designation by its said competitor, Orange Rice Mill Co., also engaged in the sale and distribution of rice and rice products under the trade brand or designation "Monaco" in foreign commerce and more particularly in the shipment of such products so branded or labeled from the United States to and into Buenos Aires, Argentina, South America.

Respondent agreed to cease and desist forever from the use of the word "Monaco" either independently or in connection or conjunction with any other word or words on its bills of lading, invoices, or other printed matter, or as a trade brand or designation for its rice products sold and/or shipped in interstate or foreign commerce which import or imply that the said products so designated are the products of said competitor in business, Orange Rice Mill Co., and from the use of the word "Monaco" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are those of said competitor company.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 25, 1928.)

274. **False or Misleading Advertising and Trade or Corporate Name—Bedding and Table and Other Linen.**—Respondents, copartners, engaged in the business of selling at wholesale, comfortables, blankets, bedspreads, tablecloths and linens in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competion as set forth therein.

Respondents, in the course and conduct of their business, purchased raw materials in the open market and caused such materials to be made up into the finished products in accordance with their own specifications by various manufacturers, and in soliciting the sale of and selling such finished products in interstate commerce, said respondents caused their trade name, containing the word "Mills," to be used on their letterheads, envelopes, and other printed matter circulated in interstate commerce, when in truth and in fact the said respondents did not own, operate, or control a mill or factory in which the merchandise sold by them was made or fabricated, but filled their orders for such merchandise from products which were made or fabricated in mills or factories which they neither owned, operated, nor controlled.

Respondents, in the sale and distribution of their products in interstate commerce, agreed to cease and desist forever from the use on their stationery or other printed matter circulated in interstate commerce of their trade name containing the word "Mills" so as to import or imply that the said copartners own, operate and/or control a mill or factory in which are made or fabricated the products sold by them, and from the use of the word "Mills" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that the said respondents own, control and/or operate a mill or factory for the manufacture or fabrication of the products which they sell.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (June 25, 1928.)

275. **False or Misleading Advertising and Trade or Corporate Name—Fruit Beverage Powders and Liquid Flavors or Concentrates.**—Respondent, an individual, engaged in the manufacture of an alleged fruit drink powder and of liquid flavors or concentrates, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business used various trade names in the sale of his products in interstate commerce, two of which said trade names contained the word "Orangeade," which he used in advertisements and advertising matter in soliciting the sale of certain of his products. Respondent also caused products of his manufacture to be described in said advertising matter by means of the following phraseology: "Orangeade Powders," "The New Improved Drink Powder, Orangeade, Grape, Lemon, Lime, Cherry, Strawberry, and Raspberry." In his price lists and folders circulated and distributed in interstate commerce, the said respondent made use of such phraseology as "Fruitty High Grade Powders." Under the heading "Fruit Drink Powders" the said folders listed the following: "Orangeade," "Lemonade," "Grapeade," "Cherryade," "Raspberry," "Strawberry," and "Limeade," while there appeared, under the heading "100% Flavoring Oils, etc., in bottles," the names of the following fruits: "Orange," "lemon," "strawberry," "raspberry," "grape," and "lime"; when in truth and in fact neither the aforesaid powders nor the liquid products or concentrates were manufactured of the juice or the fruit of the orange, lemon, grape, cherry, raspberry, strawberry, or lime so as to be properly and accurately designated by the use of the names of said fruits or any of them.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "Orangeade" either independently or in connection or conjunction with any other word or words as a trade name, or as a trade brand or designation for products not composed of the juice or fruit as indicated, and from the use of the words "orange," "lemon," "grape," "cherry," "raspberry," "strawberry," "lime," "fruit," or "fruitty," or any of them, either independently or in connection or conjunction with any other word or words, in his advertising matter distributed in interstate commerce, or as a trade brand or designation for synthetic products, in the sale and distribution thereof in interstate commerce, which import or imply that the said products are composed of the juice or the fruit of either the orange, lemon, grape, cherry, raspberry, strawberry, lime, or other fruit, or the juice of the fruit thereof. The aforesaid respondent also agreed to cease and desist forever from the use of the aforesaid words, or any of them, in any other way that may have the capacity and tendency to mislead, confuse, or deceive the purchasing public into the belief that the said products are composed of the juice or the fruit or either the orange, lemon, grape, cherry, raspberry, strawberry, lime, or any other fruit, unless, when said products are composed in substantial part of the juice or fruit of the orange, lemon, grape, cherry, raspberry, strawberry, lime, or other fruit so as to derive its color and flavor from the indicated fruit, and the word "orange," "lemon," "grape," "cherry," "raspberry," "strawberry," or "lime" is used as a trade brand or designation, or in any way descriptive of said products, in which case the word "orange," "lemon," "grape," "cherry," "raspberry," "strawberry," or "lime" shall be immediately accompanied by some other word or words displayed in type equally as conspicuous as that in which the word designating the fruit is displayed so as to clearly indicate that the products are composed in part of an ingredient or ingredients other than the juice of the fruit or the fruit designated. The aforesaid respondent further agreed that he will not use any means of representation, or advertising matter, in soliciting the sale of and selling his products in interstate commerce that will falsely represent, suggest, import, or imply that such products are manufactured from the juice or the fruit of the orange, lemon, grape, cherry, raspberry, strawberry, lime, or other fruit, and to cease and desist from the use of the aforesaid words, and of the words "fruit" and "fruitty" in any way in connection with the sale and distribution of a synthetic product so as to confuse, mislead, or deceive the purchasing public into the belief that the said product is manufactured from the juice or the fruit of the orange, lemon, grape, cherry, raspberry, strawberry, lime, or other fruit.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (June 25, 1928.)

276. **False or Misleading Advertising and Brands or Labels—Shoes.**—Respondent, a corporation, engaged in the manufacture of shoes and in the sale and distribution of the same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipu-

lation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused products of its manufacture to be described in catalogues circulated in interstate commerce, using the word "Army" in connection with its trade designation, together with the words "Munson Last" or "Army Last" and/or "Army Blucher" or under the general head "Army," together with the descriptive words "Army Blucher," while on the bottom of the soles of certain of said products were placed stamps, marks, or labels featuring the word "Army," and the said products so marked, stamped, or labeled were sold and distributed by said respondent in interstate commerce, when in truth and in fact the products represented, advertised, and sold as aforesaid, and/or containing the marks, stamps, or labels featuring the word "Army" were not manufactured by said respondent for the United States Army in accordance with Army specifications or Government requirements.

Respondent agreed to cease and desist forever from the use in its catalogues, in soliciting the sale of and selling its products in interstate commerce, of the word "Army" either independently or in connection or conjunction with the words "Munson Last" or the word "Last," or with any other words, figures, numerals, or insignia that import or imply that the products so advertised, marked, stamped, or labeled were made under Government contract in accordance with United States Army specifications or Government requirements, and from the use of the word "Army" in advertising matter or as a brand or label for said products either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products so advertised, marked, stamped, or labeled are manufactured for the United States Army in accordance with Army specifications or Government requirements.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 25, 1928.)

277. **Resale Price Maintenance—Carbide Miners' Lamps.**—Respondent, a corporation, engaged in the manufacture of miners' carbide lamps and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product in interstate commerce, adopted and enforced a system of fixing and maintaining a specified standard price at which the products sold by it in interstate commerce to the jobbing and other trade should be sold by such trade to subsequent purchasers thereof, and as a means of enforcing and effecting maintenance of its said system respondent used the following cooperative methods, to wit:

(*a*) Established price lists for the resale of its products and caused said lists to be distributed from time to time among the jobbing and other trade located in various States of the United States, together with letters addressed to said trade, requesting and soliciting cooperation in the maintenance of such resale prices.

(*b*) Sought and received the advice and assistance of, and cooperated with its distributors in the compilation of prices at which its products should be resold by the distributors and other trade.

(*c*) Sought and secured assurances and promises from its distributors to maintain suggested resale prices.

(*d*) Sought and obtained assurances and promises from prospective distributors that they would maintain suggested resale prices as a condition precedent to opening accounts with such distributors.

(*e*) Solicited and secured from its distributors and other trade the cooperation of such trade in reporting competitors and others who failed to maintain suggested resale prices.

(*f*) Solicited and obtained, by letters and by verbal representations of its salesmen, assurances and promises from alleged price cutters that such offenders would maintain suggested resale prices as a condition to further supplying said offenders with products.

(*g*) Adopted and enforced a policy of price discrimination in favor of that trade which cooperated with respondent in the maintenance of its resale price policy as against that trade which failed or refused to maintain such resale price maintenance policy.

(*h*) Threatened to refuse to sell, and did refuse to sell, jobbing and other trade reported as selling at less than the established resale prices.

(*i*) Solicited and received from its salesman and its distributors reports of alleged price cutters and acting upon such reports removed such offenders from its direct selling list.

(*j*) Solicited and accepted from its jobbing and other trade, alleged to be cutting resale prices, agreements, and assurances that in the future such trade would maintain said resale prices as a condition to further supplying said trade with products.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the following cooperative methods:

(*a*) Seeking and securing advice and assistance of its distributors and other trade in the compilation and fixing of resale prices to be observed by said distributors and other trade in various territories and to be enforced by respondent.

(*b*) Seeking and securing assurances and promises, generally from its distributors and other trade, to maintain said resale prices thus fixed.

(*c*) Requiring prospective distributors and other trade to give assurances and promises to maintain resale prices fixed by respondent either independently or in cooperation with its distributors and other trade, as a condition precedent to opening accounts with such prospective distributors and other trade.

(*d*) Seeking and securing, either directly or through salesmen, the cooperation of said distributors and other trade, in reporting the names of, and other information relative to competitors and others who do not maintain said resale prices.

(*e*) Refusing to sell and threatening to refuse to sell its products to such distributors and other trade who do not maintain, or who are reported as failing to maintain, said resale prices.

(*f*) Discriminating in price in favor of distributors and other trade who maintain its resale prices by allowing more favorable trade discounts to such distributors than are allowed to those who do not maintain its resale prices.

(*g*) Seeking and securing by any means whatsoever promises or agreements from alleged price cutters that such offenders will maintain suggested resale prices as a condition to further supplying said offenders with products.

(*h*) Securing or seeking to secure by personal solicitation or by other means the cooperation of its distributors and/or other trade to maintain and enforce any system of resale prices whatsoever.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 25, 1928).

278. **False or Misleading Advertising—Beverage Concentrates and Extracts.**—Respondent, a corporation, engaged in the manufacture of concentrates and extracts and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Respondent in the course and conduct of its business in soliciting the sale of and selling its products, caused its advertising matter to be disseminated in interstate commerce among its bottling customers for distribution among the retail trade located in various States of the United States, said advertising matter being in the form of display signs, posters, and other similar matter designed for public use and for public display in business establishments of the retailer, and the same containing in its trade designation the words "grape" or "cherry," said word or words being conspicuously shown in said advertising matter and in some instances accompanied by a pictorial representation of a bottle, the contents of which are so colored as to simulate the particular beverage specified in such advertising matter, and in certain instances being also accompanied by a pictorial representation of a cluster of the fruit or berries of which the particular beverage is supposed to be made, and as a result of the circulation and distribution of such advertising matter respondent enabled the retail trade to sell said products in the form of soft drinks to the consuming public in various States of the United States, when as a matter of fact (1) said products advertised and sold as "Grape" were not manufactured from the juice of the grape or the fruit of the same, or did not contain the juice or fruit of the grape in such substantial quantity so as to be properly and accurately designated or referred to by the use of the word "grape"; (2) said products advertised and sold as "Cherry" were not manufactured from the juice of the cherry or the fruit of the same or did not contain the juice or the fruit of the cherry in such substantial quantity so as to be properly and accurately represented, designated and referred to by the use of the word "cherry."

Respondent agreed to cease and desist forever from the use of the words "grape" or "cherry" either independently or in connection or conjunction with any other word or words or pictorial representation or representations in its advertisements or advertising matter circulated in interstate commerce so as to import or imply that the products manufactured and sold by it are composed entirely of the juice of the fruit of either the grape or the cherry, or of the juice or fruit thereof, in such substantial quantity as to justify the use of the aforesaid words, or any of them, as descriptive of said products sold in interstate commerce. Respondent also agreed to cease and desist from putting into the hands of retail dealers or other persons, directly or indirectly, advertising matter containing the words "grape" or "cherry," or either of them, independently or in connection or conjunction with any other word or words, pictorial representation or representations, or in any other way that may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that any one of the said products manufactured and sold in interstate commerce, is in truth and in fact a beverage composed wholly or in substantial part of the juice or the fruit of either the grape or the cherry.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 25, 1928).

279. **False or Misleading Advertising and "Free" Inducements—Stationery, Office Supplies—Imitation Ivory, Amber, Pearl, Leather.**—Respondent, a corporation, engaged in the mail-order business and in the sale and distribution of stationery and office supplies in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce, caused circulars and other advertising matter to be distributed in interstate commerce among its customers and prospective customers, said advertising matter containing phraseology purporting to describe stationery and office supplies generally carried in stock by said respondent, and also in numerous instances included the offer of a premium and/or a premium certificate in connection with the purchase of a certain specified quantity of said stationery and/or office supplies. The offer of such premiums or premium certificates was in language as follows: "Included free (just to advertise)," "One memo pad stand is to be included as a premium, for which no charge will be made," "Free," "Given free," and/or "Given," when in truth and in fact the said products offered as premiums were not given free or bestowed without compensation, but their cost was included in the price paid by the purchasers for said stationery and office supplies. Respondent also caused certain of said premium products to be represented, designated, and referred to in its advertising matter distributed in interstate commerce as follows: Stockings described as "silk" or as "genuine silk stockings, full fashioned," when in truth and in fact said stockings were not manufactured wholly of silk, the product of the cocoon of the silkworm, so as to be properly and accurately designated as silk, nor were said stockings manufactured in accordance with that process used in the manufacture of "fashioned" hosiery and were not that product known to the trade and purchasing public as "fashioned" hosiery. Certain other of said products offered as premiums were represented, designated, and referred to as "Ivory" or as "Amber" or as "Pearl" or as "Leather," when in truth and in fact said products were not manufactured, respectively, from ivory, a product obtained from the tusks of certain mammals, or from amber, a yellowish translucent resin resembling copal, or from pearls obtained from the shells of certain mollusks, or from leather, a product prepared from the hides of animals.

(1) The words "free" and "given" either independently or in connection or conjunction each with the other, or with any other word or words, in soliciting the sale of and selling its stationery and office supplies in interstate commerce so as to import or imply that the products to which said words or either of them refer are in truth and in fact given as a gratuity, and the words "free" or "given," or any other word or words of like import, either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products so offered as "free" or "given" are in fact given free and that their cost is not included in the price paid by the purchasers for the stationery and office supplies ordered.

(2) The word "silk" either independently or in connection or conjunction with any other word or words in its advertising matter distributed in interstate commerce or as a trade brand or designation for its hosiery so as to import or imply that said hosiery is made of silk, the product of the cocoon of the silkworm, and the word "silk" in any other way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the hosiery so referred to is made of silk; or unless when said hosiery is composed in substantial part of silk, and the word "silk" is used as a trade brand or designation for said hosiery, in which case the word "silk" shall be accompanied by some other word or words displayed in type equally as conspicuous as that in which the word "silk" is displayed so as to clearly indicate that such hosiery is not made wholly of silk, the product of the cocoon of the silkworm, and which will otherwise properly and accurately represent, define, and describe said hosiery so as to clearly indicate that the same is composed in part of a material or materials other than silk.

(3) The word "fashioned" either independently or in connection or conjunction with any other word or words, or in any other way, as a descriptive designation for its hosiery which imports or implies, or which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said hosiery is manufactured in accordance with that process used in the manufacture of "fashioned" hosiery, and as being that product known to the trade and purchasing public as "fashioned."

(4) The word or words "ivory" or "amber" to describe products which are made, respectively, of imitation ivory or of imitation amber.

(5) The word "pearl" either independently or in connection or conjunction with any other word or words, letter, or letters, or in any other way to designate or describe its products so as to import or imply that said products are those products which are obtained from the shells of certain mollusks.

(6) The word "leather" either independently or in connection or conjunction with any other word or words, letter, or letters, or in any other way to designate or describe its products so as to import or imply that said products are made of leather prepared from the hides of animals.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 18, 1928.)

280. **False or Misleading Advertising and Brands or Labels—Concentrates and Flavoring Extracts.**—Respondents, copartners, engaged in the manufacture of concentrates and flavoring extracts and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their products in interstate commerce, caused said products to be advertised in trade journals and magazines having circulation between and among various States of the United States, and in circular letters distributed in interstate commerce, said advertising matter containing the words "LemCola" and "Lemon Cola," while on certain tin signs, posters, price lists, and bottle caps furnished for advertising purposes by said respondents to their purchasers located in various States of the United States appeared such descriptive words and phrases as "The Delicious Lemon Cola Drink," "Orange Soda," "LemCola," "Supreme Lemon," "Supreme Orange," "Grape Concentrate," "Grape-Concord," and/or "Limes-Supreme," and in the instance of the aforesaid tin signs the words "LemCola" were printed in large black type across the pictorial representation of a lemon, when in truth and in fact none of the products so advertised, described, referred to, and sold in interstate commerce was manufactured from the juice or the fruit of the grape, orange, lemon, or lime so as to be properly represented, designated, described, or referred to by the use of the words grape, orange, lemon, or lime, or any of them.

Respondents agreed to cease and desist forever from the use of the words "grape," "orange," "lemon," or "lime" either independently or in connection or conjunction with any other word or words, pictorial representation, letter or letters, in advertising matter or as a trade brand or designation in the sale and distribution in interestate commerce of a product which is not composed of the juice or the fruit of either the grape, orange, lemon, or lime, unless, when said product is composed in substantial part of the juice or the fruit of the grape, orange, lemon, or lime so as to derive its color and flavor from said fruit and the word "grape," "orange," or "lime" is used in their advertising matter, or as a trade brand or designation for said product, in which case the said word "grape," "orange," "lemon," or "lime" shall be immediately accompanied with some other word or words, letter, or letters displayed in type equally as conspicuous as that in which the said designating word "grape," "orange," "lemon," or "lime" is printed so as to clearly indicate that the said product is not made wholly from the juice of the fruit or the fruit indicated, and that will otherwise clearly indicate that the product is composed in part of an ingredient or ingredients other than the juice of the fruit or the fruit indicated. The aforesaid respondents further agreed that they would not use a pictorial representation or other advertising matter in soliciting the sale of and selling their product in interstate commerce that will falsely represent, suggest, import, or imply that the product is manufactured from the juice or the fruit of either the grape, orange, lemon, or lime, and to also cease and desist from the use of the words "grape," "orange," "lemon," or "lime" in any way in connection with the sale and distribution of a synthetic product so as to confuse, mislead, or deceive the purchasing public into the belief that the said product is the juice or the fruit of either the grape, orange, lemon, or lime.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of a complaint which the commission may issue. (July 18, 1928.)

281. **False or Misleading Advertising and Trade Name—Metal Signs and Calendars.**—Respondent, a corporation, engaged in the manufacture of metal advertising signs and calendars, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused certain of said products to be advertised in circular letters, folders, and other printed matter which it caused to be distributed in interstate commerce, and wherein use was made of the trade name "Bras-Etch" to designate said products, when in truth and in fact the products so advertised and designated were not manufactured of brass and were not etched in accordance with that process known to the trade and purchasing public as and to be the art of producing pictures, figures, and designs by means of etched plates so as to be properly and accurately advertised or designated as "Bras-Etch."

Respondent agreed to cease and desist forever from the use of the word "Bras-Etch" in its circulars, folders, and other advertising matter circulated in interstate commerce to designate its products so as to import or imply that said products are manufactured of brass and/or etched in accordance with the process known and recognized by the trade and purchasing public as and to be the etching process or art. Said respondent further agreed to cease and desist forever from the use of the word "Bras-Etch" either independently or in connection or conjunction with any other word or words, or in any other way in soliciting the sale of and selling its products in interstate commerce which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products so designated are made of brass which has been etched in accordance with that process known to the trade and purchasing public as the art of producing pictures, figures, or designs on metal by means of lines or strokes eaten in or corroded by means of a chemical agent.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 7, 1928.)

282. **False or Misleading Advertising—Paints.**—Respondent, an individual, engaged in the sale and distribution of paints in interstate commerce and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused advertisements to be inserted in newspapers and other publications having circulation between and among various States of the United States, the said advertisements reading in part as follows: "Big pay selling complete line paints, varnishes, and supplies direct to users; lower factory prices and money-back guarantee." Agents, answering the aforesaid advertisements, were sent circulars by said respondent which contained such language as "Every can of paint is made fresh to your orders," "Prices are really wholesale to you," and "Sold direct to the users through exclusive representative." The same and similar statements were contained in catalogues sent by said respondent to agents and prospective agents as informative of the sales policy to be pursued by said agents in obtaining orders for products from purchasers located in various States of the United States, when in truth and in fact, said respondent did not own, control, or operate a factory or plant wherein were manufactured or compounded, fresh to each customer's order or otherwise, the paints which he sold and distributed in interstate commerce, but all of his said products were purchased from the general stock of a paint company which he neither owned, controlled, nor operated.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the words "Direct to users," "Lower factory prices," "Sold direct to the user through exclusive representative," and "Made fresh to your orders," either independently or in connection or conjunction each with the other, or with any other words, phrases, or representations so as to import or imply that the said respondent controls or operates a plant or factory in which are manufactured or compounded the paints sold by him in interstate commerce, or that said respondent fills orders for products made fresh to each customer's order, when such is not the case. Said respondent further agreed to cease and desist forever from the use of the aforesaid representations either independently or in connection or conjunction with any other words, phrases, or statements, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent is a manufacturer of the product which he sells in interstate commerce, or that he either owns, controls, or operates a plant or factory in which are manufactured or compounded the paints sold by him, or that the said respondent fills orders for products made fresh to each customer's order.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 7, 1928.)

283. **Resale Price Maintenance—Toilet Preparations.**—Respondent, a corporation engaged in the manufacture of toilet preparations, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product in interstate commerce, caused the products of its manufacture to be exclusively advertised in magazines and other periodicals having circulation between and among various States of the United States, and it adopted a system involving the cooperation of the retail and other trade for the maintenance and enforcement of the resale prices established by it, and which system said respondent continuously maintained and enforced. As a method of effecting obedience to said system, respondent cooperating with the trade aforesaid, employed the folllwing means, to wit:

(*a*) Caused it to be generally known to the trade, through the issuance of price lists, by means of letters, through its salesmen, and by other means, that it expected and required its customers to maintain resale prices established by it.

(*b*) Solicited and obtained by letters, through its salesmen, and by other means, promises and assurances from its customers that they would cooperate in the observance and maintenance of said resale prices.

(*c*) Solicited and obtained promises and assurances from its customers that they would cooperate in reporting dealers to be cutting prices, and, acting upon the information thus obtained, threatened to refuse, and did refuse, to ship supplies of products to such reported offenders.

(*d*) Solicited and obtained reports of the names of, and other information relative to, dealers who ignored or who failed to observe or maintain its suggested resale prices, and upon securing such reports, urged the offenders to cease selling below the suggested resale prices, and sought and secured promises and assurances from said offenders that they would thereafter maintain said resale prices as a condition to further supplying them with products.

(*e*) Caused notations to be entered on its sales record kept for the purpose, among others, of listing those dealers reported as failing or refusing to maintain its resale prices, and who were not to be supplied with products until they gave assurances or other satisfactory evidence that they would maintain said resale prices.

Respondent agreed to cease and desist forever from the following cooperative methods:

(*a*) Seeking and securing from the retail or other trade, assurances, promises or agreements to cooperate with said company in the maintenance of any system of resale prices whatsoever.

(*b*) Seeking and securing, through its salesmen, or by other means, the cooperation of the retail or other trade in reporting the names of and/or other information relative to competitors or others who are cutting prices or who are alleged to be cutting prices on said products.

(*c*) Seeking and securing by any means whatsoever, promises, assurances, or agreements from price cutters, or alleged price cutters, that such offenders or alleged offenders will maintain suggested resale prices as a condition to further supplying them with products.

(*d*) Maintaining sales records or enrolling upon lists the names of undesirable purchasers who are not to be supplied with the products of the company unless and until they have given satisfactory assurances of their purpose to maintain such designated prices in the future.

(*e*) Employing salesmen or agents to assist in such plan by reporting dealers who do not observe such resale prices, and giving orders of purchase only to such dealers as sell at the suggested prices and refusing to give such orders to dealers who sell at less than such prices.

(*f*) Directly or indirectly carrying into effect, by cooperative methods, any system whatsoever for the maintenance of resale prices established by the company.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 7, 1928.)

284. **False or Misleading Advertising and Brands or Labels—Paints.**—Respondent, an individual, engaged in the sale and distribution of paints in interstate commerce and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, secured the services of agents or salesmen in different States of the United States by means of advertisements inserted in newspapers having circulation between and among various States of the United States, and through the medium of such agents or salesmen, caused his said paint products to be sold and shipped or distributed to the purchasing public located in various States of the United States. Said respondent also distributed letterheads and other advertising matter in interstate commerce bearing such phrases as "New formula paint" and "Direct from factory," while in his circulars or bulletins distributed in interstate commerce use was made of the following language: "Direct from factory to you," "Fresh every day," "New formula paints," "My paint is of such high quality that I know it will outwear, outlast, outspread, outcover even paint selling for twice as much." In his said circulars and on his letterheads, two buildings were pictorially represented, together with a tilted can, the liquid contents of which were indicated as flowing therefrom, while adjacent to the picture were printed the words "Fresh every day" and "Direct from factory to you," while on certain of his labels affixed to the containers bearing his products appear the words "New formula," when in truth and in fact the said respondent did not own, control, or operate a factory or plant wherein were manufactured or compounded the paint products which he advertised, sold, and distributed in interstate commerce, but he filled orders for paints from products purchased by him from factories or plants which he neither owned, controlled, nor operated, and which said products were not manufactured or compounded in accordance with a new formula and did not have the wearing, lasting, and other qualities attributed to it in the said advertising matter, but was similar in all respects to paint sold by the manufacturers thereof to other dealers.

Respondent agreed to cease and desist forever—

(*a*) From the use of the words "Direct from factory" either independently or in connection or conjunction with any other word or words which import or imply that he either owns, controls, or operates a plant or factory wherein the products advertised, sold, and distributed by him in interstate commerce are actually manufactured or compounded, and from the use of the aforesaid words either independently or in connection or conjunction with any other word or words, pictorial or other representation which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent either owns, controls, or operates a plant or factory wherein the products so advertised, sold, and distributed are actually manufactured or compounded.

(*b*) From the use of the words "New formula" either independently or in connection or conjunction with any other word or words which import or imply, or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are manufactured or compounded in accordance with a formula new to the art of paint production.

(*c*) From the use of the phrase "It will outwear, outlast, outspread, outcover even paint selling for twice as much," or of any other phrase or phrases of like import, when such phrase or phrases are not founded in truth and in fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 7, 1928.)

285. **False or Misleading Advertising—Garments, Dress Goods, and Furs.**—Respondent is a corporation operating two large department stores. Said corporation conducts a mail-order department as a branch of its business and sells and distributes products handled by its said mail-order department in interstate commerce. Said respondent is in competition with other corporations, firms, partnerships, and individuals likewise engaged in the mail-order business.

Respondent, in the course and conduct of its business, and in order to advertise and promote its mail order-business, caused catalogues to be circulated among customers and prospective customers located in various States of the United States, in which catalogues the goods sold by said respondent were described through the use of such language as "Royal Alpaca" to characterize garments which contained no wool, but were made of a material or materials other than wool; "Silk Rayon" and "Bloomer Satin" to describe dresses and bolt goods respectively, which contained no silk, the product of the cocoon of the silkworm, but which were made of a material or materials other than silk. Certain of its products advertised in said catalogues were also described therein as being trimmed with "Manchurian wolf" or with "French beaver," when in truth and in fact said products were not trimmed with the fur of either the Manchurian wolf or beaver, but were trimmed with a material or materials other than that indicated, while certain coats described as made of French seal were not made in truth and in fact of the fur of the seal.

Respondent in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use, in its catalogues and other advertising matter circulated in interstate commerce, of the word "alpaca" either independently or in connection or conjunction with any other word or words to define or describe its products so as to import or imply that said products are made of the wool of the alpaca, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are made of such wool, or unless, when said products are made partly of such wool and partly of some other material or materials, and the word "alpaca" is used to designate the same, the word "alpaca" shall be accompanied by a word or words which shall be displayed in type equally as conspicuous as that in which the word "alpaca" is printed so as to indicate that the said products are not made wholly of the wool of the alpaca; (*b*) of the words "silk" or "satin," either independently or in connection or conjunction with any other word or words to describe its products so as to import or imply, or which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that the said products so described are made of silk, the product of the cocoon of the silk worm, or unless, when said products are made partly of silk and partly of some other material or materials, and the word "silk" or "satin" is used to designate the same, the word "silk" or the word "satin" shall be accompanied by another word or words printed in type equally as conspicuous as that in which the word "silk" or "satin" is printed so as to indicate that said products are not made wholly of silk; (*c*) of the word "wolf" in connection or conjunction with the word "Manchurian" or with any other word or words which import or imply, or which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that the products so described are made from the skin or pelt of the wolf; (*d*) of the words "beaver" or "seal," either independently or in connection or conjunction with any other word or words which import or imply, or which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that the products so described are made of the fur of the beaver or of the seal.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be

used in evidence against it in the trial of the complaint which the commission may issue. (September 7, 1928.)

286. **False or Misleading Advertising and Brands or Labels—Cuticle Remover.**—Respondent, a corporation, engaged in the manufacture of toilet preparations, including a cuticle remover, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product, caused said product to be labeled under a trade name and designation containing the words "cuticle oil" and with the said label affixed thereto, sold and distributed the said product between and among various States of the United States. Afterwards, said respondent altered the wording of the said label for its cuticle remover to a trade brand or designation containing the words "Trimoyl for cuticle," and did thereafter sell and distribute in interstate commerce its said product bearing the said altered label. Respondent also caused its product to be advertised in catalogues and on price lists distributed in interstate commerce and in periodicals having circulation between and among various States of the United States, the said advertising matter containing the words "Trimoyl cuticle remover," when in truth and in fact the said product advertised and labeled as aforesaid was not manufactured from oil and contained no oil whatever, but was manufactured from ingredients other than oil.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the word "oil" or "oyl" either independently or in connection or conjunction with any other letter or letters, word or words, as a trade brand, label, or designation for its said product, or in its advertising matter circulated in interstate commerce which import or imply that the said product is manufactured from, or contains oil, and said respondent further agreed to cease and desist forever from the use of the word "oil" or "oyl" either independently or in connection with any other word or words, or in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said product is manufactured from, or contains oil so as to be properly and accurately designated, described and referred to as "cuticle oil" or as "Trimoyl for cuticle."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 7, 1928.)

287. **Resale Price Maintenance—Medicinal Preparations for Animals.**—Respondent, a corporation, engaged in the manufacture of medicinal preparations used in the treatment of animals and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, advertised its products in numerous farm and other journals having circulation between and among various States of the United States. Respondent adopted a plan having as an alleged object the stabilization of resale prices for its products by limiting its distributors to service jobbers and through the establishment of suggested resale prices for its products. Pursuant to its said plan or policy, respondent published a circular letter and mailed the same to its wholesale and jobbing trade located in various States of the United States, the said letter containing in part such announcements as: "As a part of this policy, we shall exercise our discretion to select our own customers, and we are suggesting the following resale prices and quantity discounts, with no other discount or rebate on our products." "This policy is designed to correct certain abuses heretofore indulged in by some of our wholesalers—abuses which have interfered with the legitimate profit of those rendering us complete distributive service." "We invite you to give this letter your immediate attention, advising us if you stand ready to cooperate to the fullest extent in the above sales policy. In this connection, please state your plan for affording us sales cooperation and state the territory over which you can efficiently act in this capacity, the number of travelers you employ, etc." As a result of the issuance and distribution of the aforesaid letter the said corporation received from its wholesale and jobbing trade generally promises and assurances by such trade that it would cooperate in the maintenance of the said resale policy, and the said trade did thereafter cooperate with the said respondent in the observance and maintenance of said resale policy.

Respondent agreed to cease and desist forever from (*a*) seeking and securing by letter, or by other means, from the wholesale, jobbing, and other trade, promises, assurances, or agreements to cooperate with the said respondent in the maintenance of any system of resale prices whatsoever; (*b*) directly or indirectly carrying into effect by cooperative methods any system whatsoever for the maintenance of resale prices established by the said respondent.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be

used in evidence against it in the trial of the complaint which the commission may issue. (September, 7, 1928.)

288. **False or Misleading Brands and Labels—Gloves.**—Respondent, a corporation, engaged in the sale and distribution of gloves in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

In the course and conduct of its business, respondent caused certain of its products, sold and distributed by it in interstate commerce, to be labeled "Chamois suede" and with the said label affixed thereto caused said products to be shipped from its place of business to purchasers thereof located in various States of the United States, when in truth and in fact said products so labeled were not made of chamois or suede, both of which are leather prepared from the skins of certain animals, but were made of a material or materials other than said leather.

Respondent in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from the use of the words "chamois" or "suede," either independently or in connection or conjunction each with the other, or with any other word or words as a brand or label for its products that imports or implies that said products are made of or fabricated from leather, a product prepared from the skins or hides of certain animals, and from the use of the said words "chamois" or "suede" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products so branded or labeled are made or fabricated from leather.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 7, 1928.)

289. **False or Misleading Advertising—Sirups and Concentrates.**—Respondent, an individual, engaged in the manufacture of sirups and concentrates, and in the sale and distribution of the same, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his product in interstate commerce, represented that the same was manufactured by a certain corporation, when as a matter of fact said corporation had gone out of business and said respondent was trading as an individual. In soliciting the sale of and selling the said sirups and concentrates, respondent represented that the same was to be used "to make grape bottlers' syrup," and also represented that by following certain directions "you will then have grape "syrup ready to bottle." Respondent in said advertising matter further represented, "We recommend low carbonation for all fruit drinks, especially grape" so as to import or imply that the product was manufactured from the juice of the grape or the fruit of the same, when in truth and in fact said product sold, advertised, represented, designated, and referred to was not manufactured by the corporation as represented and was not composed of the juice of the grape or fruit of the same, but was manufactured by said respondent of a product or products other than grape.

Respondent agreed to cease and desist forever from the use of, or contracting with, or licensing or authorizing others to use the word "grape" either independently or in connection or conjunction with any other word or words, letter or letters as a trade name, brand, or designation in the sale and distribution in interstate commerce of a product which is not composed of the juice of the grape or the fruit of the same, or unless, when said product is composed in substantial part of the juice or fruit of the grape, and the word "grape" is used in his trade name, or as a trade brand or designation for his product, in which case the said word "grape" shall be employed in connection, conjunction, or combination with some other word or words, letter or letters which shall be displayed in type equally as conspicuous as the word "grape" is printed so as to clearly indicate that such product is not made wholly from the juice or fruit of the grape, or that will otherwise properly and accurately represent, define, or describe said product so as to clearly indicate that the same is composed in part of a product or products other than the juice or fruit of the grape. Said respondent further agreed that in soliciting the sale of and selling his product in interstate commerce, he will cease and desist from the use of the word "grape" in any other way in the sale or distribution of a synthetic product which may confuse, mislead, or deceive the purchasing public into the belief that the said product is the juice of the grape or fruit of the same. Said respondent further agreed, in soliciting the sale of and selling his product in interstate commerce to cease and desist forever from using as a trade name the name of a corporation so as to import or imply that said respondent and the said corporation are one and the same.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 7, 1928.)

290. **False or Misleading Advertising—Printed Stationery.**—Respondent, an individual, engaged in the business of printing stationery

for social and business use, including invitations, announcements, calling cards, letterheads, envelopes, and similar products, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, printed by a special process and/or by a special type of machine, invitations, announcements, calling cards, letterheads, envelopes, and other social and business stationery, which he designated, defined, and described as "Plateless engraving," and said respondent solicited the sale of and sold his products so designated, defined, and described to purchasers thereof located in various States of the United States. As a means of advertising his said products, said respondent caused such descriptive phraseology as "Plateless engraving and embossed effect," and "Plateless engraving process," to be set forth on his business cards, blotters, and other advertising matter circulated in interstate commerce, when in truth and in fact the process used or the methods employed by said respondent in the manufacture of his products was not the process of producing an impression on stationery from inked plates in which have been stamped, cut, or carved letters, sketches, designs, or inscriptions from which impressions or representations are made, known as "engraving," but was and is printing while the ink is wet, which chemical adheres to the wet ink, and in passing through a baking process the heat causes it to fuse so as to present a raised-letter effect and resemble in appearance or simulate the impression made from ink-engraved plates, known as "engraving."

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the words "engraving" and "embossed," or either of them, to define or describe his products on his business cards, blotters, and other advertising matter of whatsoever character circulated or distributed in interstate commerce, and from the use of the words "engraving" or "embossed" or either of them, either independently or in connection or conjunction with any other word or words which import or imply that the said products printed and sold by the said respondent are the result of impressions made from ink-engraved plates generally known to the purchasing public as "engraving" and/or "embossing" and from the use of the words "engraving" and "embossed," either independently or in combination with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the products printed and sold by the said respondent are engraved or embossed, when such is not the fact.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 7, 1928.)

291. **Resale Price Maintenance—Skin Lotion.**—Respondents, copartners, engaged in the manufacture of a lotion alleged to be a remedy for chapped skin, sunburn, etc., and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, established and maintained a resale price policy for their jobbing and retail trade located in various States of the United States, and caused said policy to be brought to the attention of such trade by means of letters, personal interviews, and through their sales agency. As a means of enforcing and effecting maintenance of their said resale price policy or price standardization, the said respondents used the following cooperative methods, to wit: (*a*) Suggested and fixed prices at which their products should be sold by their wholesale and retail trade to purchasers, and sought and obtained on the part of both wholesalers and retailers agreements that they would cooperate in the maintenance of said suggested resale prices; (*b*) solicited and secured from their wholesale and other trade the cooperation of such trade in reporting dealers who failed to maintain said suggested resale prices and sought and obtained assurances and promises from such offending dealers to maintain the suggested resale prices as a condition to further supplying such offenders with products; (*c*) solicited and obtained the cooperation of retail druggist associations, their officers and members, to maintain said suggested resale prices.

Respondents agreed to cease and desist forever from the following cooperative methods: (*a*) Seeking and securing from the wholesale and/or other trade assurances, promises, or agreements of said trade to cooperate with said copartners in the maintenance of any system of resale prices whatsoever; (*b*) seeking and securing, either directly or through a sales agency, or by any other means, the cooperation of said trade in reporting the names of and other information relative to competitors and others who do not maintain said resale prices; (*c*) seeking and securing by any means whatsoever promises, assurances, or agreements from alleged price cutters that such offenders will maintain suggested resale prices as a condition to further supplying said offenders with products; (*d*) securing or seeking to secure the cooperation of druggist associations, their officers and members, or of other organizations in the enforcement and maintenance of any system of resale prices.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 10, 1928.)

292. **False or Misleading Advertising—Sirups, Concentrates.**—Respondent, a corporation, engaged in the manufacture of concentrates, sirups, and flavors, and in the sale and distribution of the same to soda-water manufacturers and bottlers of soft drinks, located in various States of the United States, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, caused one of its said products to be advertised in trade journals and other publications having circulation between and among various States of the United States, and in which publications the said product was represented, designated, referred to, and described as "Grape" and/or "Concord grape," while in its pamphlets, price lists, and other advertising matter distributed in interstate commerce among the trade, the said product was represented, designated, described, and referred to as "Grape," "Grape Concord complete with color and acid," and as "New Concord grape;" when in truth and in fact the said product so advertised, designated, described, and referred to was not manufactured from the fruit of the grape or the juice of the same so as to be properly represented, designated, described, or referred to by the use of the word "grape."

Respondent agreed to cease and desist forever from the use of the word "grape" either independently or in connection or conjunction with any other word or words, in its advertising matter of whatsoever character distributed in interstate commerce, as a trade brand or designation in the sale or distribution in interstate commerce of its product which is not composed of the juice of the grape or the fruit of the same; or unless, when said product is composed in substantial part of the juice or fruit of the grape and the word "grape" is used in its advertising matter or as a trade brand or designation for said product, in which case the word "grape" shall be employed in connection, conjunction, or combination with some other word or words which shall be displayed in type equally as conspicuous as that in which the word "grape" is printed so as to clearly indicate that the said product is not made wholly from the juice of the grape or the fruit of the same, and that will otherwise properly and accurately represent, define, and describe said product so as to clearly indicate that the same is composed in part of a product or products other than the juice or fruit of the grape. Respondent further agreed to cease and desist forever from the use of the word "grape" in any way in connection with the sale and distribution of a synthetic product which will import or imply that the said product is manufactured from the juice or the fruit of the grape, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is composed of the juice of the grape or the fruit of the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 17, 1928.)

293. **False or Misleading Advertising—Oleomargarine.**—Respondent, a corporation, engaged in the manufacture of oleomargarine and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution in interstate commerce of oleomargarine and/or butter, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its oleomargarine in interstate commerce, caused its said product to be advertised in newspapers and other publications having circulation between and among various States of the United States, the said advertising matter containing the words, phrases, and statements, supposedly descriptive of its said product, as follows: "Made in the milky way," "Churned fresh daily from pure wholesome milk in our giant sunlit churneries," "Rich, creamy milk made Churngold," together with the pictorial representation of a milk can with milk flowing therefrom, and the words "Made in the milky way" printed in large type across the can. In certain of its pamphlets distributed in interstate commerce, the aforesaid product was described under the heading "Churning" as being made of "Fresh milk from selected dairies" and also further statements concerning its product as "Fresh milk from selected dairies, which is weighed, tested for richness, and then pasteurized, then allowed to ripen (just as is done in all modern creameries) at an even moderate temperature. The choicest creamery butter is made in this way." At other places in said pamphlets there were statements such as "Pure, sweet pasteurized milk," "It is obtained from the richest of sweet milk," "The richest of the cream," "The contents of the churn are agitated on the principle of the old-fashioned churn except that the dasher revolves instead of moving up and down;" while in still other places in said pamphlets and in said advertising matter appeared such statements as "Butter making has no Government supervision," "To-day Churngold margarine sells strictly on its merits as a pure, palatable, staple food, impure Churngold margarine being practically an impossibility. But who dares to say this much for butter?" when in truth and in fact the said product so advertised, described, sold, and distributed in interstate commerce was not the product known to the trade and purchasing public as creamery butter, a dairy or milk product, but was a manufactured product composed in substantial part of ingredients or substitutes other than those of which creamery butter is made, and the intimation or insinuation that the competitive product, known to the trade and purchasing public as creamery butter, is not produced under Government supervision or inspection and is not pure and palatable, is not generally true.

Respondent agreed to cease and desist forever from using, in the advertisements, sale, and distribution of its product in interstate commerce, the words "milk," "cream," "churn," "churned," "dairy" or "dairies" either independently or in connection or conjunction with the phrases "Made in the milky way," "Churned fresh daily from pure wholesome milk in our giant sunlit churneries," "Rich, creamy milk made Churngold," "Made of fresh milk from selected dairies," "The choicest creamery butter is made in this way," "Pure, sweet pasteurized milk," "It is obtained from the richest of sweet milk," "The contents of the churn are agitated on the principle of the old-fashioned churn, except that the dasher revolves instead of moving up and down," or with any of the said phrases, so as to import or imply that the said product is that product known to the trade and purchasing public as creamery butter, a dairy or milk product, and from the use of the words "milk," "cream," "churn," "churned," "dairy," "dairies" either independently or in connection or combination with any other word or words, pictorial representation or representations, or in any way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said product is that product known to the purchasing public as creamery butter. Respondent also agreed that when the coined word "Churngold" is used in connection with the advertisement, sale, and distribution of the said product in interstate commerce, the said coined word "Churngold" shall be accompanied by the word "oleomargarine" printed in type equally as conspicuous as that in which the word "Churngold" is printed so as to clearly indicate that the product is not that product known to the trade and purchasing public as creamery butter. Respondent further agreed to cease and desist forever from directly or indirectly publishing, circulating, or causing to be published or circulated in interstate commerce, any false, descriptive, or misleading statements of or concerning the product of a competitor and particularly from publishing, circulating, or causing to be published or circulated in interstate commerce, directly or indirectly, any such statements concerning the creamery and/or dairy products of competitors.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 19, 1928.)

294. **False or Misleading Advertising—Automobile Fuel Vaporizer and Decarbonizer.**—Respondents, copartners, engaged in the manufacture of a device, designated by them as a "Vaporizer and decarbonizer" for automobiles, and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their product in interstate commerce, and as a means of securing the services of salesmen or agents to purchase and sell their product, caused advertisements to be inserted in newspapers, magazines, and other publications having circulation between and among various States of the United States, the said advertising matter containing such phrases and statements as "500 per month selling a new patented fuel vaporizer guaranteed to save up to 50 per cent in gasoline; 40 miles per gallon made with Ford car," "Ford runs 57 miles on gallon of gasoline," "Ford makes 40 to 57 miles to gallon; other cars show equally remarkable gains; increases power 25 to 50 per cent," "Why not buy gasoline for 10 cents per gallon? New invention. Cuts fuel bills 25 to 50 per cent," "An automobile goes 27 miles on air by using an automatic device which was installed in less than five minutes. The automobile was only making 30 miles on a gallon of gasoline, but after this remarkable invention was installed, it made better than 57." As a further means of obtaining the services of salesmen or agents located in various States of the United States, said respondents also caused circular letters, leaflets, post cards, and other advertising matter to be distributed in interstate commerce and wherein appeared such statements as "Ford runs 57 miles on gallon of gasoline," "40 to 57 miles on 1 gallon of gasoline," "You are losing half the power of your gasoline," "Makes more miles per gallon than any other device on the market regardless of price"; when in truth and in fact the aforesaid representations of increased mileage, increased power, and fuel saving, were exaggerated and much in excess of what was possible of accomplishment as the result of the use of said device, and were otherwise not founded in truth and in fact. Respondents also made use in certain of the advertising matter distributed by them in interstate commerce of statements to the effect that the alleged vaporizer and decarbonizer would remove carbon, prevent spark-plug trouble, and make engines start easier, when in truth and in fact, the said vaporizer and decarbonizer did not destroy or put an end to carbon deposits, or prevent spark-plug trouble or overheating, or cause the engine to start easier.

Respondents, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist forever from the use of any and all exaggerated representations or statements which import or imply that the increased mileage, power, and fuel saving obtained from the use of the said vaporizer and decarbonizer are in excess of that of which the said device is capable of producing, and from any other representations or statements which import or imply, or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that motive engines, if and when equipped with the said device, will give increased mileage, provide greater power and effect a saving of fuel in excess of that which is actually the case. Respondents in soliciting the sale of and selling their product in interstate commerce also agreed to cease and desist forever from representing in any way whatever that the use of the said vaporizer and decarbonizer on motor vehicles will remove carbon, prevent spark-plug trouble or overheating, and/or make the engine start easier, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (September 24, 1928.)

295. **False or Misleading Advertising—Concentrates and Sirups.**—Respondent, an individual, engaged in the manufacture of concentrates and sirups and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, sold his products through the medium of traveling salesmen to bottlers and/or jobbers, who used said products as a basis for the soft drinks which they bottled and sold to the retail and other trade located in various States of the United States. As a means of promoting the sale of his products, said respondent caused advertisements to be inserted in trade journals and other publications having circulation between and among various States of the United States, the said advertising matter containing such language as "Complete line of concentrated flavors, grape, orange, lemon, peach," when in truth and in fact, the products so advertised were neither manufactured from the juice or the fruit of either the grape, orange, lemon, or peach, nor did they contain the juice or the fruit thereof in such substantial quantity so as to be properly and accurately designated, described or referred to by the use of the words "grape," "orange," "lemon," or "peach," or any of them.

Respondent agreed to cease and desist forever from the use of the words "grape," "orange," "lemon," or "peach" either independently or in connection or conjunction with any other word or words, in his advertising matter to designate or describe his products distributed in interstate commerce which import or imply that the said products are composed of the juice or fruit of either the grape, orange, lemon, or peach, or any of them, and from the use of the words "grape," "orange," "lemon," and "peach" in any way that may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are composed of the juice or fruit of either the grape, orange, lemon, or peach, or any of them; or unless, (*a*) if the words, "grape," "orange," "lemon," or "peach" or any of them, are used to designate or describe the flavor of the said products, the word or words so used shall be immediately preceded by the word "imitation" printed in type equally as conspicuous as that in which the said designating or descriptive word or words are printed; and (*b*) if the products are composed in substantial part of the juice or the fruit of either the grape, orange, lemon, or peach, so as to derive their color and flavor from said fruit, or fruits, and the word "grape," "orange," "lemon," or "peach" is used to designate the products, in which case the said designating word or words shall be accompanied by a word or words which shall be printed in type equally as conspicuous as that in which the said designating word or words are printed so as to clearly indicate that the products are not made wholly from the juice or the fruit indicated by the said designating word or words and that will otherwise properly and accurately represent, define, and describe the products so as to clearly indicate that the same are composed in part of an ingredient or ingredients other than the juice or fruit indicated by the said designating word or words.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 8, 1928.)

296. **False or Misleading Advertising and Brand or Label—Cigars.**—Respondent, a corporation, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce,

and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, and as a means to promote the sale and distribution in interstate commerce of cigars manufactured by it, caused advertisements to be inserted in newspapers having circulation between and among various States of the United States, in which said advertisements the aforesaid respondent represented, designated, and referred to a certain brand of cigars manufactured by it and sold in interstate commerce by the use of the word "Havana." Respondent also caused the aforesaid brand of cigar manufactured by it to be packed in boxes on the exposed surfaces of which were printed in conspicuous type the word "Havana," so as to import or imply that the said product was made of tobacco grown on the island of Cuba, and with the aforesaid brand or label affixed thereto, sold said product in commerce between and among various States of the United States, when in truth and in fact the product so represented, designated, and referred to in the advertisement and on the brands or labels used by the said respondent in soliciting the sale of and selling said product in interstate commerce was not made wholly from tobacco grown on the island of Cuba.

Respondent agreed to cease and desist forever from the use of the word "Havana" to represent or designate said product in advertisements or other printed matter used in soliciting the sale of and selling the same in interstate commerce, and said respondent also agreed to cease and desist forever from the use of the word "Havana" either independently or in connection or conjunction with any other word or words as a brand or label in the sale and distribution in interstate commerce of a product which is not composed wholly of tobacco grown on the island of Cuba; unless, when said product is composed in substantial part of tobacco grown on the island of Cuba and the word "Havana" is used to designate said product, in which case the said word "Havana" shall be employed in connection or combination with some other word or words which shall be displayed in type equally as conspicuous as that in which the word "Havana" is printed so as to clearly indicate that such product is not made wholly of tobacco grown on the island of Cuba and that will otherwise properly and accurately represent, designate, or describe said product so as to clearly indicate that the same is composed in part of tobacco other than that known to the trade and purchasing public as Havana.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be

used in evidence against it in the trial of the complaint which the commission may issue. (October 22, 1928.)

297. **False or Misleading Advertising—Ladders.**—Respondent, a corporation, engaged in the manufacture of ladders and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused the same to be advertised in folders and circulars which it distributed in interstate commerce, and wherein its said products were designated, described, and referred to as being "Made of choice clear straight grained Vancouver spruce or Norway pine," and respondent caused the products of its manufacture so advertised and described to be sold in commerce between and among various States of the United States, when in truth and in fact, certain of its said ladders were not manufactured from Vancouver spruce or Norway pine, but were manufactured wholly or in part of a wood or woods other than Vancouver spruce or Norway pine.

Respondent agreed to cease and desist forever from the use of the words "Vancouver spruce" and the words "Norway pine," either independently or in connection or conjunction with any other word or words, or in any other way so as to import or imply that the products so represented, designated, described or referred to are made from Vancouver spruce and/or Norway pine, or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief, that the said products are made from Vancouver spruce and/or Norway pine, when such is not the fact; unless, when said products are made in part of Vancouver spruce or Norway pine, and the words "Vancouver spruce" or "Norway pine" are used to designate said products, they shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the words "Vancouver spruce" and "Norway pine" are printed so as to clearly indicate that the said products are not made wholly of Vancouver spruce or Norway pine.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 22, 1928.)

298. **False or Misleading Advertising—Infants' Knit Wear.**—Respondent, an individual, engaged in the sale and distribution of infants' knit wear in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise en-

gaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused said product to be sold through the medium of traveling salesmen to the jobbing and other trade located in various States of the United States, the said salesmen being provided with identification cards having printed thereon, in addition to the name of the salesman, the trade name of said respondent and the word "Manufacturers." Said respondent also caused his aforesaid trade name to be featured, together with the words "manufacturers of infants' knit goods," in trade directories and other publications having circulation between and among various States of the United States, when in truth and in fact the said respondent did not own, control, or operate a mill or factory wherein were made or fabricated the products sold and distributed by him in interstate commerce, and the said respondent filled orders from products manufactured or fabricated in mills, factories, or obtained from other sources of supply which he neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use in his advertising matter of whatsoever character circulated and distributed in interstate commerce of the word "Manufacturers," either independently or in connection or conjunction with any other word or words so as to import or imply that the said respondent either owns, operates, or controls a mill or factory for the manufacture or fabrication of the products sold and distributed by him in interstate commerce, and from the use of the word "Manufacturers" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead, confuse, or deceive the purchasing public into the belief that the said respondent either owns, controls, or operates a mill or factory wherein are made or fabricated the products which he sells and distributes in interstate commerce, or until such time as said respondent does actually own, control, or operate such mill or factory in which are manufactured or fabricated the products which he sells and distributes in interstate commerce.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 22, 1928.)

299. **False or Misleading Advertising and Brands or Labels—Shellac Compound or Substitute.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of automobile accessories including a product used as a gasket cement, and in the

sale and distribution of the same in interstate commerce, and in competition with other corporations, partnerships, firms, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused the product used as a gasket cement to be sold and distributed in interstate commerce as gasket shellac, and also in the course and conduct of its business it advertised same in pamphlets, circulars, price lists, and other literature distributed in interstate commerce as gasket shellac, and also trade brands containing the word "shellac," which said trade brands it also caused to be affixed to the bottles containing the product, and in the directions for the use of the same referred to said product as "shellac" and with the aforesaid representations affixed thereto sold said product between and among various States of the United States, when in truth and in fact said product so designated, described, referred to, and advertised was not manufactured or compounded of genuine shellac gum cut in alcohol but was manufactured or compounded from elements, ingredients, or materials, including gum other than shellac gum, which is a distinctive commodity produced by insects found principally in India and in a small portion of Thibet, the gum so produced being imported into the United States and the term "shellac" being understood to mean the gum shipped from India cut in alcohol.

Respondent agreed to cease and desist forever from the use of the word "shellac" on its brands or labels, or in its advertising matter of whatsoever character, as descriptive of its product sold and distributed in interstate commerce, unless said product is 100 per cent shellac gum cut in alcohol, or if the product contains less than 100 per cent shellac gum then, if the word "shellac" is used as descriptive of said product, it shall be accompanied by the word "compound" printed in type equally as conspicuous as that in which the word "shellac" is printed, or if the product contains no shellac gum, then, if the word "shellac" is used to designate the said product, it shall be immediately preceded by the word "substitute" printed in type as conspicuous as that in which the word "shellac" is printed.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 22, 1928.)

300. **Resale Price Maintenance—Cough Remedy.**—Respondent, a corporation, engaged in the manufacture of a cough remedy and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts

and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold products of its manufacture chiefly through the instrumentality of divisional sales agencies to wholesale, retail, and other trade located between and among different States of the United States. Further in the course of its business said respondent adopted a system, involving the cooperation of the aforesaid trade, for the maintenance and enforcement of prices established by it and at which its product should be sold by such trade, and which system said respondent caused to be maintained and enforced. Respondent caused it to be generally known by means of circular letters distributed in interstate commerce through its sales agencies and by other means, that it expected and would require its customers to maintain resale prices established by it, and as a means of effecting obedience to its system, the said respondent and its sales agencies, in conjunction with the trade aforesaid employed the following cooperative methods: (*a*) Sought and secured, through its sales agencies, and by other means, agreement, promises, and assurances from its customers that they would cooperate in the maintenance of resale prices suggested by it, and threatened to and did withhold orders for supplies from retail dealers who failed or refused to maintain its suggested resale price, and from wholesalers who sold to price-cutting retailers; (*b*) sought and secured the cooperation of its customers in reporting dealers who failed to maintain its suggested resale prices, and solicited and obtained promises and assurances from such offending dealers to maintain the suggested resale prices as a condition to further supplying such offending dealers with products; (*c*) cooperated, through its sales agencies, with its customers in tracing the sources of supply of price-cutting dealers for the purpose of preventing such dealers from obtaining supplies of products, and further for the purpose of removing from its direct list such sources of supply.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the following cooperative methods: (*a*) Seeking and securing from the wholesale, retail, and other trade, agreements, promises, or assurances of such trade to cooperate with said respondent in the maintenance of any system of resale prices whatsoever; (*b*) seeking and securing the cooperation of its customers in reporting dealers who failed to maintain resale prices established by it; (*c*) seeking and securing by any means whatsoever promises, agreements, or assurances of cooperation from alleged price cutters that such offenders will maintain suggested resale prices as a condition to further supplying said offenders with products; (*d*) cooperating with it customers in tracing the sources of supply of price-cutting dealers for the purpose of preventing such offenders from obtaining further supplies of products or for the purpose of removing from its direct list such sources of supply; (*e*) directly or indirectly carrying into effect by cooperative methods, any system whatsoever for the maintenance of resale prices established by said respondent.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 31, 1928.)

301. **False or Misleading Brands or Labels—Shellac Compound or Substitute.**—Respondent, an individual, engaged in the manufacture or compounding of paints and varnishes, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, engaged in the manufacture or compounding or different grades of paint and varnish products, certain of which grades he designated, defined, and described on labels affixed thereto as "100 per cent pure shellac," while another of which grades he designated, defined, and described on labels affixed thereto as "Cut orange shellac free from rosin," or "Cut white shellac free from rosin." Another of the said grades respondent designated, described, and defined on labels affixed thereto as "white" or "orange" "See-Lak," when in truth and in fact the said grades of products so labeled and sold were not manufactured wholly of genuine shellac gum dissolved in alcohol, as recognized and understood by the trade and purchasing public to be the constituent elements or formula of which shellac is composed, but were manufactured or compounded so as to contain, in varying quantities, constituent elements, ingredients, or substitutes other than those contained in the product known to the trade and purchasing public as "shellac."

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use on labels affixed to the products sold by him of the word "shellac" or of any manner of phonetic spelling thereof, either independently or in connection or conjunction with any other word or words so as to import or imply that the product so labeled is composed wholly of shellac; or unless, when the product is not pure shellac, but one in which shellac gum is the principal and predominate element, and the word "shellac" is used to designate the product, such word shall be accompanied by the word "compound" printed in type equally as conspicuous as that in which the word "shellac" is printed so as to clearly indicate that such product is not composed wholly of shellac gum cut in alcohol; or if the product is one in which no shellac gum is used, or in which shellac gum is not the principal and predominate element, and the word "shellac" is used to designate said product, such word shall be accompanied by the word "substitute" in type as conspicuous as the word "shellac."

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 5, 1928.)

302. **False or Misleading Trade Name and Advertising—Hosiery.**— Respondents, copartners, engaged in the sale and distribution in hosiery in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, adopted and used a trade name which included the word "Mills," and caused the said trade name containing the word "Mills" to be used in connection with the sale and distribution of their products in interstate commerce. Respondents caused their said trade name containing the word "Mills" to be used on their stationery, including letterheads, billheads, and envelopes, which stationery they distributed in interstate commerce, when in truth and in fact said respondents did not own, operate, or control a mill or factory wherein was manufactured the hosiery sold and distributed by them in interstate commerce, but filled orders for such products from hosiery manufactured in mills or factories which they neither owned, operated, nor controlled.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with their trade name so as to import or imply that the said respondents either own, operate, or control a mill or factory in which are manufactured or fabricated the products sold by them, and from the use of the word "Mills" as part of or in connection or conjunction with their trade name, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the aforesaid respondents own, operate, or control a mill or factory wherein are manufactured or fabricated the products sold by them in interstate commerce.

Respondents also agreed that if they ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (November 5, 1928.)

303. **Resale Price Maintenance—Drugs and Other Pharmaceutical Supplies.**—Respondent is an incorporated association consisting of approximately 250 individuals, firms, partnerships, and corporations, located in a certain State of the United States, and doing business as retail druggists. The said retail druggists, comprising the membership of the aforesaid respondent association, engaged in the purchase of pharmaceutical and other supplies from manufacturers, makers and/or vendors thereof located in various States of the United States, and caused such supplies to be shipped in interstate commerce from the places of business of said manufacturers, makers and/or vendors to the places of business of said retail druggists located in the said certain State of the United States, and in competition with other individuals, firms, partnerships, and corporations likewise engaged in the purchase and shipment in interstate commerce of similar products. Respondent entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Pursuant to the purposes and objects for which it was organized, respondent association adopted a policy alleged to be for the protection of the interests of its aforesaid members, and in the course and conduct of its business, said respondent association caused its said policy to be put into effect and inforced by the following cooperative methods: (1) Sent to numerous manufacturers, makers, and vendors engaged in the sale and distribution in interstate commerce of pharmaceutical and other supplies in competition with other manufacturers, makers, and vendors of similar products, a letter reading: "We are compiling a special list for our records of all items manufactured by those concerns who have gone on record as favoring the standardization of the retail selling prices of their products. In accordance with the above we would appreciate it if you will send us without delay a complete list giving the cost price as well as the suggested resale selling price of all items manufactured by you. Your prompt cooperation in this matter will be appreciated. In a few days we will be ready to issue courtesy cards and suggest that you let us know immediately what your requirements are; (2) issued courtesy cards to the aforesaid manufacturers, makers, and vendors for their use, and for the use of their salesmen or representatives, in securing orders for supplies from the membership of said respondent association, and directed such membership to purchase supplies only from manufacturers, makers, and vendors, or the salesmen or representatives of said manufacturers, makers, and vendors who were equipped with such courtesy cards; (3) induced said manufacturers, makers, and vendors to cease dealing with price cutters and to limit the distribution of their products to the drug trade by means of threats of the withdrawal of patronage from association members if such manufacturers, makers, and vendors should continue to supply products to such price cutters or to the trade other than the drug trade; (4) circularized its membership with bulletins issued at stated intervals and which bulletins contained the slogan "Remember your friends and push their products. Forget the others," together with such statements as: "All you have to do is to form the habit of saying, without fail, the following words to every salesman who asks for an order: 'Show me your courtesy card.' Buy only from the salesman who can show this card, and remember that a new card will be issued each month, and each month the color will change. Be sure to take the card in your hand, otherwise some salesman might fool you, by flashing a card in your face. No matter what excuse a salesman gives you, that he lost his card, or he will get one next week, if he has no card, follow our * * * slogan 'Forget him.' A partial list of the manufacturers who are entitled to receive courtesy cards is inclosed. New ones are being added almost every day, so watch your mail, and your drug journals." With certain of its bulletins, the aforesaid respondent association sent to its members a printed list of manufacturers under the heading "Courtesy cards." Said respondent association also sent monthly bulletins to its members containing lists of manufacturers, together with the items sold by each and the prices at which their products should be sold.

Respondent agreed to cease and desist forever from cooperating with its membership, or with the agents, representatives, or employees of its membership, in carrying out or following a common course of action pursuant to mutual understanding, combination, or agreement for the purpose or with the effect, directly or indirectly, of lessening competition in interstate commerce in the course of trade in pharmaceutical and other supplies usually sold in retail drug stores or pharmacies, through the use of any or all of the following cooperative and/or coercive methods, to wit: (1) By compelling or attempting to compel manufacturers, makers, or vendors, engaged in the competitive sale and distribution in interstate commerce of pharmaceutical and other supplies, to establish and promulgate price standardization or suggested resale price of such merchandise at retail by any or all of the following means, to wit, coercion, intimidation, boycott or threat of boycott, or by any suggestion or intimation of boycott, or of other retaliatory or prejudicial action in case such manufacturers, makers, or vendors do not conform to the wishes of the aforesaid respondent association with respect to a resale price maintenance policy; (2) by the issuance of the so-called "courtesy card" or any card of similar import, purpose, or effect, to manufacturers, makers, or vendors, or to or for their salesmen or respresentatives, and with the purpose or effect, either expressly or by implication, of aiding in carrying out said manufacturers', makers', or vendors' policies of resale price maintenance; (3) by the publication and issuance of bulletins, trade papers, or any other publications, or the promulgation in any other manner of any list of manufacturers, makers, or vendors, to whom have been issued the so-called "courtesy cards" or any card of similar import, purpose, or effect, or by the publication or promulgation of any list of similar import.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 5, 1928).

304. **False or Misleading Advertising; Misrepresenting Prices—Electric Generator.**—Respondent, an individual, engaged in the manufacture of electrotherapeutical instruments and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, caused the product of his manufacture to be sold in interstate commerce through the instrumentality of salesmen to the wholesale and other trade located in various States of the United States. Respondent also employed resident agents to sell, and who did sell, his products direct to the ultimate consumers in different States of the United States. Respondent, in soliciting the sale of and selling his products, caused circulars and other printed matter to be distributed in interstate commerce throughout the United States mails by means of the aforesaid salesmen and resident agents. In said printed matter appeared the language, "Special 60-day offer" and which representation was followed by the word "free" in connection with the offer of an electric pad as an inducement to purchase an electrical generator. Said printed matter also represented that an electrode would be given "free" to those who purchase electrical generators from said respondent. Use was made in said printed matter of such phraseology as "Special introductory offer" followed by the words, "Limited time only," while in certain of said advertising matter distributed in interstate commerce, said respondent offered the sale of certain of his products as, "Special price only $32.50," when in truth and in fact the offer alleged to be "Special 60-day" or for "Limited time only" was not a special offer which continued only for a period of 60 days, or for a limited period of time, but was a general offer made in the usual and customary course of business and intended to remain and which did remain in force and effect for an indefinite period of time and the price alleged to be "special introductory" was neither special nor introductory, but was the regular and usual price asked for the product designated in such advertising matter. The products advertised as being given "free" with the purchase of other products were not in truth and in fact given free or bestowed without compensation, but their cost was included in the price paid by the purchasers of said other products.

Respondent agreed to cease and desist forever (1) from the use of the words or phrase "Special 60-day offer" and "Limited time only" either independently or in connection or conjunction with any other word or words or phrases so as to import or imply that the products designated or referred to by said words or phrases constitute the subject matter of a special offer which is to continue only for a period of 60 days, or for a limited period of time, when such is not the fact; (2) from the use of the words "special" and "introductory" either independently or in connection or conjunction each with the other, or with the the word "prices" or with any other word or words to designate the prices of his product, when in truth and in fact such prices so designated are not special or introductory, but are the regular and customary prices asked for said products in the usual course of business; (3) from the use of the word "free" either independently or in connection or conjunction with any other word or words, or in any other way so as to import or imply, or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products referred to are in truth and in fact given free or bestowed without compensation and that their cost is not included in the price paid by purchasers of other products.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 7, 1928.)

305. **False or Misleading Advertising—Beverage Concentrates and Powders—Soaps.**—Respondent, a corporation, engaged in the manufacture of concentrates and powders for use in the preparation of beverages, and also in the manufacture of soaps, and in the sale and distribution of the same in interstate commerce, in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold its products to the purchasing public located in various States of the United States, generally through the instrumentality of salesmen or representatives making "house-to-house" canvasses in said States. As means for promoting the sale of its products, said respondent issued catalogues which it distributed in interstate commerce, and wherein were made, under the general heading "Concentrated soft drinks" such statements as: "Orange—the delicious flavor and captivating aromas of lucious, ripe Florida oranges," "Raspberry—the exquisite flavor of red, ripe raspberries. A tart, satisfying, fruity drink, excellent for making fruit punch," "Strawberry—the delicious, thirst-quenching flavor of lucious strawberries," "Cherry phosphate—the piquant flavor of the freshly picked tame cherry," "Apple cider—the piquant flavor of the finest juicy apples," and "Grape cider—the delicious tart flavor of the finest Concord grapes." Pictorial illustrations of bottle containers accompanied said statements in the catalogues, and each of said containers was represented as having affixed thereto a label on which appeared the name of a fruit, as "orange," "raspberry," "strawberry," "cherry phosphate," "apple," or "grape" while in proximity to the said illustrations, fruits such as grapes, apples, lemons and oranges were fancifully depicted, when in truth and in fact the products so designated, described, labeled and/or advertised were either not manufactured in whole or in part from the juice or the fruit of the orange, raspberry, strawberry, cherry, apple, or grape, or did not contain the juice or the fruit thereof in such substantial quantity so as to be properly and accurately designated, described, or referred to by the use of the unqualified words "orange," "raspberry," "strawberry," "cherry," "apple," or "grape." The said catalogues also contained, under the general heading "soft drink powders," and with the explanation, "Pure, delicious, refreshing soft drinks made from fresh, ripe, luscious fruit and other pure ingredients and concentrates to powdered form," such statements as, "Genuine, refreshing orangeade can be made in an instant by adding a teaspoonful of orangeade powder to a glass of water and sweetening to taste," "Delicious, refreshing lemonade made in an instant by adding a teaspoon of lemonade powder to a glass of water and sweetening to taste. Lemonade powder is made from the juice of fresh, ripe, highest quality lemons." Pictorial representations of containers in the form of cans also appeared in the said catalogues, being represented as having affixed thereto a label bearing the words "Lemonade powder, made from pure concentrated lemon juice with added sugar and citric acid, the natural acid of fresh lemons" and a representation of a lemon or lemons cut in half, or a label bearing the words "Orangeade powder for making orangeade," together with the pictorial representation of an orange. Fruits, consisting of grapes, oranges, and lemons were also illustrated in proximity to the aforesaid statements and illustrations, when in truth and in fact none of the said powder products was manufactured in whole from the juice or the fruit of either the orange, lemon, or grape, nor did they contain the juice or the fruit thereof in such substantial quantity so as to be properly and accurately designated, described, or referred to by the use of the unqualified words "orange," "lemon," or "grape." The aforesaid catalogues also described certain soap products sold by respondent as "Pure olive oil castile soap," when in truth and in fact, the said soap products were not manufactured from olive oil so as to be properly and accurately advertised or described as "Pure olive oil castile soap." A certain other of its soap products was advertised and described by the said respondent in its said catalogue by the use of the words "Lemon soap" or as "Lemon complexion soap," when in truth and in fact the said product was not manufactured from any substance derived from lemons.

Respondent agreed to cease and desist forever from the use of the words "orange," "raspberry," "strawberry," "cherry," "apple," "lemon," or "grape," either independently or in connection or conjunction with any other word or words, letter or letters, pictorial illustration or illustrations, in its advertising matter or on its brands or labels to designate its products distributed in interstate commerce which import or imply that the said products are composed of the juice or the fruit of either the orange, raspberry, strawberry, cherry, apple, lemon, or grape, or any of them, and from the use of the said words or any of them in any way that may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are composed of the juice or the fruit of either the orange, raspberry, strawberry, cherry, apple, lemon, or grape, unless (*a*) if the said words, or any of them are used to designate or describe the flavor of the said product, the words so used shall be immediately preceded by the word "imitation" printed in type equally as conspicuous as that in which the said designating or descriptive word is printed; or (*b*) if the product is composed in substantial part of the juice or fruit of either the orange, raspberry, strawberry, cherry, apple, lemon, or grape so as to derive its color and flavor from said fruit, and the word "orange," "raspberry," "strawberry," "cherry," "apple," "lemon," or "grape" is used to designate the product, in which case the said designating word shall be accompanied by a word or words which shall be printed in type equally as conspicuous as that in which the said designating word is printed so as to clearly indicate that the product is not made wholly from the juice or the fruit indicated by the said designating word, and that will otherwise properly and accurately represent, define, and describe the product so as to clearly indicate that the same is composed in part of a product or products other than the juice or fruit indicated by the said designating word. Said respondent further agreed to cease and desist forever from the use of the words "olive oil," either independently or in connection or conjunction with any other word or words which import or imply that the soap products sold by said respondent in interstate commerce are in truth and in fact products manufactured from olive oil so as to be properly and accurately designated as "Olive oil castile soap," and from the use of the words "olive oil" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are soaps manufactured from olive oil so as to be properly and accurately designated, described, or referred to as "Olive oil castile soap." Respondent also agreed to cease and desist forever from the use of the word "lemon" either independently or in connection or conjunction with any other word or words, as descriptive of its soap products so as to import or imply that the said products contain any substance derived from lemons when such is not the fact, and from the use of the word "lemon," either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are soaps which contain any substance derived from lemons.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 7, 1928.)

306. **False or Misleading Brands or Labels—Overalls.**—Respondent, an individual, engaged in the manufacture of wearing apparel, including overalls, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, caused products manufactured by him to be marked or branded with pasteboard labels containing the words "union made" in conspicuous type, and caused his said products so marked, branded, or labeled to be sold and distributed in commerce between and among various States of the United States, when in truth and in fact the said respondent employed artisans or workmen who were not members of or affiliated with associations or organizations generally known, recognized, and referred to as "unions," and the said products sold and distributed in interstate commerce by respondent were not "union made," that is to say, the said products were not made by artisans or workmen who were members of or affiliated with associations or organizations generally known, recognized, and referred to as "unions."

Respondent agreed to cease and desist forever from the use of the words "union made" either independently or in connection or conjunction with any other word or words in his advertisements or other printed matter, or as a mark, brand, or label imprinted upon or attached to his products, or any of them, and the use of the words "union made" in any way to represent or describe his products that import or imply that the said products so marked, branded, or labeled are made or fabricated by artisans or workmen who are members of or affiliated with associations or organizations generally known, recognized, and referred to as "unions," and from the use of the words "union made" in any other way that may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products sold in commerce by the said respondent are manufactured or fabricated by artisans or workmen who are members of or affiliated with associations or organizations generally known, recognized, and referred to as "unions," or until such time as the said respondent does actually sell and distribute in interstate commerce products which are in truth and in fact manufactured or fabricated by such artisans or workmen who are members of or affiliated with associations or organizations known as "unions."

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 28, 1928.)

307. **False or Misleading Advertising, Trade or Corporate Name, and Offering "Free" Product—Men's and Boys' Suits and Overcoats.**—Respondent, a corporation, engaged in the sale and distribution, through local agents or authorized solicitors located in various States of the United States, of men's and boys' "ready-to-wear" suits and overcoats in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

The International Tailoring Co. is a corporation organized in 1896 under the laws of the State of Illinois. Another corporation of the same name was organized in 1901 under the laws of the State of New York. Said two corporations have the same stockholders and officers and are under the same management as though one corporation. They have been engaged since 1901 in the business of tailoring or manufacturing men's and boys' clothing to order and according to individual measurements. They are represented in the United States by numerous agents and dealers who solicit and take orders for men's and boys' suits, to be and which are made to measure by said corporations. Said corporations are popularly known as one concern, namely, "International Tailoring Co.," and as such have established a large patronage throughout the United States. Since 1901 the said corporations have used the word "International" as a trade name to distinguish clothing manufactured by them from the clothing manufactured by others. Said trade name has been, and is now printed on labels attached to all suits tailored or manufactured by said corporations, and also appears continuously and prominently on much of the advertising matter, consisting of catalogues, style books, and the like circulated extensively throughout the United States by said corporations.

Respondent, in soliciting the sale of its products through the medium of said agents or authorized solicitors, caused advertisements to be inserted in newspapers and other periodicals having circulation between and among various States of the United States featuring the corporate name containing the words, "International Tailors," and in addition, such statements as, "We are now selling our clothing direct to the consumer," "We will give you your unrestricted choice of both a suit and overcoat, or two suits, both for $29.50," "Buy one suit for $29.50 and take your choice of any other suit or overcoat in the house absolutely free! Get both garments for the price of one," and "Every garment union made," while in its booklets, placards, and other printed matter distributed in interstate commerce appeared phrases such as "Extra suit free with each order," or "Suit or overcoat free," when in truth and in fact said respondent (*a*) was not a branch of, or in any way connected with the International Tailoring Co.; (*b*) did not own, operate, or control a mill or factory wherein were made the products sold by it in interstate commerce, and did not make clothing "to measure," or at all, but purchased its products from manufacturers thereof and/or from dealers; (*c*) did not give or furnish an extra suit or overcoat, free of charge, with the purchase of a suit or overcoat, but the regular price thereof was included in the amount paid by the customers as the purported price of one suit or overcoat; (*d*) did not sell or distribute, in interstate commerce, products which were "union made," that is to say, the products sold by the said respondent and designated as "union made" were not made by artisans or workmen who are members of, or affiliated with associations or organizations generally known, recognized, and referred to as "union." In certain of its advertising matter, distributed in interstate commerce, said respondent also made use of the statement, "Sold only under an ironclad guarantee bond by authorized solicitors," while accompanying shipments of products, the said respondent furnished each of its customers with a slip having printed across the top thereof, "Guarantee bond"; when in truth and in fact neither the said statement, nor said slip, constitute a bond or obligation in writing and under seal.

Respondent agreed to cease and desist forever from the use (*a*) of the words "International Tailors" as a part of, or in connection or conjunction with its corporate or trade name, or as a trade brand or designation for its products, and from the use of the words "International Tailors" in advertisements inserted in newspapers and other publications having circulation between and among various States of the United States, or in its advertising matter of whatsoever character distributed in interstate commerce which imports or implies that said respondent is a part of, or connected with the International Tailoring Co., or which may confuse, mislead, or deceive the purchasing public into the belief that said respondent is in any way affiliated with the said International Tailoring Co.; (*b*) of the word "tailors" and the words "Direct to the consumer," or any other word or words which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said respondent makes to the measure of the customer clothing sold by it, or that said respondent either owns, operates, or controls a mill or factory wherein the products sold by it in interstate commerce are actually tailored to measure, manufactured, or fabricated; (*c*) of the words "give" and "free" either independently or in connection or conjunction each with the other, or with any other words or words which import or imply that a suit or an overcoat is in truth and in fact given as a gratuity, or free of charge, with the purchase of a suit or overcoat, and the words "give" and "free" in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the garment offered as a gift or as "free" is in truth and in fact given free, and that its cost is not included in the price of the garment purchased; (*d*) of the words "union made" and the word "union" either independently or in connection or conjunction with any other word or words in its advertisements or advertising matter, or as a trade brand or designation for its products so as to import or imply that the said products are made or fabricated by artisans or workmen who are members of, or affiliated with associations or organizations generally known, recognized, and referred to as "unions," and the use of the words "union made," and the word "union," in any way to define or describe its products which may have the capacity and tendency to mislead, deceive, or confuse the purchasing public into the belief that the said products are made or fabricated by artisans or workmen who are members of, or affiliated with associations or organizations generally known, recognized, and referred to as "unions," when such is not the fact; (*e*) of the statement or representation that its products are sold under a "bond," and of any other statement or representation of like import which is not founded in truth and in fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 7, 1928.)

308. **False or Misleading Brands or Labels—Paint Brushes.**—Respondent, a corporation, engaged in the manufacture of paint brushes, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

A conference of paint-brush manufacturers, held under the auspices of the United States Department of Commerce, adopted uniform methods of measurement for such brushes to become and be effective as of September 1, 1926, and it was the opinion of the manufacturers at such conference, as set forth in Bulletin No. 43, of the Division of Simplified Practice, Bureau of Standards, that numeral designations used on paint brushes should correctly indicate the width of said brushes in inches and fractions thereof, and that the use of such designations indicated to the trade and purchasing public the width of said brushes.

Respondent, in soliciting the sale of and selling its products in commerce between and among various States of the United States, caused certain of its paint brushes to be indicated by numerals which did not correctly and accurately designate the width of said brushes. As an example of the foregoing, the said respondent caused a certain brush marked "XXX Auto" to be stamped with the figure "2" so as to import or imply that the said brush was 2 inches in width, and with the said markings thereon caused the said product to be shipped and distributed in interstate commerce, when in truth and in fact said product did not measure 2 inches in width.

Respondent in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from marking, stamping, branding, or labeling its products by means of numerals or otherwise so as to import or imply that such products are of a width other than is actually the case. Respondent also agreed to cease and desist forever from marking, stamping, branding, or otherwise designating the width of its products by any means whatsoever which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that such products so designated are actually of the width indicated, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 10, 1928.)

309. **False or Misleading Advertising and Brands or Labels—Beverage Compounds—Flavoring Extracts.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of a variety of natural and artificial extracts, coloring compounds and imitation fruit products, and in competition with other corporations, firms, partnerships, and individuals similarly engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused one brand thereof to be advertised in trade journals having circulation between and among various States of the United States as "Pure white grape" and as "Real grape," while in circular letters distributed in interstate commerce, the said brand was referred to as "The only pure white grape on the market for the soda beverage bottler," and as being "Prepared from selected types of grapes." Said trade journals and circular letters were also made use of by respondent to advertise another of the brands of products sold and distributed by it in interstate commerce as "Grape," "True grape," and as "Real concentrated grape." In its price lists distributed among the trade in various States, the said two brands were itemized as "Pure white grape" and as "Grape (with or without color)." Said respondent supplied the trade with labels for use in bottling and selling its alleged "grape" products to retailers of beverages, the said labels featuring the word "Grape" in large distinctive type and, in much smaller type, the words "Ninety-five per cent real grape, five per cent fortification artifically colored, tartaric acid added." The words "Imitation grape," printed in smaller type and inconspicuously placed, also appeared on the label, when in truth and in fact the products advertised, designated, referred to, and described as aforesaid were not those products made from the juice of the grape or the fruit of the same, or as containing the juice or the fruit thereof in such substantial quantity so as to be properly and accurately described, designated, and referred to by the use of the word "grape."

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "grape," either independently or in connection or conjunction with any other word or words, in its advertising matter to designate its products distributed in interstate commerce so as to import or imply that the said products are composed of the juice or the fruit of the grape, and from the use of the word "grape" in any way that may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are composed of the juice of the grape or the fruit of the same; unless, (*a*) if the word "grape" is used to designate the flavor of the said products, the said word shall be immediately preceded by the word "imitation" printed in type equally as conspicuous as that in which the said designating word is printed; or (*b*) if the products are composed in substantial part of the juice or the fruit of the grape so as to derive its color and flavor from the said juice or fruit, and the word "grape" is used to designate the products, in which case the said designating word shall be accompanied by a word or words which shall be printed in type equally as conspicuous as that in which the said designating word is printed so as to clearly indicate that the products are not made wholly from the juice or the fruit of the grape, and that will otherwise properly and accurately represent, define, and describe the products so as to clearly indicate that the same are composed in part of an ingredient or ingredients other than the juice of the grape or the fruit of the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 10, 1928.)

310. **False or Misleading Advertising—Sanitary Fittings for Food Handling Machinery.**—Respondent, an individual, engaged in the sale and distribution of certain types of sanitary fittings for use in food-handling machinery in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of compeition, as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his product in interstate commerce, caused advertisements to be inserted in trade journals having circulation between and among various States of the United States, and which advertisements contained the words, "Nickel, the lifetime metal," as descriptive of the products sold and distributed by him in interstate commerce. Letterheads, blotters, catalogue price lists, and other advertising matter containing the words "Nickel" and/or "Nickel tubing" were also distributed in interstate commerce by said respondent in soliciting the sale of and selling his products, when in truth and in fact the said products so advertised, designated, and described were not made wholly of nickel, but were made in part of a material or materials other than nickel, so as not to be properly and accurately advertised, designated, or described as "nickel."

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in his advertisements or advertising matter of the word "nickel" either independently, or in connection or conjunction with any other word or words so as to import or imply that the said products were manufactured of that product known to the trade and purchasing public as "nickel," and from the use of the word "nickel" in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said products were made of nickel; unless, when said products are made in substantial part of nickel, and in part of some other material or materials, and the word "nickel" is used to designate or describe the products such designating word shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the said designating word is printed so as to clearly indicate that said products are made in part of a material or materials other than nickel.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 7, 1929.)

311. **False or Misleading Advertising—Sanitary Fittings for Food-Handling Machinery.**—Respondent is a corporation engaged in the manufacture of certain types of sanitary fittings for use in food-handling machinery, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused advertisements to be inserted in trade journals, which said advertisements contained such words as "Nickel, the lifetime metal" as descriptive of the products sold and distributed by it in interstate commerce. Respondent also caused booklets to be distributed in which were featured at various places the word "nickel" in such manner as to import or imply that the products to which said words refer were made of nickel, when in truth and in fact said products were not made wholly of nickel, but were made of a material or materials other than nickel so as not to be properly and accurately designated and described as "nickel."

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter of the word "nickel" either independently or in connection or conjunction with any other word or words so as to import or imply that said products are manufactured of that product known to the trade and purchasing public as "nickel," and from the use of the word "nickel," in any way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said products are made of nickel; unless, when said products are made in substantial part of nickel, and in part of some other material or materials, and the word "nickel" is used to designate or describe the products, such designating word shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the said designating word is printed so as to clearly indicate that said products are made in part of a material or materials other than nickel.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 7, 1929.)

312. **False or Misleading Advertising—Wearing Apparel—Household Goods.**—Respondent, a corporation, engaged in the mail-order business, the products sold by it consisting of a large variety of merchandise, including men's, women's, and children's wearing apparel, household effects and the like, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused said products to be described in catalogues as follows: Certain products were described as "Silkolene" or as "Velveteen, silk finish," or as "Rayon tussah," or as "Novelty tussah," or as "Silk check voile," or as "Jacquard tussah," or as "Mercerized pongee," or as "Pongee," or as "Rayon silk," when in truth and in fact the said products were not made of silk, the product of the cocoon of the silkworm, and contained no silk whatsoever. Certain other of its products were described in said catalogues as "Tussah silk," or as "Silk cotton crêpe" or as "Silk plush," or as "Satin de chine," or as "Printed pongee," or as "Gloria silk," or as "Satin," or as "Silk bengaline," when in truth and in fact said products were not made wholly of silk, but were made in part of a material or materials other than silk. Other products were described in said advertising matter as "Flannel" or as "Wool mixed," when in truth and in fact the said products were not made of wool, but were made wholly or in part of a material or materials other than wool. Other products were described as "Angora wool polaire," or as "Camel's hair Angora polaire," when in truth and in fact the said products contained neither wool of the Angora goat, nor camel's hair. Other products of merchandise were described as "Linene," or as "Damask," when in truth and in fact, the said articles were not made of linen so as to be properly and accurately described as either linen or damask. Hats were described in said catalogues as "Woven toyo Panama," when in truth and in fact such hats were not made of Panama straw, but were made of material or materials other than Panama straw. Lace products and various other articles were described as "Cluny," or as "Nottingham," or as "Chantilly," or as "Filet," or as "French batiste," or as "French voile," or as "Imported English broadcloth," or as "French marquisette," or as "French serge," or as "Persian leather," or as "Quebec leather," or as "Milan," or as "Milanese," when in truth and in fact, none of the said products or articles was imported from the places or countries indicated, but were of domestic production and manufacture. Other articles were described as "Chamoisette" or as "Chamois-suede," when in truth and in fact said articles were not made of chamois or suede, both of which are leather prepared from the skins of certain animals, but were made of a material or materials other than such leathers.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use (*a*) of the words "silk" or "silkolene," "tussah," "pongee" or "satin," either independently or in connection or conjunction each with the other, or with any other word or words, letter or letters, in its advertisements or advertising matter distributed in interstate commerce, so as to import or imply that the products so designated and referred to are made of silk, and from the use of the aforesaid quoted words, or any of them, in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the products so designated or referred to are made of silk; unless, when the products are composed in part of silk, and the word "silk" or "silkolene," "tussah," "pongee" or "satin" is used as descriptive thereof, in which case such words shall be accompanied by some other word or words, printed in type equally as conspicuous as that in which the said descriptive word is printed, so as to clearly indicate that said products are not made wholly of silk; (*b*) of the words "wool" and "flannel" either independently or in connection or conjunction each with the other, or with any other word or words, letter or letters so as to import or imply, or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products so designated and referred to are made of wool; unless when said products are composed in part of wool, and the word "wool" or "flannel" is used as descriptive thereof, in which case such words shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the said descriptive word is printed, so as to clearly indicate that the said products are not made wholly of wool; (*c*) of the words "linene" or "damask" either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply, or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products so designated or referred to are made of linen, a product prepared from flax or hemp; (*d*) of the words or phrases "Angora wool polaire" or "Camel's hair Angora" in any way so as to import or imply that the products so described are made from either the wool of the Angora goat or from camel's hair, or both; (*e*) of the word "Panama" either independently or in connection or conjunction with any other word or words, as descriptive of hats which are not made in Panama, or made in accordance with the process used in the manufacture of Panama hats, from the young leaves of the jipijapa; (*f*) of the words, "Cluny," "Nottingham," "Chantilly," "Filet," "French," "English," "Persian," "Milan" or "Milanese" or "imported" either independently or in connection or conjunction each with the other, or with any other word or words, or in any other way so as to import or imply, or which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that the products so designated or referred to were manufactured abroad, or in the country indicated by the aforesaid designating words, or any of them, or have been imported from abroad; (*g*) of the words "chamois" or "chamoisette" or "suede" either independently or in connection or conjunction each with the other, or with any other word or words as descriptive of its products so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made or fabricated from leather, a product prepared from the skins or hides of certain animals.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (January 7, 1929.)

313. **False or Misleading Advertising and Brands or Labels—Garters.**—Respondent, a corporation, engaged in the manufacture of garters, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused the garter product manufactured by it to be advertised, sold, and distributed in interstate commerce through the medium of jobbers directly to the retail and other trade as "Pure dye silk," the said product so advertised and sold being wound on paper spools bearing the trade brand, label, or designation containing the words "Pure dye silk honeycomb elastic," when in truth and in fact the dye used to color, tint, blend, or shade said garter product was not a product free from mixture or combination with extraneous matter so as to be properly and accurately described as "pure dye," but was a product adulterated by an admixture with a foreign substance designated to increase the weight or body of said product.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the words "pure dye" either independently or in connection or conjunction with any other word or words to describe the coloring matter used to tint, blend, or shade its product so as to import or imply that said product is tinted, shaded, or blended with dyestuffs that are unadulterated by an admixture with a foreign substance or substances, when such is not the fact; and said respondent also agreed to cease and desist from the use of the word "pure" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of the dyestuff used to color its product which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that said product is colored with dyestuffs free from mixture or combination with a so-called weighting or other foreign substance or substances.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 24, 1929.)

314. **False or Misleading Advertising—Philippine Mahogany.**—Respondent, a corporation, engaged in the sawing of lumber and in the manufacture of doors, sashes, panels, and interior finish, and in the sale and distribution of such products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Mahogany is the product of the genus *Swietenia*, tribe Swietenioideæ, of the tree family scientifically called Meliaceæ. The genus *Swietenia*, of which there are several known species, is the only one which produces true mahogany. Trees of the *Swietenia* group grow principally in the West Indies, southern Florida, southern Mexico Central America, Venezuela, and Peru. No species of the genus *Swietenia* of this tree family grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused certain products of its manufacture to be advertised by means of invoices and other printed matter, distributed in interstate commerce, as "Lauan (Philippine mahogany)," and as "Tanguile (Philippine mahogany)," and sold and distributed said products so advertised, represented, and designated in commerce between and among various

States of the United States, when in truth and in fact said products were not those products, or were not made from those products which were derived from the tree of the mahogany or Meliaceæ family so as to be properly and accurately represented or designated as "Mahogany," or as "Philippine mahogany," but were derived from the tree family scientifically called "Dipterocarpaceæ."

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Philippine mahogany" either independently or in connection or conjunction with the words "Lauan" or "Tanguile," or with any other word or words in its advertisements, or as a trade designation for said products so as to import or imply that said products are those products, or are made from those products which are derived from the trees of the mahogany or Meliaceæ family, when such is not the fact; and said respondent further agreed to cease and desist forever from the use of the word "Mahogany" either independent or in connection or conjunction with the words "Philippine," "Lauan," or "Tanguile," or with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are those products or are from those products which are derived from the trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 24, 1929.)

315. **False or Misleading Brands or Labels—Cigars.**—Respondents, copartners, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Respondents manufactured cigars from tobacco, most of which was grown in the State of Pennsylvania, and said product also contained tobacco grown in Porto Rico used as a filler. The cigars manufactured as aforesaid by the said respondents were caused to have affixed thereto a brand or label containing the word "Tampa," and with the said brand or label affixed thereto said cigars were sold and distributed in interstate commerce. In addition to the use of such brands or labels upon their products, respondents stamped, or caused to be stamped on the boxes or containers the following representations: "The genuine," "The original," and "Beware of imitations," when in truth and in fact said cigars so branded or labeled and sold in interstate commerce were not made in the city or district of Tampa, in the State of Florida, and were not manufactured of Tampa tobacco.

Respondents agreed to cease and desist forever from the use of the word "Tampa" either independently or in connection or conjunction with any other word or words as descriptive of their products, or in any way so as to import or imply that said products were made or manufactured of Tampa tobacco and/or made in the city or district of Tampa, in the State of Florida, and from the use of the word "Tampa" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said products are in truth and in fact cigars made in the city or district of Tampa, in the State of Florida, and/or of Tampa tobacco.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (February 4, 1929.)

316. **Resale Price Maintenance—Horse and Mule Shoes.**—Respondent, a corporation, engaged in the manufacture of horse and mule shoes and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, sold the products of its manufacture chiefly through the medium of traveling salesmen to the distributing and wholesale trade located in different States of the United States. Further in the course of its business, said respondent adopted the system involving the cooperation of the aforesaid trade for the maintenance and enforcement of prices established by it and at which its product should be sold by such trade, and which system said respondent caused to be maintained and enforced. Said respondent caused it to be generally known by means of letters, through its salesmen and other means that it expected and would require its customers to maintain resale prices established by it, and as a means of effecting obedience to its system, said respondent in conjunction with the trade aforesaid employed the following cooperative methods, to wit: (*a*) Sought and secured through its salesmen, by letters and by other means, agreements, promises, and assurances from its customers that they would cooperate in the maintenance of resale prices suggested by it, and threatened to and did withhold orders for supplies from those who failed or refused to maintain its suggested resale prices; (*b*) sought and secured the cooperation of its customers in reporting dealers who failed to maintain its suggested resale prices and solicited and obtained promises and assurances from such offending dealers to maintain the suggested resale prices as a condition to further supplying such offending dealers with products; (*c*) sought and secured promises and assurances from its distributing and other trade that such trade would maintain suggested resale prices and would not depart therefrom to meet competitiveprices without first having obtained the permission and approval of said respondent.

Respondent agreed to cease and desist forever from the following cooperative methods: (*a*) Seeking and securing from the distributing and other trade, agreements, promises, or assurances that such trade would cooperate with said corporation in the maintenance of any system of resale prices whatsoever, and that said trade would not depart from such system of resale prices to meet competitive prices without first obtaining the permission and approval of said corporation; (*b*) seeking and securing the cooperation of its customers in reporting dealers who fail to maintain resale prices established by it; (*c*) seeking and securing by any means whatsoever promises, agreements, or assurances of cooperation from alleged price cutters that such offenders will maintain suggested resale prices as a condition to further supplying said offenders with products; (*d*) directly or indirectly carrying into effect by cooperative methods any system whatsoever for the maintenance of resale prices established by the said corporation.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 6, 1929.)

317. **False or Misleading Advertising and Brands or Labels—Enamel Paint.**—Respondent, a corporation, engaged in the manufacture of an enamel for use in the painting of automobiles, and in the sale and distribution of such product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product in interstate commerce, caused the same to be designated, described, and represented in its circulars and other advertising matter circulated in interstate commerce as "Auto Rubber Baked Enamel" and "Insist on getting the genuine Auto Rubber Baked Enamel and take no other. Manufactured for an appreciative public from highest grade rubber and gums." Said respondent also caused its product to be sold and distributed in interstate commerce in containers having affixed thereto brands or labels bearing the words "Auto Rubber Baked Enamel," when in truth and in fact said product so advertised, designated, represented, and sold in interstate commerce was not "baked" as the expression is generally understood to mean by the trade and purchasing public and did not contain rubber or rubber in such substantial quantity so as to be properly and accurately represented, designated, or described as and to be rubber enamel.

Respondent agreed to cease and desist forever from the use of the words "rubber baked" either independently or in connection or conjunction with the word "enamel," or with any other word or words as a trade brand, label, or designation for its product, and from the use of the words "rubber" and "baked" either independently or in connection or conjunction each with the other, or with any other word or words as a trade brand, label, or designation for its product, so as to import or imply that said product is baked and/or is manufactured from rubber or contains rubber in such substantial quantity so as to be properly and accurately represented, designated, or described as and to be rubber enamel; respondent further agreed to cease and desist from the use in its advertising matter of whatsoever character of the words "rubber" and "baked" either independently or in connection or conjunction each with the other, or with any other word or words, or in any way to designate or describe its product that may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is "baked" or is manufactured from rubber or contains rubber in such substantial quantity so as to be properly and accurately represented, designated, or described as and to be rubber enamel.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 6, 1929.)

318. **False or Misleading Advertising—Hardwood Lumber—Philippine Mahogany.**—Respondent, a corporation, engaged in the importation into the United States from the Philippine Islands of lumber and logs derived from trees grown on said islands, and in the sale and distribution of the same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Mahogany is the product of the genus *Swietenia*, tribe Swietenioideæ, of the tree family scientifically called Meliaceæ. The genus *Swietenia*, of which there are several known species, is the only one which produces true mahogany. Trees of the *Swietenia* group grow principally in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru. No species of the genus *Swietenia* of this tree family grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused certain of said products to be designated "Philippine mahogany," and in its advertisements, circular letters, price lists, and other printed matter distributed in interstate commerce represented, designated, and referred to said products as "Philippine mahogany" or as "Lauan, Philippine mahogany," when in truth and in fact the said products so advertised, represented, designated, and sold in interstate commerce were not products derived from the trees of the mahogany or Meliaceæ family, so as to be properly and accurately advertised, designated, represented, or referred to as "Philippine mahogany" or as "mahogany," but were products derived from the tree family scientifically called Dipterecarpaceæ.

Respondent agreed to cease and desist forever from the use of the words "Philippine mahogany" either independently or in connection or conjunction with any other word or words in its advertisements, or as a trade designation for said products so as to import or imply that such products are those products which are derived from the trees of the mahogany or Meliaceæ family, when such is not the fact; respondent further agreed to cease and desist from the use of the word "mahogany" either independently or in connection or conjunction with the words "Philippine" or "Lauan," or with any other word or words, or in any way as descriptive of said products which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are those products which are derived from the trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 15, 1929.)

319. **False or Misleading Advertising and Trade Name—Knitted and Sports Garments.**—Respondent, a corporation, engaged in the jobbing business, selling and distributing products consisting of sportswear and knitted outerwear in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Respondent, in the course and conduct of its business, caused its said corporate or trade name containing the words "Manufacturing

Company" to be used in its advertisements inserted in newspapers, magazines, and trade papers having circulation between and among various States of the United States, and also caused its said corporate and trade name containing the words "Manufacturing Company" to be used on its letterheads, envelopes, and other printed matter distributed by it in interstate commerce, while in its circulars the said corporate and trade name, containing the words "Manufacturing Company," has also been used, together with the statement, "Our tremendous purchasing power and volume production enables us to offer you values presenting remarkable sales opportunity," when in truth and in fact said respondent did not own, operate, or control, or had not owned, operated, or controlled for more than one year last past, a mill or factory for the manufacture or fabrication of the products sold by it in interstate commerce, or wherein the cloth or materials from which said products are made, and said respondent filled orders for products manufactured or fabricated at mills or factories which it neither owned, controlled, or operated.

Respondent agreed to cease and desist forever from the use of the word "Manufacturing" or "Mfg." as part of, or in connection or conjunction with its corporate or trade name in the sale and distribution of its products in interstate commerce, and from the use of its said corporate or trade name containing the word "Manufacturing" or "Mfg." in advertisements inserted by it in newspapers, magazines, or trade papers having circulation between and among various States of the United States, or on its letterheads, envelopes, or other printed matter distributed in interstate commerce in soliciting the sale of and selling its products, and the use of the word "Manufacturing" in any other way which may import or imply that the said respondent either owns, controls, or operates a mill or factory for the manufacture or fabrication of the products, or of the cloth or materials from which said products are made, or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent either owns, controls or operates a mill or factory wherein are manufactured or fabricated the products, or the cloth or materials from which said products are made.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (February 18, 1929.)

320. **False or Misleading Advertising—Mahogany.**—Respondent, a corporation, engaged in the manufacture of tables, chairs, and radio cabinets and in the sale and distribution of such products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the fol-

lowing stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Mahogany is the product of the genus *Swietenia*, tribe Swietenioideæ, of the tree family scientifically called Meliaceæ. The genus *Swietenia*, of which there are several known species, is the only one which produces true mahogany. Trees of the *Swietenia* group grow principally in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru. No species of the genus *Swietenia* of this tree family grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Walnut is a product of the genus *Juglans*, which said genus contains two or more known species and which are of the tree family scientifically called Juglandaceæ.

Respondent, in the course and conduct of its business in soliciting the sale of and selling certain of the products of its manufacture in interstate commerce, caused them to be designated, represented, and referred to in its price lists and other advertising matter, distributed in interstate commerce, as "mahogany" or "walnut," the said price lists containing the additional representation "All Davenport, Console, End, and Gateleg Tables are made of solid mahogany tops and gum understock, etc." Its interstate sales and distribution of the aforesaid products were accompanied by invoices, wherein the products were described, represented and referred to as "mahogany," "Tudor mahogany," "brown mahogany," "Red mahogany," and "walnut;" when in truth and in fact said products advertised, designated, represented, and referred to as "mahogany" with or without other qualifying words, were not those products derived from trees of the mahogany or Meliaceæ family so as to be properly and accurately designated "mahogany," and the said products advertised, designated, and referred to as "walnut" were not those products derived from the tree family scientifically called Juglandaceæ so as to be properly and accurately designated "walnut," but were products derived from the tree family scientifically called Dipterocarpaceæ.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "mahogany" and "walnut" either independently or in connection or conjunction with any other word or words in its advertisements, or as a trade designation for its products so as to import or imply that such products are those products which are derived, respectively, from trees of the mahogany or Meliaceæ family, or from trees of the walnut or Juglandaceæ family, when such is not the fact; and said respondent also agreed to cease and desist from the use of the words "mahogany" or "walnut" either independently or in connection or conjunction with any other word or words, or in any way, as descriptive of products which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are those products which are derived, respectively, from the mahogany or Meliaceæ family, or from the walnut or Juglandaceæ family, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 18, 1929.)

321. **False or Misleading Advertising—Philippine Mahogany.**—Respondent, a corporation, engaged in the sale and distribution of lumber and other wood products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Mahogany is the product of the genus *Swietenia*, tribe Swietenioideæ of the tree family scientifically called Meliaceæ. The genus *Swietenia*, of which there are several known species, is the only one which produces true mahogany. Trees of the *Swietenia* group principally grow in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru. No species of the genus *Swietenia* of this tree family grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products, caused certain of said products to be advertised in interstate commerce as "Philippine mahogany," and sold and distributed such products so represented and designated in commerce between and among various States of the United States, when in truth and in fact said products so advertised, represented, and designated were not those products derived from trees of the mahogany or *Meliaceæ* family so as to be properly and accurately represented, designated, or referred to as "Philippine mahogany" or as "mahogany," but were products derived from the tree family scientifically called dipterocarpaceæ.

Respondent agreed to cease and desist forever from the use of the words "Philippine mahogany" either independently or in connection or conjunction with any other word or words in its advertisements or as a trade designation for said products so as to import or imply that such products are those products which are derived from trees of the mahogany or Meliaceæ family, when such is not the fact; and said respondent further agreed to cease and desist from the use of the word "mahogany" either independently or in connection or conjunction with the word "Philippine" or with any other word or words, or in any way, as descriptive of said products which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are those products which are derived from trees of the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 18, 1929.)

322. **Simulation of Corporate Name—Cloth.**—Respondents, copartners, engaged in the sale and distribution of cloth in interstate commerce, and in competition with other partnerships, corporations, firms, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

American Woolen Company is a corporation, incorporated under the laws of the State of New Jersey, its properties having been transferred in 1916 to American Woolen Company, a corporation organized under the laws of the State of Massachusetts. Said American Woolen Company at all times since the date of its original incorporation was engaged in the sale and distribution of cloth in interstate commerce, and there was at all times herein referred to a constant current of trade and commerce in the products sold and distributed by it in interstate commerce, said American Woolen Company being in competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution of cloth in interstate commerce, the said respondent being one of its competitors.

Respondents, in the course and conduct of their business, adopted in or about 1925 a trade name containing the words "American" and "Woolen" and "Company," and which trade name containing the said words the said respondents used on their letterheads, envelopes, business cards, and other advertising matter distributed in interstate commerce in the sale and distribution of its products. Such use of the trade name containing the words "American," "Woolen," and "Company" due to the similarity to the corporate and trade name of the American Woolen Company of New Jersey and Massachusetts, tended to import or imply that the said respondents were and are one and the same and/or that said respondents were a branch of, or connected or associated with, American Woolen Company (of New Jersey and/or Massachusetts), when in truth and in fact the said respondents were not, at no time have been, and are not now a branch of, or in any way connected or associated with American Woolen Company aforesaid.

Respondents agreed to cease and desist forever from the use of the words "American" and "Woolen" as part of or in connection or conjunction with their trade name in the sale and distribution of their products in interestate commerce, and from the use of their trade name containing the words "American" and "Woolen" on their letterheads, envelopes, business cards, and other advertising matter circulated in interstate commerce so as to import or imply that said respondents are a part of, or in any way connected or associated with American Woolen Company of New Jersey and/or Massachusetts; and said respondents also agreed to cease and desist from the use of the words "American" and "Woolen" either independently or in connection or conjunction with any other word or words, or in any way as part of, or in connection or conjunction with their trade name, or in their advertising matter of whatsoever character which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that said respondents are a part of, or in any way connected or associated with American Woolen Company of New Jersey and/or Massachusetts.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (February 23, 1929.)

323. **False or Misleading Advertising and Brands or Labels—Grape Concentrate.**—Respondent, a corporation, engaged in the manufacture of concentrates, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused the same to be advertised by means of booklets, price lists, and other advertising matter circulated in interstate commerce, and also caused to be affixed to the bottles containing said products, brands, or labels purporting to represent said products and/or the ingredients composing the same. Said respondent caused to be affixed to the containers of one of its products sold in interstate commerce a bottle label designating said product as "Redwine," together with the following representation: "An excellent stimulant." The said label also contained a pictorial representation of a bunch or cluster of grapes. The said product was also represented on said label as follows: "Contains $\frac{1}{10}$ of 1 per cent benzoate of soda," and in type less conspicuous than that in which the trade designation "Redwine" was printed appeared the qualifying statements: "Imitation" and "Artificial Color and Flavor." The aforesaid product, together with other products sold by said respondent, was also represented in the advertising matter as "Redwine" and "Whitewine," "Made from grape juice base. These are not synthetic flavors, but a flavor from the pure grape juice." "Our cordials are made from pure fruit base, flavored with the natural flavor and oils. These flavors are made from the fruit itself." "Our Redwine, Whitewine, Grape and Manhattan Cocktails Cordials are made from grape juice base; one kind is made from white grapes, the other from red grape juice," when in truth and in fact the aforesaid product designated "Redwine" or "Whitewine" was not composed of the juice of the grape so as to be properly designated "wine," "redwine," or "whitewine"; the said product was not an "excellent stimulant" as represented on the bottle labels, nor was the benzoate of soda content accurately represented as one-tenth of 1 per cent. The representation in said advertising matter to the effect that the products "Are not synthetic flavors" and that they are made "From the pure grape juice" and/or "Flavored with the natural fruit flavor" is not founded in fact, as the said products contained ingredients other than grape and substitute for the natural grape flavor.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "wine" either independently or in connection or conjunction with the word "red" or "white," or with any other word or words in its advertisements, or as a trade brand or designation for its products so as to import or imply that said product is composed of a fruit juice, when such is not the fact, unless, when the product is composed in substantial part of an indicated wine so as to derive its color and flavor from the fruit juice of which it is made, and the word "wine" is used either independently or otherwise to represent or designate said product, in which case the word "wine" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "wine" is printed so as to clearly indicate that the product is not composed wholly of wine but contains ingredients or substitutes other than that of which wine is composed. Said respondent further agreed to cease and desist forever from the use of the word "grape" or the name of any other fruit and/or the use of a pictorial representation of grapes or of another fruit so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said product is composed of the juice of the grape, or other fruit indicated, when such product is not composed of the juice of the fruit indicated. Said respondent further agreed to cease and desist forever from the representation that a product is a "stimulant" and/or contains one-tenth of 1 per cent benzoate of soda, when in truth and in fact said product so represented is not a stimulant and does not contain benzoate of soda in the amount as indicated.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be

used in evidence against it in the trial of the complaint which the commission may issue. (February 23, 1929.)

324. **False or Misleading Advertising—Misrepresenting Product—Hardwoods—Mahogany (Philippine).**—Respondent, a corporation, engaged in the sale and distribution of lumber in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein:

Mahogany is the product of the genus *Swietenia*, tribe Swietenioideæ of the tree family scientifically called Meliaceæ. The genus *Swietenia*, of which there are several known species, is the only one which produces true mahogany. Trees of the *Swietenia* group grow principally in the West Indies, Venezuela, and Peru. No species of the genus *Swietenia* of this tree family grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling certain of its products in interstate commerce, caused the same to be designated "Philippine mahogany" and/or "Bataan mahogany," and also caused the words "Philippine mahogany" to be printed on its letterheads, invoices, stock and price lists, and pamphlets distributed in interstate commerce as descriptive of said products. The words "Bataan mahogany" were also used on the said stock and price lists to describe products sold by said respondent in interstate commerce, when in truth and in fact the said products so advertised, designated, and sold in interstate commerce were not those products derived from trees of the mahogany or meliaceæ family so as to be properly and accurately advertised, designated, or referred to as "Philippine mahogany" or as "Bataan mahogany" or as "mahogany," but were products derived from the tree family scientifically called Dipterocarpaceæ.

Respondent in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Philippine mahogany" and "Bataan mahogany" either independently or in connection, conjunction, or combination with any other word or words in its advertisements, or as a trade designation for said products so as to import or imply that such products are those products which are derived from trees of the mahogany or meliaceæ family, when such is not the fact; and the said respondent also agreed to cease and desist forever from the use of the word "mahogany" either independently or in connection with the words "Philippine" or "Bataan," or with any other word or words, or in any way as descriptive of its said products which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are those products which are derived from trees of the mahogany or "meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 27, 1929.)

325. **False or Misleading Advertising and Name for Product—Malt Sirup.**—Respondents, an individual and a corporation, respectively, engaged in the sale and distribution of malt sirup in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein:

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their products in interstate commerce, caused advertisements to be inserted in newspapers and other publications having circulation between and among various States of the United States, the said advertisements containing such language as "Made where the grain is nature's best," followed by "Canadian Maid Malt Syrup" in large, heavy type. This advertisement also included a pictorial representation of a can bearing a label on which appeared "Canadian Maid Malt Syrup," together with an illustration of a maple leaf, a recognized insignia of the Dominion of Canada. Respondents also distributed in interstate commerce, or caused to be distributed in interstate commerce, other forms of advertising matter wherein the corporate or trade name containing the words "Canadian Maid" appeared, and use was made of the word "Canadian" as descriptive of and as a designation for the product sold by said respondents, when in truth and in fact the said product advertised and sold in interstate commerce under the aforesaid corporate or trade name, containing the words "Canadian Maid" and the other trade brands, designations, and labels aforesaid, was not obtained from or manufactured in the Dominion of Canada, and/or imported into the United States from a foreign country, but was manufactured in the United States of ingredients obtained from local sources.

Respondents, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist forever from the use as a corporate or trade name, brand, or designation for the said product, or in newspapers or other advertising matter distributed in interstate commerce, of the words "Canadian," "Canadian Maid," or "Imported," either independently or in connection or conjunction or combination each with the other, or with any other word or words, pictorial representations or insignia, so as to import or imply, or that may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said product so advertised or designated is manufactured in Canada and/or has been imported into the United States or has been obtained from a foreign source, when such is not the fact.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 8, 1929.)

326. **False or Misleading Advertising—Dresses, Dress Goods, Spreads, Draperies, Curtains.**—Respondent, a corporation, engaged in the sale and distribution, among other things, of men's, women's, and children's wearing apparel in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused catalogues to be circulated between and among various States of the United States, in which said catalogues respondent represented certain of its articles of merchandise as follows: Spreads, dresses, dress goods, drapes, and curtains were described as "rayon," "rayon de chine," "rayon lace cloth," "rayon gauze," "rayon marquisette," "alpaca rayon," or "Du Tone rayon alpaca," when in truth and in fact said products were not made wholly of rayon, a product the chief ingredient of which is cellulose, but were made in part of a material or materials other than rayon. Certain of its dresses and dress goods were described as "silk mixed crêpe," "silk warp Faille poplin," "silk mixed Canton," "Maule," "silk mixed crêpe de chine," when in truth and in fact, said products were not made wholly of silk, the product of the cocoon of the silkworm, but were made in part of a material or materials other than silk. Certain of its products described as "satin finish" or as "satin weave" were made of cotton. Lace curtains described as being "silk fringed" were in truth and in fact provided with a fringe of rayon, while certain of its dresses were described as "linene," when as a matter of fact such dresses were not made of linen, a product prepared from flax or hemp. Certain other of its products were described as "wool mixed," when in truth and in fact such products were not made wholly of wool, but were composed in part of a material or materials other than wool.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use (*a*) of the words "silk" or "satin," either independently or in connection or conjunction with any other word or words in its advertisements or advertising matter distributed in interstate commerce so as to import or imply that the products so designated and referred to are made of silk, and from the use of the words "silk" or "satin" in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the products so designated or referred to are made of silk, unless when the products are composed in part of silk and the words "silk" or "satin" are used, as descriptive thereof, in which case such words shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the said descriptive word or words are printed so as to clearly indicate that said products are not made wholly of silk; (*b*) of the word "wool," either independently or in connection or conjunction with any other word or words, or in any way, so as to import or imply, or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products so designated and referred to are made of wool, unless when said products are composed in part of wool and the word "wool" is used as descriptive thereof, in which case such word or words shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the said descriptive word is printed so as to clearly indicate that the said products are not made wholly of wool; (*c*) of the word "rayon," either independently or in connection or conjunction with any other word or words, or in any way, so as to import or imply or which may have the capacity and tendency to mislead the purchasing public into the belief that the products so designated and referred to are made of rayon, a product the chief ingredient of which is cellulose, unless when said products are composed in part of rayon and the word "rayon" is used as descriptive thereof, in which case the word "rayon" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the said descriptive word is used so as to clearly indicate that said products are not made wholly of rayon; (*d*) of the word "linene," either independently or in connection or conjunction with any other word or words, or in any way so as to import or imply or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products so designated or referred to are made of linen, a product prepared from flax or hemp.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 12, 1929.)

327. **False or Misleading Advertising and Brands or Labels—Piece Goods.**—Respondent, a corporation, engaged in the business of converting cotton, cotton and rayon, and cotton and silk materials into piece goods and in the sale and distribution of the same in interstate

commerce, in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, designated a fabric treated and sold by it in interstate commerce and composed of cotton warp and silk filler as "silk chiffon" or "silk mull," and attached to bolts of such fabrics when sold labels containing the words "silk chiffon" or "silk mull," when in truth and in fact the greater portion by weight of the materials of which such fabrics were made was cotton.

Respondent, in soliciting the sale of fabrics not composed entirely of silk, and in the sale of the same in interstate commerce, agreed to cease and desist forever from the practice of designating such fabrics as "silk chiffon" and "silk mull" and from so labeling such fabrics.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 20, 1929.)

328. **False or Misleading Advertising—Trade or Corporate Name and Brands or Labels—Knit Goods, Ties, Cravats.**—Respondents, copartners, engaged in the sale and distribution of knit goods, cravats, ties, and other similar goods in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their products in interstate commerce, caused their trade name, containing the words "Knitting Mills," to be used on letterheads, envelopes and other printed matter circulated and used in interstate commerce, and also on labels affixed to said products, when in truth and in fact said respondents did not own, operate, or control a mill or factory in which the merchandise sold by them was fabricated and/or knitted, but filled their orders for such merchandise with products made and fabricated in factories which they neither owned nor controlled.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use on stationery or other printed matter circulated in interstate commerce of a trade name containing the words "Knitting Mills," or either of said words, or of any trade name containing the word "Knitting" or the word "Mills" so as to import or imply that said respondents own, operate, or control a mill or factory where the merchandise sold by them is fabricated and/or knitted.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 22, 1929.)

329. **False or Misleading Trade or Corporate Name, Advertising, and Brands or Labels—Fountain Pens, Pencils, Ink.**—Respondent, a corporation, engaged in the manufacture of fountain pens, pencils, and ink and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Thomas A. Edison, for more than 30 years last past, has been known and recognized throughout the United States and foreign countries as an inventor and a manufacturer of various products. It is a matter of general knowledge that the names "Thomas A. Edison" and "Edison" for many years have been prominently associated with all kinds of novelties. Products invented by Thomas A. Edison are now, and for more than 20 years last past have been, manufactured and sold by various individuals, firms, partnerships, and corporations throughout the United States, and which individuals, firms, partnerships and corporations are owned and/or controlled by Thomas A. Edison, or are licensed by him to use the name "Edison" as part of their trade or corporate names to the end that the use of the name "Edison" as part of a business style or corporate name, and the name "Edison" affixed to an article tends to import or imply to the purchasing public that such article was invented, manufactured, or made by or under the direction, supervision, or approval of Thomas A. Edison, and that the use of such name was authorized by him. The names "Thomas A. Edison" and "Edison" are gnerally used by authorized individuals, firms, partnerships, and corporations in the particular script handwriting of Thomas A. Edison as a trade-mark or brand upon the products, and this particular script lettering is well known and identifies and distinguishes said products as those of the said Thomas A. Edison, or of the individuals, firms, partnerships and corporations conducting business under his authorization or license.

Respondent, in the course and conduct of its business, sold and distributed the products of its manufacture in commerce between and among various States of the United States. Pursuant to said business, said respondent used its corporate and trade name, containing the word "Edison" in its advertising matter inserted in magazines and other periodicals as well as on its letterheads, envelopes, display signs, and other printed matter distributed in interstate commerce. It also caused the word "Edison" to be affixed to its products and to be printed on, or in, the containers of said products, and which products, so branded and designated, it sold and distributed in interstate commerce. On certain of its stationery respondent made use of the following words: "When better fountain pens are made Edison will make them," and in which slogan, as well as in other of its advertising media, the word "Edison" was printed in script so as to simulate the word "Edison" in the signature of Thomas A. Edison, and as used by numerous individuals, firms, partnerships, and corporations with the authorization and/or license of said Thomas A. Edison, when in truth and in fact the said respondent was not, and at no time had been, in any way connected or associated with, or licensed by the said Thomas A. Edison, either directly or indirectly, to use the name "Edison" in the course and conduct of its business aforesaid.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use, as part of or in connection or conjunction with its corporate or trade name, of the word "Edison" printed in script so as to simulate the word "Edison" in the signature of Thomas A. Edison; and said respondent also agreed to cease and desist from the use of the word "Edison" in such simulating script in its magazines or other advertising matter of whatsoever character circulated in interstate commerce, or on its brands or labels affixed to products sold and/or distributed in interstate commerce, so as to import or imply that said respondent is in any way authorized or licensed by Thomas A. Edison, or by any of his owned or controlled companies, to use the name "Edison" as aforesaid. Respondent further agreed to cease and desist from the use of the word "Edison," either independently or in connection or conjunction with its corporate or trade name, in its advertising matter, or on its brands or labels, circulated in interstate commerce which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that said respondent is authorized or licensed by Thomas A. Edison, or any of his owned or controlled companies to use the name "Edison" as aforesaid, unless, when the word "Edison" other than in the simulated script aforesaid, is used as part of or in connection or conjunction with its corporate or trade name, in its advertising matter, or on its brands or labels affixed to products sold and distributed in interstate commerce, in which case the said corporate or trade name shall be immediately accompanied by suitable words or a statement clearly indicating that said respondent is not connected or associated with Thomas A. Edison, or any of his owned or controlled companies.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 22, 1929.)

330. **False or Misleading Advertising and Brands or Labels—Oysters.**—Respondent, a corporation, engaged in the growing of oysters and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused circulars and other advertisements to be circulated in interstate commerce, which advertisements contained the word "Bluepoints" as descriptive of certain of the oysters so offered for sale and sold by said respondent; respondent also caused labels containing the word "Bluepoints" to be placed upon the barrels in which it shipped part of its products; when in truth and in fact, the product so labeled was not the product known as "Bluepoints."

Respondent, in advertising and soliciting the sale of its products, and in selling the same in interstate commerce, agreed to cease and desist forever from the use of the word "Bluepoint," either independently or in connection with any other word or words so as to imply that the oysters so advertised and labeled are "Bluepoints"; and the use of the word "Bluepoint" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that its products, or any of them, are "Bluepoints."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 25, 1929.)

331. **False or Misleading Advertising—Mahogany.**—Respondent, a corporation, engaged in the sale and distribution of domestic and imported hardwoods, including lumber from the Philippine Islands, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Mahogany is the product of the genus *Swietenia*, tribe Swietenioideæ of the tree family scientifically called Meliaceæ. The genus *Swietenia*, of which there are several known species, is the only one which produces true mahogany. Trees of the *Swietenia* group grow principally in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru. No species of the genus *Swietenia* of this tree family grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused the same to be advertised, represented, and designated in price lists distributed in interstate commerce as "mahogany," "red Lauan mahogany" or as "Philippine mahogany," and made use in said price lists of such language as "Makes a wonderful, low-priced mahogany" and "This is an excellent wood for interior trim, a little harder than Lamao mahogany and a little softer than Bataan mahogany; takes mahogany stain wonderfully." Respondent also caused said products, sold and distributed in interstate commerce, to be invoiced as "Philippine mahogany" or as "Philippine Mhg." or as "Phil. Mhg.," when in truth and in fact said products so advertised, represented, designated, and referred to were not those products derived from trees of the mahogany or Meliaceæ family so as to be properly and accurately designated as "Philippine mahogany" or as "mahogany," but were products derived from the tree family scientifically called Dipterocarpaceæ.

Respondent, in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use of the words "Philippine mahogany," "Bataan mahogany," "Lamao mahogany," or "red Lauan mahogany," either independently or in connection or conjunction with any other word or words, in its advertisements or as a trade designation for said products so as to import or imply that such products are those products which are derived from trees of the mahogany or Meliaceæ family, when such is not the fact; and said respondent further agreed to cease and desist from the use of the word "mahogany," either independently or in connection or conjunction with the words "Philippine," "Bataan," "Lamao," "Lauan," or with any other word or words, or in any way, to represent or as descriptive of said products which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that said products are those products which are derived from the mahogany or Meliaceæ family, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 29, 1929.)

332. **False or Misleading Advertising and Trade Name—Cotton Goods.**—Respondents, copartners, engaged in the sale and distribution of cotton goods in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, purchased their stocks of cotton cloth from various mills wherein the same was made or fabricated and caused said cloth so purchased to be bleached, colored, finished, and otherwise rendered merchantable by a "finishing" factory or plant under contract. Said respondents caused the products so obtained by them and treated to be sold through the medium of traveling salesmen to purchasers thereof located in various States of the United States, and in the course and conduct of their business caused literature to be circulated in interstate commerce, said literature consisting of letterheads, invoices, order blanks, billheads, labels, and other printed matter, containing their trade name in which the word "Mills" was used, together with the phrase "Cotton-goods converters," when in truth and in fact said respondents did not own, control, or operate a mill or factory wherein were made or fabricated the products which they sold and distributed in interstate commerce, or wherein the said products were "converted" by bleaching, coloring, finishing, and/or otherwise rendering merchantable, and said respondents filled orders for cotton goods from products made, fabricated, and/or converted in mills or factories which they neither owned, operated, nor controlled.

Respondents agreed to cease and desist forever from the use of the word "Mills" as part of or in connection or conjunction with their trade name and from the use of their said trade name containing the word "Mills" on their stationery circulated in interstate commerce or on the labels affixed to their products sold and distributed in interstate commerce, and from the use of the word "mills" and the word "converters" either independently or in connection or conjunction each with the other or with any other word or words, in soliciting the sale of and selling their products in interstate commerce so as to import or imply that the said respondents own, operate, and control a mill or factory wherein are made or fabricated the products which are sold and distributed by them in interstate commerce, or that said respondents are in truth and in fact "converters" of the products so sold and distributed by them. Said respondents also agreed to cease and desist from the use of the words "mills" or "converters" either independently or in connection or conjunction with any other word or words or in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondents own, operate, and control a mill or factory wherein are made or fabricated the products sold and distributed by them in interstate commerce, or that said respondents are in truth and in fact "converters" of the products so sold and distributed by them.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (March 29, 1929.)

333. **False or Misleading Trade or Corporate Names, Brands or Labels and Advertising—Flour.**—Respondent, a corporation, engaged in the business of blending and/or mixing flour and in the sale and distribution of said product in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, purchased flour from flour mills located in various States of the United States, and which flour the said respondent caused to be shipped in interstate commerce to its plant, where it was blended and/or mixed, and then sold and shipped in interstate commerce to the retail and other trade located in various States of the United States. In the course and conduct of its business as aforesaid, respondent adopted and used as a part of its corporate name the word "Mills" and also adopted and used a trade name containing the word "Milling," and which corporate name and trade name containing the words "Mill" and "Milling," respectively, said respondent used on its letterheads, letter forms, and other printed matter distributed in interstate commerce in soliciting the sale of and selling its products. In addition to the aforesaid corporate and trade names certain of its said printed matter contained the word "Manufacturers." On each sack or cloth container used by said respondent was printed one or the other of the aforesaid names, and such containers filled with flour and branded or labeled as aforesaid were shipped in interstate commerce, when in truth and in fact the said respondent did not own, operate, and control a mill or factory in which the product sold by it was ground and/or manufactured, but the said respondent filled orders from products which were ground and/or manufactured in mills or factories which it neither owned, operated, nor controlled.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "Mills" and "Milling" as part of or in connection or conjunction with its corporate or trade names, and from the use of the words "mills," "milling," "manufactures," or of any other word or words in its advertising matter circulated in interstate commerce, or on its brands or labels affixed to products sold or shipped in interstate commerce so as to import or imply that the said respondent is the manufacturer or maker of said products. Said respondent also agreed to cease and desist forever from the use of the words "mills," "milling," and "manufacturers" either independently or in connection or conjunction with any other word or words, or in any way, in the advertisement, sale, or distribution of its product in interstate commerce which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that said respondent owns, operates, and controls a mill or factory wherein is ground or manufactured the product sold and advertised by it as aforesaid.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 3, 1929.)

334. **False or Misleading Brands or Labels—Confections.**—Respondent, a corporation engaged in the manufacture of confections and candies and in the sale and distribution of said products in interstate commerce and in competition with other corporations, partnerships, individuals, and firms likewise engaged entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, sold its merchandise through firms and traveling salesmen to the wholesale and retail trade located in various States of the United States, a part of said merchandise so sold consisting of a confection made of layers of biscuit wafers in sandwich form, the layers having a flavored and sugared filling disposed therebetween. Said products were individually wrapped with tinfoil bearing the word "Nu-Grape" together with a pictorial representation of a bunch or cluster of grapes interposed between the coined word "Nu" and the word "Grape." The said word, "Nu-Grape" and the said pictorial representation were also printed upon the outer face of the pasteboard boxes in each of which the said products, wrapped as aforesaid, are packed, shipped, and sold in interstate commerce, when in truth and in fact the filling nor any other part of parts of said product is or were made from or composed of the juice or fruit of the grape so as to be properly advertised, designated, represented, or referred to by the use of the word "grape."

Respondent agreed to cease and desist forever from the use of the word "grape" either independently or in connection or conjunction with any other word or words, letter or letters, in its advertising matter, or as a trade brand or designation for its products sold and distributed in interstate commerce, so as to import or imply that the filling of said product was made from or composed of the juice or fruit of the grape, and from the use of the word "grape" in any way that may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is flavored with or composed of filling made from the juice of the grape or the fruit of the same, unless, if the word "grape" is used to designate the flavor of the filling of said product, said word shall be immediately preceded by the word "imitation" printed in type equally as conspicuous as that in which the word "grape" is printed. Said respondent further agrees that it will not use a pictorial representation or other advertising matter in soliciting the sale of and selling its product in interstate commerce that will falsely represent, suggest, import, or imply that the filling of said product is manufactured from the juice of the grape or the fruit of the same, and will also cease and desist from the use of the pictorial representation of grapes in any way in connection with the sale and distribution of a synthetic product so as to confuse, mislead, or deceive the purchasing public into the belief that the said product is manufactured in whole or in part from the juice or fruit of the grape.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 3, 1929.)

335. **False or Misleading Advertising—Shirts, Pajamas, and Underwear.**—Respondent, a corporation, engaged in the business of selling and distributing shirts, pajamas, and underwear in commerce between and among various States of the United States, and in competition, with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products through the medium of traveling salesmen or representatives who made a "house-to-house" canvass in their respective territories for the purpose of soliciting and taking orders for its products from the purchasing public in various States of the United States, caused said orders so obtained to be transmitted by said salesmen or representatives to the place of business of said respondent, and the articles ordered were forwarded direct by said respondent, usually through the United States mails to the customers. In the procuring of such orders, catalogues, order blanks, sample books, and other printed matter furnished by said corporation to its salesmen or representatives were brought directly to the attention of the ultimate purchasers and were used to induce such purchasers to order goods represented and advertised therein; and said catalogues, order blanks, sample books, and other printed matter contained descriptive words and phrases such as "Buy direct and save the difference," "Sold only direct to wearer," "Direct to wearer," "Save the middleman's profit," "Shirts would retail in stores at nearly double the cost, but buying from our salesmen you save the middleman's profit." In its said catalogues respondent inserted and used a pictorial representation of a 12-story building, together with the following words, "Home Offices," underneath, and on the inside cover of said catalogues, in addition to a display of a cut of the building above mentioned, it inserted and used cuts of an "inspection department," "laundry department," and a "sewing department." All of said respondent's stationery carried an alleged pictorial representation of the "home office," underneath which appeared the legend "Views above show various departments where shirts are made" and the statement "Sold only direct to wearer," when in truth and in fact said respondent did not own, control, and operate a mill or factory for the fabrication of the cloth from which the shirts it sells were made, nor did it cut or fashion the shirts sold by it in interstate commerce, but said corporation filled orders for shirts with garments which it neither cut, fashioned, nor made, and which said garments were made from cloth fabricated by mills or factories which it neither owned, controlled, nor operated.

Respondent agreed to cease and desist forever from using in catalogues, order blanks, sample books, or other printed matter, circulated or distributed in interstate commerce, in soliciting the sale of and selling its products, the words "Buy direct and save the difference," "Sold only direct to wearer," "Direct to wearer," "Save the middleman's profit," or any other word or words, phrase, statement, slogan, pictorial, or other representations which import or imply that said respondent is a manufacturer and/or that it owns, operates and controls a mill or factory where the products sold by it in interstate commerce are manufactured, or which may have the capacity and tendency to confuse, mislead or deceive the purchasing public into the belief that said respondent manufactures the products which it sells in interstate commerce, and/or that said products are in truth and in fact sold to the wearer direct from the factory or manufacturer without the intervention of middlemen; unless and until said respondent actually owns, controls, and operates a factory and manufactures therein the products which it sells and distributes in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 5, 1929.)

336. **False or Misleading Advertising and Brands or Labels—Tooth Paste.**—Respondent, a corporation, engaged in the manufacture of tooth paste and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following

stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The tooth paste manufactured by respondent is prepared by compounding various ingredients, and includes an amount of iodine and chalk, which in the process of manufacturing the tooth paste, combine to form an iodide which does not have the antiseptic or germicidal qualities of free iodine.

Respondent, in soliciting the sale of and selling its product in interstate commerce, caused said product to be branded, labeled, and described as "The iodine tooth paste," together with the representation "Iodine purifies the mouth as sunshine purifies the air," and with the aforesaid brands, labels, and representation affixed to the containers in which said product was marketed caused the same to be sold and distributed to purchasers thereof located in various States of the United States. Respondent also caused said product to be represented, defined, and described on stationery and in pamphlets, circulars, and other advertising matter, including newspapers and similar publications having circulation between and among various States of the United States, as "The iodine tooth paste," "Its iodine protects you," "Contains just enough pure, active iodine to accomplish this purpose," "The full iodine efficacy is there"; and in connection or conjunction with the aforesaid representations and statements, respondent featured the well-known medicinal or therapeutic qualities of iodine in the following language: "The chemical element—iodine—has been in general use for about 100 years. Dentists have used iodine in their general practice for over 40 years. Its germ-destroying power and stimulating effect upon inflamed tissues have been fully tested and accepted beyond any question. Iodine is one of the finest elements that can be used in a tooth paste to keep the gums and mouth in a healthy condition." "This is why this development in the use of iodine will interest you," when in truth and in fact, the said tooth paste, so branded, labeled, described and sold in interstate commerce did not contain any free iodine, but did contain ingredients known to the science of chemistry as "iodides," which, however, do not possess the antiseptic and germicidal properties of free iodine.

Respondent agreed to cease and desist forever from the use in interstate commerce, in its advertisements or on its brands or labels, of the word "iodine" to represent, describe, or define its product, unless, when the said word "iodine" is so used it must be accompanied, in type equally as prominent as that in which the word "iodine" is printed, by the following words or representations: "Contains potassium and calcium iodides." Respondent further agreed that when featuring in its advertisements or advertising matter any beneficial effect due to iodine content of its product, it plainly states in such advertisements or advertising matter that such effects are due to the presence of potassium and calcium iodides or not to the presence of free iodine or tincture of iodine.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 8, 1929.)

337. **False or Misleading Advertising—Building Bricks.**—Respondent, a corporation, engaged in the business of manufacturing various types of building bricks, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, manufactured and sold machine-made building bricks which were made to simulate in appearance, handmade bricks. It caused advertisements to be published in technical journals and other publications having general circulation in interstate commerce, and also caused circulars and other advertising matter to be given general distribution among customers and prospective customers, in which advertisements and advertising matter descriptive of such machine-made bricks the same were designated as "handmades," "western handmades," and by other combinations of words including the word "handmades." There is a substantial demand in the market for genuine handmade building bricks, and genuine handmade building bricks are sold in interstate commerce in competition with the products of respondent.

Respondent, in soliciting the sale of machine-made bricks and the sale of the same in interstate commerce agreed to cease and desist from the practice of advertising and selling or offering to sell such bricks under the brand names of "handmades," "western handmades" or by any other combination of words which includes the word "handmades."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 10, 1929.)

338. **Lottery Scheme—Candy.**—Respondent, a corporation, engaged in the manufacture of candies and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, packed two certain kinds or assortments of its candies in packages, boxes or cartons, which candies it sold and shipped to the jobbing trade located in various States of the United States and engaged therein in the business of selling such candies to the retail trade, which in turn sold to the general public in accordance with the plan formulated by the aforesaid respondent, and which was as follows: Each of the aforesaid packages contained 200 chocolate-coated penny pieces of uniform size and shape, and of bar type, certain of which pieces had colored centers which were completely concealed from the view of the purchaser; that is to say, 15 of these bars had raspberry colored or pink centers and the remaining bars had white centers. The purchaser from the retail vendor who picked, selected, or drew a bar having a raspberry or pink center received free or was given a 5-cent bar of candy without further charge and the purchaser of the last bar of candy in the package received as a gift or prize a small box containing 15 chocolate-coated marshmallow drops. The fifteen 5-cent bars of candy and the small box of marshmallow drops were obtained by the purchasers of the bars as indicated wholly by lot or chance. A display card was furnished by said respondent with each of the said packages or cartons of candy for advertising purposes and as an aid to the merchandising plan above outlined. The said card bore the following reading matter: "One chocolate raspberry button and one chocolate-covered bar for 1 cent. One chocolate vanilla button for 1 cent. The last purchaser receives a large box of fine chocolates free."

Respondent agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of sale or of promoting the sale of its candy products which involves the use of any gift enterprise, lottery, or any scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article; and respondent also agreed to cease and desist from using and from transporting in interstate commerce any advertising matter for the use of local dealers in soliciting the sale of said products by means of any gift enterprise, lottery, or scheme of chance whereby any article is offered as a prize or premium for and in consideration of the purchase of any other article.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 10, 1929.)

339. **False or Misleading Advertising—Claiming Exaggerated Results—Miscellaneous.**—Respondent, a corporation, engaged in publishing magazines and books, and in the sale and distribution of such publications in interstate commerce, and in competition with

other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, solicited or caused to be solicited in interstate commerce paid advertisements and advertising matter featuring certain products or devices for sale and which said advertisements and advertising matter it accepted and published in one of its magazines, which said magazine containing the aforesaid advertisements and advertising matter it sold, circulated, and distributed between and among the various States of the United States. Said respondent accepted or caused to be accepted for publication the aforesaid advertisements without first making a reasonable investigation as to the standing, reputation, or reliability of the individuals, firms, partnerships, and corporations offering said advertisements for publication, and without first making reasonable investigation as to the truth or accuracy of the representations and statements as set forth and contained in said advertisements and advertising matter. In the course and conduct of its business as aforesaid the said respondent published numerous advertisements in its said magazine, particularly in the issue or edition of said publication for the month of January, 1929, which said issue was circulated and distributed in interstate commerce and included therein advertisements and advertising matter containing representations and statements as follows: Under the caption "New youth-giving belt; reduces waist line quickly" the following appears: "Instantly makes you look inches thinner and years younger and actually massages away fat every second while you wear it!" "The moment you put on this new self-massaging belt your waist is instantly reduced from 2 to 4 inches! You are filled with a wonderful new energy and look and feel 10 to 15 years younger!" There appeared in connection with the aforesaid advertisement pictorial representations, in one of which the figure of a man was represented with a protruding stomach and sunken chest, and the other of which represented the device as correcting the stomach and chest to their normal appearance and shape so as to import or imply that the figure was corrected by the use of the aforesaid device; when in truth and in fact the aforesaid device did not quickly reduce the waist line or instantly make the wearer look inches thinner and years younger, and the aforesaid pictorial representations were not in accordance with results which were probable of immediate accomplishment by the use of the aforesaid device. The said magazine contained a certain advertisement under the following caption: "Gland Glad. Papa's Silent Partner." The aforesaid advertisements represented that the use of its product "brings quick animation, ready response, lingering satisfaction. If your vitality is low, gladden your glands. Let 'Papa's Silent Partner' make you look and feel younger than your years. Be a he-man," when in truth and in fact the aforesaid representations were exaggerated and in excess of probable accomplishment. Under the caption "My tires cost me nothing!" a certain alleged vaporizer was represented to "more than double gasoline mileage!" and also in effecting more than 40 miles on a gallon of gasoline, together with the following representation: "This little invention saves me enough money to buy my tires and then some!" when in truth and in fact the aforesaid representations were in excess of probable accomplishment and exceptional, if true. Under the caption "X-ray Kathoscope" the following representation was made: "See your best girl and all she is doing. You see everything," when in truth and in fact the said product is not an Xray nor in any way equipped with a Röntgen ray, and the aforesaid representation is exaggerated and beyond the power of accomplishment and otherwise suggestive and indecent. Under the caption "If you were down and out," the following representation was made: "If you are earning a cent less than $100 a week—$5,000 a year—here is your chance to break into real estate my way—build a big profit business of your own—right at home—in your spare time—without capital or experience." There also appeared in the aforementioned advertisement under the subcaption "Amazing profits" the following representations: "$17,000 in one deal," "$5,500 in one week," "$8,500 in 17 weeks," "$14,400 in six months," "$248 first profit," "200% more money," when in truth and in fact the aforesaid representations were exaggerated, exceptional, if true, and otherwise improbable of accomplishment by those without capital or experience. Under the caption "Blood diseases" the following representation was made: "No matter how bad or old the case or what's the cause," "treatment used successfully for over 25 years in the most severe and chronic cases," when in truth and in fact the said representation was exaggerated and beyond the probability of accomplishment. Under the caption "For men," the advertisement represented "French Pep Tablets—the most efficient on the market. For men who need vigor, pep, and energy. No experiment, but a safe and proven formula," when in truth and in fact the said product was not a proven formula and the said representations were exaggerated and beyond the probability of accomplishment. Under the caption "What made my hair grow?" the following statement appeared: "Two years ago I was bald all over the top of my head. I tried different preparations, but they did no good. I remained bald until I used * * *. New hair came almost immediately and kept on growing. In a short time I had a splendid head of hair, which has been perfect ever since and no return of the baldness." The above statement was accompanied by a pictorial representation of a man with a heavy growth of hair, when in truth and in fact the aforesaid statement was exaggerated and exceptional, if true. Under the caption "Sex explained!" the following representation was made: "Sex truth at last. The science of a new life. Explains the sex appeal, choosing a mate, blissful marriage, how babies are conceived and born, sex diseases, what to avoid, etc. Birth-control chapter," when in truth and in fact the aforesaid representations were misleading, exaggerated, and contrary to public decency.

Further in the course and conduct of its business the said respondent solicited, printed, and published in the aforesaid magazine numerous other advertisements and advertising matter which it caused to be circulated and distributed in interstate commerce, which advertisements and advertising matter offered for sale numerous and varied products, devices, appliances, and services to be performed which were included in the following statements and representations: Under the caption "Are you Afraid to Love," the following representation was made: "Does a petting party stop with a kiss or does it go further? Is spooning dangerous? At last the question is answered." This advertisement also represented as follows: "Has true love come into your life—or didn't you recognize it when it came? Are you afraid now of the baffling, perplexing mysteries of sex relationship? Are you discontented with the stupid lies and furtive, ashamed answers the world gives you in place of the naked, fearless truth you desire? Do you want some safe, sane, unashamed advice on sex questions? Clip coupon below," together with other similar suggestive representations; the caption "Women—there's dollars and sense in prevention" was followed by the name and address of the advertiser; the caption "Men—big pay. South American work. Companies pay fare, expenses" was followed by the name and address of the advertiser; the caption "Liquor or drug habit cured or no pay" was followed by the representation "$2 if cured"; the caption "Tobacco or snuff habit cured or no pay" was followed by the representation, "$1.50 if cured"; under the caption, "French-American girl" the following representation was made: "Photos, full front-view poses. Red hot real stuff"; under the caption "Kidney, bladder, prostate trouble" it was represented that a certain treatment would be mailed "to prove that these troubles can be stopped, often in a few hours"; under the caption "Fits" the following representation was made: "This treatment has stopped attacks of thousands; costs nothing to try"; under the classified caption "Matrimonial" numerous advertisements appeared containing the following representations: Under the caption "Would you marry? Our plan—you win—we win" the following appeared: "Thousands of happy clients"; under the caption "America's leading high-class correspondence institution" the following representation appeared: "Ladies worth $75,000.00, $100,000.00, $200,000.00, $300,000.00.

Quick results positively guaranteed"; under the caption "Try me first. Pay when married" appeared the name and address of the advertiser; under the caption "Would you marry girl 18?" the following representation appeared: "Will inherit $50,000. Widow 40, $78,000. Photos and descriptions free"; under the caption "Marriage guaranteed in six months" appeared the following: "Photos, addresses, and descriptions free. Confidential, reliable"; under the caption "Lonely hearts" the following representation was made: "The world's greatest social-extension bureau. We have a companion or sweetheart for you. Correspondents everywhere, many worth from $5,000 to $50,000 and up"; under the caption "Wife guaranteed in six months" the following representation appeared: "Personal service. Quick results"; under the caption "If you wish a wealthy, pretty wife, write Doris" was followed by the address of the advertiser, when in truth and in fact the aforesaid captions and the representations and statements, as set forth in the aforesaid advertisements were in many instances not founded in truth and were otherwise misleading and confusing, and some of the aforesaid representations as set forth in the advertisements and advertising matter were beyond the probability of accomplishment.

Respondent agreed to cease and desist and hereafter abandon the publication, circulation, or distribution in interstate commerce of the aforesaid advertisements or other advertising matter which does not truthfully represent and describe the products or devices offered for sale or the results obtained as represented by such advertising matter.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 12, 1929.)

340. **False or Misleading Brands or Labels—Shirts.**—Respondent, a corporation, engaged in the manufacture of shirts, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused the shirts manufactured by it to be branded or labeled "English broadcloth" and with the aforesaid brand or label affixed thereto caused said shirts to be sold and distributed in interstate commerce, when in truth and in fact said product was not made in England or made of broadcloth which had been imported from England, but was made in the United States of fabrics woven in the latter country.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "English broadcloth" as a brand or label for its shirts sold and distributed in interstate commerce, or the use of the aforesaid words in any other way so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said product is of English manufacture or is made of fabrics woven in and imported from England, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 12, 1929.)

341. **False or Misleading Brands or Labels—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulations as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, caused the cigars of his manufacture sold and distributed by him in interstate commerce to be packed in boxes on the exposed surfaces of which were printed in conspicuous type the following legend: "HAVANA PERFECTO—CORONOS, Cagarros, Manufacturados para E. L. Martinez," which is translated as follows: "Perfect Havana Cigars—Crowned. Cigars manufactured for E. L. Martinez." On the front and ends of the boxes in which said products were so packed and sold appeared the words "Havana Perfecto Coronas," and on the bands of the cigars was printed the word "Habana," when in truth and in fact the product so represented, designated, and referred to was not made wholly of tobacco grown in the island of Cuba, and the individual designated as "E. L. Martinez" was dead.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "Havana" or "Habana" to represent or designate his said products, and also agreed to cease and desist forever from the use of the word "Havana" or "Habana" either independently or in connection or conjunction with any other word or words as a brand or label in the sale and distribution in interstate commerce of a product which is not composed wholly of tobacco grown on the island of Cuba; or unless, when said product is composed in substantial part of tobacco grown on the island of Cuba, and the word "Havana" or "Habana" is used to designate such tobacco, in which case the said word "Havana" or "Habana" shall be employed in connection or conjunction or combination with some other word or words which shall be displayed in type equally as conspicuous as that in which said word "Havana" or "Habana" is printed so as to clearly indicate that such product is not made wholly of tobacco grown on the island of Cuba, and that will otherwise properly and accurately represent, designate, and describe said product and indicate clearly that the same is composed in part of tobacco other than that known to the trade and purchasing public as Havana; and respondent further agreed to cease and desist forever from the use of the words or representation "Para, E. L. Martinez," or any other equivalent representation or statement indicating that said product is made for the said E. L. Martinez.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 12, 1929.)

342. **False or Misleading Advertising and Brands or Labels—Goose Feather Pillows.**—Respondent, a corporation, engaged in the manufacture of feather pillows and other similar products and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its feather pillows in interstate commerce, caused the same to be described in its catalogues and by means of labels affixed to said products, and through its salesmen as "All New Feathers—A. A. White Goose" and represented in said catalogues and on its labels and through its salesmen that the feathers in the pillows so advertised, labeled, and sold were "Pure Goose Feathers," and that "The contents of this pillow consist only of feathers that have never been used"; when in truth and in fact said pillows were not filled with goose feathers or with new feathers or with feathers that had never been used so as to be properly and accurately advertised or described as "New," "Goose," or as "Feathers that have never been used."

Respondent agreed to cease and desist forever from the use of the words or statements "All New Feathers—A. A. White Goose," "Pure Goose Feathers," or "The contents of this pillow consist only of feathers that have never been used" or of any words or statements in its advertisements or advertising matter, or on its brands or labels in soliciting the sale of and selling its pillows in interstate commerce so as to import or imply that said pillows are filled with and/or made of new feathers, or of feathers that have never been used, or of pure goose feathers, when such is not the fact; and respondent also agreed to cease and desist forever from the use of the words "New," "All New," and "Goose" as descriptive of the feather filling for its pillows when in truth and in fact said pillows are not filled with feathers which are new and/or goose.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 12, 1929.)

343. **False or Misleading Advertising and Brands or Labels—Cigarettes.**—Respondent, a corporation, engaged in the sale and distribution of cigars and cigarettes in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused advertisements to be published in trade journals and other publications having general circulation in the several States of the United States, and also caused advertising matter in the form of leaflets and booklets to be given general public distribution, and which advertisements and advertising matter the cigarettes offered for sale by it were designated as "De-Nicotinized Cigarettes," and among the claims concerning such cigarettes appearing in such advertisements and advertising matter was the following: "All the incomparable flavor is retained with a minimum amount of nicotine, due to de-nicotinizing," and conspicuously printed upon the wrappers or packages in which such cigarettes were distributed to the consuming public appeared the representations that such cigarettes were "Mildest of the mild. All that joyous aroma but less nicotine." Tests of said cigarettes disclosed that the nicotine content is not substantially less than the nicotine content of the nationally advertised popular brands of cigarettes for which no claim as to denicotinization is made by the respective manufacturers.

Respondent, in soliciting the sale of and selling its product in interstate commerce agreed to cease and desist forever from the practice of using the words "De-Nicotinized" in advertisements and advertising matter descriptive of such cigarettes, and from making the claim therein that such cigarettes contain only a minimum of nicotine, or an amount less than the average nicotine content of nationally advertised popular brands of cigarettes for which no claims as to denicotinization are made by the respective manufacturers; or until such time as the said respondent actually sells cigarettes that conform to the representations and statements as set forth on the brands or labels affixed thereto, and in the advertisements or advertising matter used in soliciting the sale of and selling said product.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the practice of using the word "De-Nicotinized" in advertisements and advertising matter descriptive of such cigarettes, and from making the claim therein that such cigarettes contain only a minimum of nicotine, or an amount less than the average nicotine content of nationally advertised popular brands of cigarettes for which no claim as to denicotinization is made by the respective manufacturers; or until such time as the said respondent actually sells cigarettes that conform to the representations and statements as set forth on the brands or labels affixed thereto, and in the advertisements or advertising matter used in soliciting the sale of and selling said product.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 12, 1929.)

344. **False or Misleading Advertising—Replacement Parts for Trucks.**—Respondent, a corporation, engaged in the business of buying and selling replacement parts for trucks, in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipualtion of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused catalogues, price lists, and other advertising matter to be distributed in interstate commerce, wherein the following statements appeared: "The oldest and original manufacturers of replacement parts." On the letterheads distributed in interstate commerce appeared the following statement: "Oldest manufacturers of truck parts exclusively"; when in truth and in fact said respondent did not own, operate, or control a plant or factory in which were manufactured the replacement parts sold by it in interstate commerce, but filled orders for such parts obtained from plants or factories which it neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use of the word "manufacturers" either independently or in connection or conjunction with any other word or words so as to import or imply that the said respondent owns, operates, or controls a plant of factory wherein are made or fabricated the products sold and distributed by it in interstate commerce, and from the use of the word "manufacturers" in any way that may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondent owns, operates, or controls a plant or factory for the manufacture or fabrication of the products which it sells.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 17, 1929.)

345. **False or Misleading Advertising and Brands or Labels—Upholstery Fabrics—Draperies.**—Respondent, a corporation, engaged in the business of selling and distributing in wholesale quantities upholstered fabrics, draperies, and cretonnes in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its product in interstate commerce caused advertising circulars to be distributed in interstate commerce, which circulars contained such words, statements, and representations as "Chintz-cretonne and linens for spring and summer decorations," "Modern wayside flowers printed on linen." Attached to the back of each of two samples described as "Printed on linen" was an adhesive tag, designating its said product as "linen." There was also attached to circulars a postal-order card which designated the product ordered as "linen;" when in truth and in fact none of said products was made in such substantial part of linen so as to be properly or accurately designated as linen, but were made in large part of threads other than the thread of the flax.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use of the word "linen," either independently or in connection or conjunction with any other word or words as a trade brand or designation in the sale and distribution in interstate commerce of its products which are not composed wholly of linen, the product of a thread composed wholly of flax, unless, when said products are composed in substantial part of linen, the product of a thread composed wholly of flax, and the word "linen" is used as a trade brand or designation for said product, in which case the said word "linen" shall be employed in connection or conjunction with some other word or words which shall be displayed in type equally as conspicuous as that in which the word "linen" is printed so as to indicate clearly that such products are not made wholly of linen, and which will otherwise properly and accurately represent, designate, or describe said product so as to indicate clearly that the same are composed in part of a material or materials other than linen, and from the use of the word "linen" in any other way purporting to describe products sold by it in interstate commerce that may have the capacity and tendency to confuse, mislead, and deceive the purchaser into the belief that said products are manufactured from linen.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 17, 1929.)

346. **False or Misleading Brands or Labels—Zinc Oxide.**—Respondent, a corporation, engaged in the manufacture of paint, varnish and zinc, and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following stipulation of acts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

One of the products manufactured by respondent and sold in interstate commerce it caused to be branded or labeled "Villa Zinc," and with said brand or label affixed to the containers thereof said product was sold and distributed in interstate commerce, when in truth and in fact the said product was not composed of zinc oxide so as to be properly branded, labeled, or designated as "zinc."

Respondent agreed to cease and desist forever from the use of the words "Villa Zinc" as a trade brand or designation for its product, and from the use of the word "zinc" in any other way so as to import or imply that the said product is composed wholly of zinc oxide, and also from the use of the word "zinc" in any way to designate its product which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief the said product is composed wholly of zinc, unless, if the product is composed in substantial part of zinc and the word "zinc" is used to designate said product, in which case the said word "zinc" shall be accompanied by some other word or words which shall be printed in type equally as conspicuous as that in which the word "zinc" is printed so as to clearly indicate that said product is not made wholly of zinc and will otherwise properly represent, designate, and describe said product so as to clearly indicate that the same is composed in part of a product or products other than zinc.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 17, 1929.)

347. **False or Misleading Advertising—Celluloid Crystals for Watches.**—Respondents, copartners, engaged in the business of manufacturing and selling celluloid crystals for watches, clocks, gauges, auto instruments, etc., and in the sale and distribution of the same in

interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreements to cease and desist from the alleged unfair practices, as set forth therein.

Respondents in the course and conduct of their business caused advertisements to be published in jewelry trade journals and in magazines of nation-wide circulation, and have also distributed in various States of the United States advertising matter, in which said advertisements and advertising matter they have offered for sale crystals made of celluloid described as "Unbreakable crystals." In such advertisements and advertising matter reference was made to competitors' cyrstals, also made of celluloid, as "Ordinary celluloid crystals," "Imitation unbreakable crystals," "Celluloid crystals," whereas said competing products were made of the same materials as were the crystals manufactured and sold by said respondent.

Respondent in soliciting the sale of and selling their products in interstate commerce agreed to cease and desist forever from the practice of referring in their advertisements and advertising matter, or by any other means, to competing crystals also made of celluloid as "Ordinary celluloid crystals," "Imitation unbreakable crystals," "Celluloid imitations," or by referring to such competing crystals in any manner likely to create the impression that the crystals sold by respondents were made of a material superior for that purpose to celluloid.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (April 17, 1929.)

348. **False or Misleading Advertising.**—Respondent, an individual, engaged in the manufacture of an oil used in the textile, leather, and metal industries and in the sale and distribution of said product in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business in soliciting the sale of and selling its product, caused to be distributed in interstate commerce circulars, letters, invoices, and other printed matter in which the said product was referred to as "Denatured olive oil," or as "Treated denatured olive oil" or as "T. D. olive oil," while on the drum or other containers in which the said product was shipped in interstate commerce were stamped, printed, or stenciled the words "Treated denatured olive oil"; when in truth and in fact the said product so advertised, designated, and referred to was not manufactured from pure olive oil and was not that product known to the trade and purchasing public as "Denatured olive oil" so as to be properly and accurately designated and referred to as aforesaid.

Respondent in soliciting the sale of and selling his product in interstate commerce agreed to cease and desist from the use of the words "Denatured olive oil," "Treated denatured olive oil," or "T. D. olive oil" as a designation for his product, and said respondent also agreed to cease and desist from the use of the words "olive oil" either independently or in connection or conjunction with the words "denatured," "treated," or the letters "T. D." or with any other word or words, letter or letters which may have the capacity and tendency to mislead, confuse, or deceive the purchasing public into the belief that the said product is made of olive oil or is that product known to the trade and purchasing public as denatured olive oil, unless, when said product is composed in substantial part of olive oil and the words "olive oil" are used to designate such product, in which case the said words "olive oil" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the words "olive oil" are printed so as to clearly indicate that the said product is made in part of an ingredient or ingredients other than olive oil.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 17, 1929.)

349. **False or Misleading Corporate Name—Misrepresenting Business Status—Woolens and Dress Goods.**—Respondent, a corporation engaged in the sale and distribution of woolens and dress goods in interstate commerce, and in competition with other corporations, partnerships, firms, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair practices, as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce, adopted as a part of its corporate or trade name the word "Mills," and which corporate name containing the word "Mills" it used in the sale and distribution of woolens and dress goods in commerce between and among various States of the United States. Respondent also caused its corporate name containing the word "Mills" to be used on its letterheads, order blanks, bill heads, envelopes, and other printed matter distributed in interstate commerce in soliciting the sale of and selling its products, when in truth and in fact said respondent did not own, control, or operate a mill or factory in which was manufactured the goods sold and distributed by it in interstate commerce and said respondent filled orders for said products from materials manufactured in mills or factories which it neither owned, controlled, nor operated.

Respondent agreed to cease and desist forever from the use of the word "Mills" as a part of or in connection or conjunction with its corporate or trade name in the sale and distribution of said products, and on its letterheads, advertising, and other printed matter distributed in interstate commerce in soliciting the sale of and selling the same, and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said respondent either owns, controls, or operates a mill or factory wherein are made the products sold by it in commerce between and among various States of the United States, or until such time as said respondent does actually own, operate, and control a mill or factory wherein said products are made.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 19, 1929.)

350. **False or Misleading Brands or Labels—Concentrates and Sirups.**—Respondent, an individual, engaged in the manufacture of concentrates and sirups and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, sold his products to bottlers and/or jobbers, who used said products as a basis for the making of soft drinks which they bottled and sold to the retail trade located in various States of the United States. As a means of promoting the sale of his product, respondent furnished to the purchasers thereof labels of varying sizes and colors having printed thereon a trade brand or designation containing the word "Cherry"; when in truth and in fact the product manufactured and sold by said respondent and upon which said brand or label was placed, was not made from the juice or the fruit of the cherry, but contained other ingredients and therefore could not properly and accurately be designated, described, and labeled "Cherry."

Respondent agreed to cease and desist forever from the use of the word "Cherry" either independently or in connection or conjuction with any other word or words as a brand or label for his product, or the use of the word "Cherry" so as to import or imply that said product is the juice or fruit of the same, and from the use of the word "Cherry" in any way that may have the capacity and/or tendency to mislead or or deceive the purchasing public into the belief that said product is composed of the juice or fruit of the cherry, unless, if the product is composed in substantial part of the juice or the fruit of the cherry so as to derive its color and flavor from said fruit, and the word "Cherry" is used to designate the product, in that case the word "Cherry" shall be accompanied by a word or words printed in type equally as conspicuous as that in which the word "Cherry" is printed, so as to indicate clearly that the product is not made wholly from the juice or the fruit of the cherry, and which will otherwise properly and accurately represent the product so as to indicate clearly that the same is composed in part of an ingredient or ingredients other than the juice or the fruit of the cherry.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 19, 1929.)

351. **False or Misleading Trade Name, Advertising, and Brands or Labels—Fruit Beverages or Soft Drink.**—Respondent, an individual, engaged in the manufacture of beverages and in the sale and distribution thereof in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair practices, as set forth therein.

Respondent, in the course and conduct of his business adopted and used as a part of his trade name the word "Cherry," and which trade name containing the word "Cherry" he used on his letterheads, order blanks, and other stationery in soliciting the sale of and selling his products in interstate commerce. Respondent also caused one of the the products of his manufacture to be advertised by means of display cards distributed in interstate commerce, and which contained the words "Cherri-Mix Syrup," together with the pictorial representation of a glass partially filled with the beverage simulating a cherry drink in color, and having disposed thereabout a cluster of cherries, while on one side of the card was a pictorial representation of a bottle filled with what appeared, from its color, to be a cherry beverage and bearing a lable containing the words "Cherri-Mix Syrup." Another display card distributed in interstate commerce by said respondent to advertise his product contained the word "Cherri-Mix—It's the best drink I ever had." Labels affixed to the bottled product sold and shipped in interstate commerce by said respondent contained the words in large type "Cherri-Mix Syrup" and in much smaller type the words "An imitation cherry cider, contains pure fruit juice artificially colored and flavored, sweetened with cane sugar"; when in truth and in fact, the said product so advertised, designated, represented, and labeled was not manufactured wholly from the juice or the fruit thereof in such substantial quantity so as to be properly and accurately represented, designated, or referred to by the use of the word "Cherry."

Respondent agreed to cease and desist forever from the use of the word "Cherry" as a part of or in connection or conjunction with his trade name in soliciting the sale of and selling his product in interstate commerce. Respondent also agreed to cease and desist from the use of the word "Cherry" or the coined word "Cherri" either independently or in connection or conjunction with the word "Mix" or the words "Contains pure fruit juice" or with other word or words, pictorial representation, or in any way as a trade brand or designation for his product so as to import or imply that the said product is composed of the juice or the fruit of the cherry; unless, when said product is composed in substantial part of the juice or fruit of the cherry and the word "Cherry" is used as a trade brand or designation for said product, in which case the said word "Cherry" shall be accompanied by some other word or words which shall be printed in type equally as conspicuous as that in which the word "Cherry" is printed so as to properly and accurately represent, define, and describe said product and that will otherwise correctly indicate that the same is composed in part of an ingredient or ingredients other than the juice or the fruit of the cherry; or unless, when the product is composed of less than a substantial part of the juice or fruit of the cherry in combination with cherry extract and artificial coloring matter and the words "Cherri-Mix" are used as a trade brand or designation for said product, in which case the words "Cherri-Mix" shall be accompanied by the words "Cherry juice" or "Pure fruit juice" and "Cherry extract artificially colored and flavored sweetened with cane sugar, imitation cherry cider," and which said accompanying words shall be printed in type equally as conspicuous as that in which the words "Cherri-Mix" are printed so as to properly and accurately designate said product.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 19, 1929.)

352. **False or Misleading Advertising—Silk.**—Respondent, a corporation, engaged in selling on a commission basis the entire output of cotton products manufactured by two certain mills, and in the sale and distribution of the same in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce, caused the products sold by it to be advertised in periodicals or publications having circulation between and among various States of the United

States, and in the said advertising matter, respondent designated, represented, and referred to said products by the use of the word "silk," and respondent also caused a label bearing the word "silk" to be affixed to said products, the said products being sold and distributed by and through said company in interstate commerce, when in truth and in fact, the said products so designated, represented, referred to, and/or labeled were not made of silk, the product of the cocoon of the silkworm, but were composed of fabrics or materials other than silk.

Respondent agreed to cease and desist forever from the use of the word "silk" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, referred to, or labeled and sold in interstate commerce were manufactured from silk, the product of the cocoon of the silkworm, and from the use of the word "silk" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the products so designated and sold by said respondent in interstate commerce were manufactured from silk, the product of the cocoon of the silkworm.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 24, 1929.)

353. **False or Misleading Advertising and Brands or Labels—Cotton Goods.**—Respondent, a corporation, engaged in the manufacture of cotton products and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused the products of its manufacture to be sold and distributed in interstate commerce through the medium of another corporation acting in the capacity of an exclusive sales agency. In soliciting the sale of and selling its said products, advertisements were inserted in periodicals or publications having circulation between and among various States of the United States, and in which advertising matter use was made of the word "silk" to designate the products manufactured by said company and sold and distributed in interstate commerce as aforesaid. Respondent also caused a label containing the word "silk" to be affixed to said products sold and distributed through the aforesaid sales agency in interstate commerce, when in truth and in fact the said products so designated, represented, referred to, and/or labeled were not made of silk, the product of the cocoon of the silkworm, but were composed of fabrics or materials other than silk.

Respondent agreed to cease and desist forever from the use of the word "silk" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, referred to, or labeled and sold in interstate commerce were manufactured of silk, the product of the cocoon of the silkworm, and from the use of the word "silk" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the products so designated and sold by said respondent in interstate commerce were manufactured from silk, the product of the cocoon of the silkworm.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 24, 1929.)

354. **False or Misleading Advertising and Brands or Labels—Cotton Goods.**—Respondent, a corporation, engaged in the manufacture of cotton products and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused the products of its manufacture to be sold and distributed in interstate commerce through the medium of another corporation acting in the capacity of an exclusive sales agency. In soliciting the sale of and selling its said products, advertisements were inserted in periodicals or publications having circulation between and among various States of the United States, and in which advertising matter use was made of the word "silk" to designate the products manufactured by said company and sold and distributed in interstate commerce as aforesaid. Respondent also caused a label containing the word "silk" to be affixed to said products sold and distributed through the aforesaid sales agency in interstate commerce, when in truth and in fact, the said products so designated, represented, referred to, and/or labeled were not made of silk, the product of the cocoon of the silkworm, but were composed of fabrics or materials other than silk.

Respondent agreed to cease and desist forever from the use of the word "silk" either independently or in connection or conjunction with any other word or words so as to import or imply that the products so designated, represented, referred to, or labeled and sold in interstate commerce were manufactured of silk, the product of the cocoon of the silkworm, and from the use of the word "silk" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasers thereof into the belief that the products so designated and sold by said respondent in interstate commerce were manufactured from silk, the product of the cocoon of the silkworm.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 24, 1929.)

355. **False or Misleading Advertising—Sirups and Concentrates.**—Respondents, copartners, engaged in the manufacture of sirups and concentrates and in the sale and distribution of such products to bottlers and other trade in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce caused advertisements to be inserted in newspapers having interstate circulation in which said advertisements their products were described as "comes in your favorite flavor, grape, orange, lemon, lime, peach, banana, strawberry, or cherry" or as "7 delicious flavors, strawberry, grape, orange, peach, lemon * * * ," and said products so advertised represented and described were sold and distributed in interstate commerce, when in truth and in fact said products were manufactured from neither the juice or the fruit of the grape, orange, lemon, lime, peach, banana, strawberry, or cherry, nor did they contain the juice or the fruit thereof in such substantial quantity as to properly be designated or referred to by the use of the words grape, orange, lemon, lime, peach, banana, strawberry, or cherry, or any of them.

Respondents agreed to cease and desist forever from the use of the words "grape," "orange," "lemon," "lime," "peach," "banana," "strawberry," or "cherry" either independently or in connection or conjunction with any other word or words in their advertising matter to designate or describe their products so as to import or imply that the said products are composed of the juice or the fruit of either the grape, orange, lemon, lime, peach, banana, strawberry, or cherry, or any of them, and from the use of the words "grape," "orange," "lemon," "lime," "peach," "banana," "strawberry," or "cherry" in any way that may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are composed of the juice or fruit of either the grape, orange, lemon, lime, peach, banana, strawberry, or cherry; unless (*a*) if the word "grape," "orange," "lemon," "lime," "peach," "banana," "strawberry," or "cherry" is used to designate or describe the flavor of the said product the word so used shall be immediately preceded by the word "imitation" printed in type equally as conspicuous as that in which the said designating or descriptive word is printed; and (*b*) if the product is composed in substantial part of the juice or the fruit of either the grape, orange, lemon, lime, peach, banana, strawberry, or cherry so as to derive its color and flavor from said fruit and the word "grape," "orange," "lemon," "lime," "peach," "banana," "strawberry," or "cherry" is used to designate the product, in which case the said designating word shall be accompanied by a word or words which shall be printed in type equally as conspicuous as that in which the said designating word is printed so as to indicate clearly that the product is not made wholly from the juice or the fruit indicated by the said designating word or that will otherwise properly represent, define, and describe the product so as to indicate clearly that the same is composed in part of an ingredient or ingredients other than the juice or fruit indicated by the said designating word or words.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (May 1, 1929.)

356. **False or Misleading Trade Name—Business Status, Advertisements—Knitted Outerwear.**—Respondents, copartners, engaged in the sale and distribution of knitted outerwear in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business in soliciting the sale of and selling their products in interstate commerce adopted and used as a part of their trade name the words "Knitting" and "Mills," which trade name containing the words "Knitting" and "Mills" they used in the sale and distribution of their products in interstate commerce and caused their said trade name containing the words "Knitting" and "Mills" to be used on their letterheads, envelopes, and billheads and on their labels affixed to the products and/or containers, and the aforesaid respondents made use of the following representations: "Manufacturers of all kinds of sweaters, novelties, and yarns" on their bills and letterheads used in soliciting the sale of and selling their products in interstate commerce, when in truth and in fact said respondents did not own or operate a knitting mill or factory in which were manufactured the products sold by them in interstate commerce and said respondents filled their said orders from goods manufactured or knitted by a mill or a factory which they neither owned nor operated.

Respondents agreed to cease and desist forever from the use of the words "Knitting" and "Mills" as a part of or in connection or conjunction with their trade name in soliciting the sale of and selling their products in interstate commerce and respondents also agreed to cease and desist from the use of the words "Knitting," "Mills," "Manufacturers," or "Factory" either independently or in connection or conjunction each with the other or with any other word or words in their advertisements or advertising matter so as to import or imply that they own, operate, or control a knitting mill or factory wherein is knitted or manufactured the products sold by them in interstate commerce. Respondents further agreed that they will not make use of the aforesaid words in any other way so as to confuse, mislead, or deceive the purchasing public into the belief that they are the manufacturers or makers of the products sold by them in interstate commerce.

Respondents also agreed that if they should ever resume or indulge n any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (May 3, 1929.)

357. **False or Misleading Brands or Labels—Composition Books.**—Respondent, a corporation, engaged in the manufacture of school supplies, including composition books and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, caused its composition books to be marked on the front cover with the legend indicating the number of pages which such books contain, such as "Composition Book 120 pages," and on the front cover of others of such books said corporation has, at the request of customers, placed legends reading, "140 Special Composition Book" and "144 Special Composition Book," when in truth and in fact the books so marked contain only 120 pages.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from marking, stamping, branding, or labeling its products by means of letters, numerals, and otherwise in such a way so as to indicate or import or imply that such books contain more or a different number of pages from their actual content and/or from marking, stamping, branding, or otherwise designating the number of pages on its said product by any means whatsoever which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that such products contain 140 or 144 pages and/or any other designated number of pages when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 3, 1929.)

358. **False or Misleading Business Status and Advertising—Foreign and Domestic Papers.**—Respondent, a corporation, engaged in the sale and distribution of foreign and domestic papers to jobbers and manufacturing stationers in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business caused its trade name to be featured in its price lists together with the words "Manufacturer and mill agent," and the words "This is printed on cockle rag onionskin paper, our own manufacture" in an advertising circular, it caused such printed matter and advertising circulars to be distributed among the trade in various States of the United States, when in truth and in fact said respondent did not own, control, or operate the mill or factory wherein were made or fabricated the products sold and distributed by it in interstate commerce, and said respondent filled orders from products manufactured or fabricated in mills or factories which it neither owned, operated, or controlled.

Respondent agreed to cease and desist forever from the use in its advertising matter of whatsoever character, circulated and distributed in interstate commerce of the word "manufacturer" either independently or in connection or conjunction with any other word or words so as to import or imply that said respondent either owned, operated, or controlled a mill or factory for the manufacture or fabrication of the products sold and distributed by it in interstate commerce; and from the use of the word "manufacturer" either independently or in connection or conjunction with any other word or words, or in any other way, which may have the capacity and tendency to mislead, confuse, or deceive the purchasing public into the belief that said respondent either owns, controls, or operates a mill or factory wherein are made or fabricated the products which it sells and distributes in interstate commerce; or until such time as said respondent does actually, own, control, and operate such mill or factory in which are manufactured or fabricated the products which it sells and distributes in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 3, 1929.)

359. **False or Misleading Advertising—Tables.**—Respondent, a corporation, engaged in the manufacture of tables and in the sale and distribution of same in interstate commerce, and in competition with other corporations, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling certain of the products of its manufacture in interstate commerce, caused the same to be designated and referred to in its price lists and other advertising matter distributed in interstate commerce as "Badger brown mahogany" and/or "Badger brown walnut;" when in truth and in fact said products so advertised, designated, represented, and referred to as "mahogany" were not those products derived from the trees of the mahogany or Meliaceæ family so as to be properly and accurately designated "mahogany"; and the said products advertised, designated, and referred to as "walnut" were not those products derived from the tree family scientifically called Juglandaceæ so as to be properly and accurately designated "walnut."

Respondent, in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use of the words "mahogany" and/or "walnut" either independently or in connection or conjunction with any other word or words in its advertisements or as a trade designation for its products so as to import or imply that such products are those products which are derived, respectively, from trees of the mahogany or Meliaceæ family or from trees of the walnut or Juglandaceæ family when such is not the fact; and said respondent further agreed to cease and desist from the use of the words "mahogany" and "walnut" either independently or in connection or conjunction with any other word or words or in any way as descriptive of its products which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said products are those products which are derived respectively from the mahogany or Meliaceæ family, or from the walnut or Juglandaceæ family when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be

used in evidence against it in the trial of the complaint which the commission may issue. (May 6, 1929.)

360. **False or Misleading Advertising and Brands or Labels—Ginger Ale.**—Respondent, a corporation, engaged in the manufacture of ginger ale and in the sale and distribution of same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce, caused the same to be advertised through the medium of newspaper, magazine, and other publications having circulation between and among various States of the United States, as well as in catalogues, circulars, counter displays, and fountain hangers distributed in interstate commerce and by means of radiobroadcasting between and among various States of the United States. Through the aforesaid and other advertising instrumentalities, and by means of labels or stickers affixed to its products, said respondent represented and described its product as follows: "Aged six months," "Long aging under ideal conditions, to develop that fullness of flavor and mellowness of tone which make * * * a unique ginger ale," "For six months the flavor elements undergo these subtle changes which aging alone can effect; for six months the natural blending proceeds, and at the end of that time comes the most tempting of beverages," "Aged six months—the exact time necessary to secure the highest quality," together with such representations as "You can't make a good ginger ale overnight," "It is in the aging that a magical change is wrought," "Aging works a mirace. It is possible to drink green ginger ale but certainly it is not good for you, 'that kick-back' or burning sensation comes from an unripe concoction and the effect is bound to be injurious," and "Aging six months—the exact time necessary to obtain that velvety mellowness." Certain of its newspaper advertising included the phrase "Aged six months makes it smooth and mellow," and the pictorial representation of a bottle on which appeared a label or sticker containing the phrase "Aged six months, the only way to get that rich mellow flavor," when in truth and in fact said product advertised, described, and represented as aforesaid was not aged for the length of time as represented, but was sold and distributed in interstate commerce before the expiration of such period of time.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from using in newspaper, catalogue, magazine, radio talks, or other advertising media circulated in interstate commerce, statements and representations to the effect that the product advertised, sold, and distributed by it in interstate commerce has been "Aged six months"; unless and until such time as said product is in truth and in fact aged for the length of time specified; and the said respondent also agreed to cease and desist from the use of the statement or representation "Aged six months" or of any other statement or representation so as to import or imply that said product sold by it was and is aged for the aforesaid length of time, when in truth such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 6, 1929.)

361. **False or Misleading Advertising and Brands or Labels—Infants' Underwear.**—Respondent, a corporation, engaged in the manufacture of infants' underwear, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce, caused certain of the garments manufactured by it to be labeled "Cotton and wool" and "Warranted part wool," and with the aforesaid labels affixed thereto sold and distributed the same in interstate commerce, when in truth and in fact the garments so labeled did not contain wool in such substantial quantities so as to be properly represented or designated by the use of the word "wool."

Respondent agreed to cease and desist forever from the use of the word "wool" either independently or in connection or conjunction with any other word or words, as a brand or label, or otherwise descriptive of its aforesaid products sold or distributed in interstate commerce, unless, when the aforesaid products are made in substantial part of wool and partly of some other material or materials, and the word "wool" is used as a brand or label or otherwise descriptive of the same, the word "wool" shall be accompanied by a word or words displayed in type equally as conspicuous as that in which the word "wool" is printed so as to indicate clearly that the products are not made wholly of wool and that will otherwise properly and accurately represent, define, and describe the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 17, 1929.)

362. **Resale Price Maintenance—Sphygmomanometers.**—Respondent, a corporation, engaged in the manufacture of scientific instruments, including sphygmomanometers, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, adopted and used a system, involving the cooperation of the retail and other trade, for the maintenance and enforcement of resale prices on sphygmomanometers. As a method of enforcing obedience to its said system, respondent, cooperating with the trade aforesaid, employed the following means, to wit: (*a*) Caused it to be generally known to the trade, through the issuance of price lists, by means of letters, through its salesmen, and by other means, that it expected and required its customers to maintain resale prices established by it; (*b*) solicited and obtained by letters, through its salesmen, and by other means, promises, and assurances from its customers that they would cooperate in the observance and maintenance of said resale prices; (*c*) solicited and obtained promises and assurances from its cutomers that they would cooperate in reporting dealers alleged to be cutting prices, and, acting upon the information thus obtained, threatened to refuse, and did refuse, to ship supplies of products to such reported offenders; (*d*) solicited and obtained reports of the names of, and other information relative to, dealers who ignored or who failed to observe or maintain its suggested resale prices and, upon securing such reports, urged the offenders to cease selling below the suggested resale prices, and sought and secured promises and assurances from said offenders that they would thereafter maintain said resale prices as a condition to further supplying them with products; (*e*) cooperated through its sales agencies with its customers in tracing the sources of supply of price-cutting dealers, for the purpose of preventing such dealers from obtaining supplies of products, and further for the purpose of removing from its direct list such sources of supply.

Respondent agreed to cease and desist forever from the following cooperative methods: (*a*) Seeking and securing from the retail and other trade agreements, promises or assurances of such trade to cooperate with said corporation in the maintenance of its system of resale prices; (*b*) seeking and securing the cooperation of its customers in reporting dealers who fail to maintain the resale prices established by it; (*c*) seeking and securing, by any means whatsoever, promises, agreements, or assurances of cooperation from alleged price cutters that such offenders will maintain suggested resale prices as condition to further supplying said offenders with products; (*d*) cooperating with its customers in tracing the sources of supply of price-cutting dealers, for the purpose of preventing such offenders from obtaining further supplies of products or for the purpose of removing from its direct list such sources of supply; (*e*) directly or indirectly carrying into effect, by cooperative methods, any system whatsoever for the maintenance of retail prices established by said respondent.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 17, 1929.)

363. **Resale Price Maintenance—Hair Tonic and Dandruff Remover.**—Respondents, copartners, engaged in the manufacture of an alleged hair tonic and dandruff remover, and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business in soliciting the sale of and selling their product in interstate commerce, adopted a system involving the cöoperation of the wholesale and retail trade for the maintenance and enforcement of resale prices established by said respondents. As a method of enforcing obedience to their said system, respondents, cooperating with the trade aforesaid, employed the following means, to wit: (*a*) Caused it to be generally known to the trade, through the issuance of price lists, by means of letters, and by other means, that they expected and required their customers to maintain the resale prices established by them; (*b*) solicited and obtained by letters and by other means, promises and assurances from their customers that they would cooperate in the observance and maintenance of said resale prices; (*c*) solicited and obtained promises and assurances from their customers that they would cooperate in reporting dealers alleged to be cutting prices, and, acting upon the information thus obtained, threatened to refuse, and did refuse, to ship supplies to such reported offenders; (*d*) solicited and obtained reports of the names of, and other information relative to, wholesalers, retailers, and others who ignored or who failed to observe and maintain their suggested resale prices, and, upon securing such reports, urged the offenders to cease selling below the suggested resale prices, and sought and secured promises and assurances from said offenders that they would thereafter maintain said resale prices as a condition to further supplying them with products.

Respondents agreed to cease and desist forever from the following cooperative methods: (*a*) Seeking and securing from the wholesale, retail, or other trade assurances, promises, or agreements to cooperate with said copartners in the maintenance of any system of resale prices whatsoever; (*b*) seeking and securing the cooperation of the wholesale, retail, or other trade in reporting the names of, and/or other information relative to, competitors or others who are cutting prices and who are alleged to be cutting prices on their product; (*c*) seeking and securing, by any means whatsoever, promises, assurances, or agreements from price cutters or alleged price cutters, that such offenders or alleged offenders will maintain suggested resale prices as a condition to further supplying them with products; (*d*) directly or indirectly carrying into effect, by cooperative methods, any system whatsoever for the maintenance of retail prices established by said respondents.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (May 17, 1929.)

364. **False or Misleading Trade Name and Advertising—Stationery.**—Respondent, an individual, engaged in the business of printing stationery and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, adopted a trade name containing the words "Plateless Engraving," and caused his products to be advertised under the said trade name containing the words "Plateless Engraving" in periodicals having circulation between and among various States of the United States. Respondent also caused advertising matter to be distributed in interstate commerce among the retail and other trade, such advertising matter consisting of circulars, form letters, and pamphlets, and contained in part the following language: "Grav-o-tone raised printing," "Plateless engraved" or "Plateless engraving"; when in truth and in fact, the process used and method employed by said respondent in the manufacture of his products was not the process of producing an impression on such stationery from inked plates in which have been stamped, cut, or carved letters, sketches, designs, or inscriptions and from which impressions or reproductions are made, known as "engraving" and/or "embossing," but were the results of the use of a chemical in powdered form applied to type printing while the ink is wet, and in passing through a baking process the heat causes it to fuse and present a raised-letter effect so as to resemble in appearance or simulate the impression made from inked engraved plates, known as "engraving" and/or "embossing."

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "Engraving" as part of or in connection or conjunction with his trade name, and from the use of the words "Engraving" and/or "Grav-o-tone," either independently or in connection or conjunction with each other or with any other words or letters which import or imply that the said products printed and sold by said respondent are the result of impressions made from inked engraved plates, commonly known to the trade and purchasing public as "engraving" and/or "embossing"; and from the use of the word "Engraving," either independently or in connection with any other word or words or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the products printed and sold by said respondent in interstate commerce are engraved or embossed.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 17, 1929.)

365. **False or Misleading Advertising—Lamp Bases, Gear-Shift Balls, Ash Trays and Similar Products.**—Respondent, a corporation, engaged in the manufacture of lamp bases, gear-shift balls, ash trays, and other similar products, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused its products to be described, represented, and designated in advertisements inserted in periodicals having an interstate circulation, and on its letterheads, envelopes, invoices, and other printed matter, as "Onyx products," and displayed and featured the word "onyx" in connection with such advertising matter in soliciting the sale of and selling its said products in interstate commerce, when in truth and in fact, said products were not made of onyx, a cryptocrystalline variety of quartz, so as to be properly and accurately designated or described as onyx, but were made of a product or products simulating onyx in appearance.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agree to cease and desist forever from the use of the word "onyx," either independently or in connection or conjunction with any other word or words to describe its products, or as a trade designation therefor, so as to import or imply that said products are made of onyx, a cryptocrystalline variety of quartz, when such is not the fact; and respondent also agreed to cease and desist forever from the use of the word "onyx" as descriptive of, or as a designation for, its products sold and distributed in interstate commerce, or in any other way so as to confuse, mislead, or deceive the purchasing public into the belief that the said products are made of onyx, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 17, 1929.)

366. **Misleading Corporate Name and Labels—Hosiery.**—Respondent, a corporation, engaged in the sale and distribution of hosiery in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Respondent in the course and conduct of its business adopted and used as part of its corporate and trade name the word "Mills," and which corporate name, including the word "Mills" it used in connection with the sale and distribution of women's hosiery in interstate commerce. Said corporation also caused its corporate and trade name, containing the word "Mills" to be used on its stationery, including letterheads, billheads, and envelopes, and on labels affixed to said products and on packing boxes in which said products were distributed in interstate commerce, when in truth and in fact said respondent did not own, control, or operate a mill or factory wherein the hosiery sold and distributed by it in interstate commerce was manufactured, but filled orders for such products from hosiery manufactured in mills or factories which it neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of its corporate or trade name, and from the use of the word "Mills" in any other way so as to import or imply that said respondent either owns, operates, or controls a mill or factory in which the products sold and distributed by it in interstate commerce are manufactured or fabricated; and from the use of the word "Mills" in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said corporation owns, operates, or controls a mill or factory wherein the products sold by it in interstate commerce are manufactured or fabricated.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 20, 1929.)

367. **Misrepresentation of Business Status and Size—Cotton Goods and Silk and Cotton Novelties.**—Respondent, a corporation, engaged in business as a jobber of cotton goods and silk and cotton novelties, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition, as set forth therein.

Respondent in the course and conduct of its business used on its letterheads, in soliciting the sale of and selling its products in interstate commerce, the following legends: "MILLS: Lawrence, Mass., Foreign Offices, Japan, Kobe, Yokohama, Tokio, China, Che Foo, Shanghai," when in truth and in fact said respondent did not own and did not operate or control a mill or factory in which were manufactured or fabricated the products which it sold and distributed in interstate commerce, but respondent filled orders for products from stock purchased by it from mills or factories which it neither owned, controlled, or operated. Said respondent does not now have offices in either Japan, China, or any other foreign country.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever (*a*) from the use of the word "Mills" on its letterheads and/or other printed matter circulated or distributed in interstate commerce, either independently or in connection or conjunction with any other word or words so as to import or imply that said respondent is or was the manufacturer or converter of the product sold and distributed by it in interstate commerce, and from the use of the word "Mills" in any way so as to confuse, mislead, and deceive the purchasing public into the belief that said respondent either owns, operates, or controls a mill or factory wherein the products which it sells and distributes in interstate commerce are made; (*b*) and from the use of any words or representations on its letterheads and/or other printed matter circulated or distributed in interstate commerce importing or implying that said respondent has an office or offices in Japan, China, or any other foreign country or countries, when such is not the fact.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 20, 1929.)

368. **False or Misleading Advertising—Glass Syringes.**—Respondent, a corporation, engaged in the importation into the United States

from abroad of medicinal supplies and syringes designed for use by the medical profession, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Schott & Genossen are copartners trading under the name and style of Jena Glass Works, with their principal place of business located at Jena, Thuringia, Germany. They are now and, for many years last past, have been engaged in the manufacture of surgical and dental appliances, including hypodermic syringes made of glass known as "Jena Glass," and which products are sold and distributed throughout the United States, and in fact the entire world. The glass of which said syringes are made is produced at and by Jena Glass Works aforesaid, and enjoys a wide and exclusive reputation as a glass especially adapted for use where resistance to strong chemical acids and sudden changes of extreme temperatures are matters of primary importance. For these reasons scientists and other professional men, not only in the United States but elsewhere, are aware of the fact that Jena Glass is the product manufactured by Schott & Genossen at Jena, Germany. To distinguish the product of their manufacture the said Schott & Genossen caused a single red or blue line to be blown into the glass while certain of their competitors have made use of two or more such lines.

Respondent, in the course and conduct of its business, imported from Germany steel and glass surgical and dental instruments, including a certain syringe, which when sold and distributed in interstate commerce bore the trade-mark "Certified," and also was designated and described in the circular and other advertising matter distributed in interstate commerce by said respondent by the words "Jena Glass" or "The glass is of that tough Jena type which is recognized by its two red stripes in the barrel," when in truth and in fact, the said product so advertised, designated, and referred to was not made of Jena Glass or of glass manufactured at the town of Jena, Germany, but was made elsewhere than at Jena, Germany, and of a material or materials other than Jena Glass.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Jena," either independently or in connection or conjunction with the word "Glass," or with any other word or words so as to import or imply that said product is made of that glass recognized and understood by the scientific and professional world to be Jena Glass or that product manufactured by the Jena Glass Works, of Jena, Germany, and the said corporation also agrees to cease and desist from the use of the word "Jena" in any way as descriptive of its said product which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said product is Jena Glass.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 22, 1929.)

369. **False or Misleading Advertising—Rubber and Metal Plumbing Specialties.**—Respondent, a corporation, engaged in the sale and distribution of rubber and metal plumbing specialties in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products, caused the following language to be used in certain advertising matter circulated in interstate commerce: "War and Navy Department Specifications for 'Good' Plumbing, Gas, and Steam Fitting Materials From Department Orders Exclusively. The unequaled service of the * * * goods was the basis for positively specifying them for Government use, as evidenced by the following quotations from a Government advertisement: 'Quotations on substitutes for supplies from the * * * will not be considered.'" This quotation was followed by a list of 163 items, when in truth and in fact, the United States Government at no time either adopted or used the products of said respondent exclusively, but used similar articles manufactured by the competitors of said respondent, and said respondent was not on its official list of bidders.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of advertisements and advertising matter in which are used expressions or statements which import or imply that the products so advertised have received the indorsement of the United States Government, or which import or imply that the United States Government is using such product or products exclusively, unless and until such statement or statements, or statements of similar import, shall be officially authorized by the United States Government and/or are in fact true.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 22, 1929.)

370. **Misleading Trade Name and Advertising—Woolens and Dress Goods.**—Respondent, an individual, engaged in the sale and distribution of woolens and dress goods in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business in soliciting the sale of and selling his products in interstate commerce, adopted as a part of his trade name the word "Mills," which said trade name containing the word "Mills" he used in the sale and distribution of woolens and dress goods in commerce between and among various States of the United States. Said respondent also caused his trade name containing the word "Mills" to be used on his letterheads, invoices, and other stationery distributed in interstate commerce, when in truth and in fact said respondent did not own, control, or operate a mill or factory in which were manufactured the goods sold and distributed by him in interstate commerce, and said respondent filled orders for said products from materials manufactured in mills or factories which he neither owned, controlled, nor operated.

Respondent agreed to cease and desist forever from the use of the word "Mills" as part of, or in connection or conjunction with his trade name in the sale and distribution of said products in interstate commerce, and from the use of the word "Mills" in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said respondent either owns, controls, or operates a mill or factory wherein are made the products sold by him in commerce between and among various States of the United States, or until such time as said respondent does actually own, operate, and control a mill or factory wherein the said products are made.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the commission may issue. (May 24, 1929.)

371. **False or Misleading Advertising and Brands or Labels—Hollow Ware.**—Respondent, a corporation, engaged in the manufacture of hollow ware and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused its catalogues to be distributed among the trade and other customers located in various States of the United States, in which catalogues its products were designated, represented, and described as "Nickel silver" or as "Silver plated on nickel silver," and the said respondent caused its products so designated, represented and described to be sold and distributed in interstate commerce, when in truth and in fact said products were not composed in whole or in part of the metals known as silver and nickel and/or were not silver plated, but were composed of a metal or metals other than silver and nickel. Respondent also caused the products manufactured by it, simulating silver in appearance, to be stamped or impressed on the bottoms thereof the words "Quadruple Plate"; and which products so stamped or impressed and simulating silver in appearance, said respondent sold and distributed in interstate commerce, when in truth and in fact said products were not silver-plated ware which had been coated or plated with silver four times, and did not contain a thickness or weight of silver plating equal to that which is obtained by four coatings, and were not of that quality and value which are associated in the minds of the trade and purchasing public with the word "Quadruple" as applied to silver-plated ware.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from (*a*) the use of the words "Nickel silver," either independently or in connection or conjunction with any other word or words, as descriptive of its products which are not composed of those metals known to the trade and purchasing public as "nickel" and as "silver"; and from the use of the word "nickel" and the word "silver"; either independently or in connection or conjunction each with the other or with any other word or words, or in any way, as descriptive of its products so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are composed of either or both of those metals known as "nickel" and "silver"; (*b*) the use of the word "quadruple," either independently or in connection or conjunction with the word "plate," or with any other word or words, or in any other way, to designate or describe its products, or by impressing or stamping the word "quadruple" thereon, so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products have been plated or coated with silver applied in four coatings or have been given a single plating of silver equivalent in thickness and/or weight to that which is obtained by four coatings.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 24, 1929.)

372. **False or Misleading Advertising—Blankets.**—Respondent, a corporation, engaged in the sale and distribution of so-called Indian blankets in interstate commerce, and in competition with other corporations, firms, partnerships and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused an advertisement of its so-called "Indian" blankets to be inserted in its price list and catalogue, which it distributed in interstate commerce, wherein the following representations and statements appeared: "Bright colored Indian blankets guaranteed part wool," when in truth and in fact the blankets so represented, designated, and referred to were not made by Indians, but were machine woven, and such blankets did not contain wool in such substantial quantity so as to be properly and accurately represented, described, and designated by the use of the word "wool."

There are in the United States several tribes of Indians who make a product designated "Indian blankets," which said product is sold in interstate commerce under the aforesaid designation to the purchasing trade and the public. These tribes include the Hopi, Leupp, and Navajo Indians in Arizona and the Pueblo Bonita, San Juan, and Southern Pueblos in New Mexico. The value of their output is substantial, and the said blankets so designated have acquired a reputation for wearing qualities, and they have a valuable good will in the word "Indian" as applied to the same.

Respondent agreed to cease and desist forever from (*a*) the use of the words "Indian blankets" in its advertisements or advertising matter to represent or designate the product sold by it in interstate commerce, and from the use of the word "Indian" in any other way in connection with the sale of its blankets so as to import or imply that the said product is in truth and in fact an Indian blanket; and (*b*) from the use of the word "wool" in any way in connection with the sale of its blankets in interstate commerce so as to import or imply that the said product is composed of wool, unless, when said product is composed in substantial part of wool and the word "wool" is used as a brand or label or otherwise descriptive of the same, the word "wool" shall be accompanied by some other word or words displayed in type equally as conspicuous as that in which the word "wool" is printed, so as to indicate clearly that the product is not made wholly of wool and that will otherwise properly and accurately represent, define, and describe the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 24, 1929.)

373. **False or Misleading Brands and Labels—Sweaters and Other Knitted Outerwear.**—Respondent, a corporation, engaged in the manufacture of sweaters and other knitted outerwear, and in the sale and distribution of the same in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused a certain garment or garments to be labeled "Wool Mix," and, with the aforesaid label affixed thereto, sold and distributed the same in interstate commerce, when in truth and in fact the fabric from which said garments were made was not manufactured wholly of wool.

Respondent agreed to cease and desist forever from the use of the words "wool" or "wool mix," to represent, designate, or describe a product which is not made wholly of wool, or unless, when said products are made partly of wool and partly of some other material or materials and the word "wool" is used as a brand or label for the same, in which case the word "wool" shall be accompanied by a word or words displayed in type equally as conspicuous as that in which the word "wool" is printed, so as to indicate clearly that the said products are not made wholly of wool, and that will otherwise properly and accurately represent, define, and describe the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 31, 1929.)

374. **False or Misleading Names, Brands and Labels—Yarns and Threads.**—Respondent, a corporation, engaged in the manufacture of various grades of yarns and threads and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, manufactured three certain grades of thread composed of a material or materials other than silk, which said products it distributed in interstate commerce under the following respective brand names: "Nusilk," "Sewinsil," and "Silkron." Labels containing such brand names were printed upon or attached to the spools containing such thread in the form in which it was sold to the consuming public, and such brand names were printed in large display type upon containers in which such thread was displayed to the purchasing public by the retail dealers through whom such products were distributed.

Respondent, in soliciting the sale of and selling in interstate commerce, thread composed in whole or in part of a material or materials other than silk, agreed to cease and desist forever from the practice of selling such thread under the brand names "Nusilk," "Sewinsil" and "Silkron," or any of such names, either alone or in combination with any other word or words; and further agreed to cease and desist from the use of any of said names, either alone or in combination with any other word or words, on labels printed upon or attached to spools containing such thread in the form in which it is sold to the consuming public, or in labels in any wise attached to such spools, or in printed matter upon the containers in which such thread is displayed to the purchasing public by retail dealers through whom the same is distributed.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 3, 1929.)

375. **False or Misleading Advertising and Misrepresentations—Alligator Shears.**—Respondent, a corporation, engaged in the manufacture of all-steel shears for the cutting of scrap iron, known to the trade as "alligator shears," and in the sale and distribution of such products in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused advertisements to be inserted in trade journals having circulation between and among various States of the United States, and in price lists and catalogues circulated among the trade in interstate commerce, wherein it represented its aforesaid product as having certain exclusive features, as follows: (*a*) All castings are massive in design and strongly reinforced at points subject to greatest strain—scientifically designed. Castings will not spring or bend. (*b*) All shafts and gears are large and well proportioned; gear ratio greater than in most shears; shafts are larger, and less power required to operate to capacity. (*c*) All main bearings, including king pin and pitman pin, are phosphor bronze bushed with large bearing surface, making for easy replacement, eliminating unnecessary wear on shear parts proper. No need to rebore arm or bed on said shears resulting from loose king pins. Simply install new bushings, which are removable, easy to replace and inexpensive. (*d*) Shears are double geared and made of all-steel throughout. (*c*) Figuring capacity for capacity, said steel shears are heavier than any competing machines on the market—and, after all, the backbone of any shear is its weight. (*f*) All shears fitted with Alemite high-pressure lubrication at all wearing points. Such claims were also made orally by said respondent and its representative to customers and prospective customers, when in truth and in fact the features above designated (*a*) to (*f*), inclusive, were not exclusive to said respondent's alligator shears, but were possessed by one or more of its competitors.

Respondent agreed to cease and desist forever from circulating in interstate commerce advertisements or advertising matter representing and describing its product as having the following exclusive features: (*a*) All castings are massive in design and strongly reinforced at points subject to greatest strain—scientifically designed. Castings will not spring or bend. (*b*) All shafts and gears are large and well proportioned; gear ratio greater than in most shears; shafts are larger and less power required to operate to capacity. (*c*) All main bearings, including king pin and pitman pin are phosphor bronze bushed, with large bearing surface, making for easy replacement, eliminating unnecessary wear on shear parts proper. No need to rebore arm or bed on said shears resulting from loose king pins. Simply install new bushings, which are removable, easy to replace, and inexpensive. (*d*) Shears are double geared and made of all-steel throughout. (*e*) Figuring capacity for capacity said steel shears are heavier than any competing machines on the market—and, after all, the backbone of any shear is in its weight. (*f*) All shears fitted with Alemite high-pressure lubricating system, insuring perfect lubrication at all wearing points; and from orally representing and/or circulating and distributing in interstate commerce any advertisements or advertising matter, wherein it is represented that one or more of the special features above-mentioned are peculiar only to the product of respondent, or until such time as the aforesaid features are exclusive or peculiar to the product of respondent and are not included in the product of competitors.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 3, 1929.)

376. **False or Misleading Brands or Labels—Pins.**—Respondent, a corporation, engaged in the importation into the United States from Germany of novelties, including pins, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to

cease and desist forever from the alleged unfair methods of competition as set forth therein.

Pins designated by the words "silk pins" for years have been universally known and accepted by the trade as applying to or indicating pins made of brass wire which may or may not be plated with nickel as desired, and an advantage of which, over iron or steel pins, is that such brass pins will not rust when subjected to dampness.

Respondent, in the course and conduct of its business, caused one of the novelties sold and distributed by it in interstate commerce—namely, pins—to be manufactured abroad and to be shipped to the United States, where such pins were sold and distributed by said respondent in box containers having affixed thereto brands or labels containing the words "Silk Pins," when in truth and in fact, said pins so branded or labeled and sold in interstate commerce were not manufactured of brass, as the words "silk pins" are generally and commonly understood to mean and indicate to the trade and/or purchasing public, but were made of a metal or metals other than brass so as not to be properly and accurately designated and described by the said words "silk pins."

Respondent, in soliciting the sale of and selling in interstate commerce the aforesaid pins obtained by it from abroad and imported into the United States of America, agreed to cease and desist forever from the use, as a brand or label for its said products, of the words "silk pins," either independently or in connection or combination with any other word or words so as to import or imply that the said pins are a product manufactured of brass, when in truth such is not the fact. Said respondent also agreed to cease and desist from the use of the word "silk" in connection or conjunction with the word "pins," or with any other word or words, or in any way, to designate its products which may have the capacity and tendency to confuse, mislead, and deceive the purchasers thereof into the belief that the products so designated are made of brass, when such is not the case.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 3, 1929.)

377. **False or Misleading Brands or Labels and Advertising—Pins.**—Respondents, copartners, engaged in the sale and distribution of notions, including pins, in interstate commerce and in competition with other partnerships, firms, corporations and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Pins designated by the words "silk pins" for years have been universally known and accepted by the trade as applying to or indicating pins made of brass wire which may or may not be plated with nickel, as desired, and an advantage of which, over iron or steel pins, is that such brass pins will not rust when subjected to dampness.

Respondents, in the course and conduct of their business, caused certain of the pins sold and distributed by them in interstate commerce to be placed in box containers bearing brands or labels containing the words "Silk Pins," and on their invoices and other stationery circulated in interstate commerce the said pins were designated and described as "silk pins," when in truth and in fact said pins so advertised, branded or labeled and sold in interstate commerce were not manufactured of brass as the words "silk pins" are generally and commonly understood to mean and indicate to the trade and/or purchasing public, but were made of a metal or metals other than brass, so as not to be properly and accurately represented and described by the said words "silk pins."

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use in their advertisements and as a trade brand or designation for their products of the words "silk pins," either independently or in connection or combination with any other word or words so as to import or imply that the said pins are a product manufactured of brass, when such is not the fact. Respondents also agreed to cease and desist from the use of the word "silk" in connection or conjunction with the word "pins" or with any other word or words, or in any way, to designate their products which may have the capacity and tendency to confuse, mislead, and deceive the purchasers thereof into the belief that the products so designated are made of brass, when such is not the case.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the commission may issue. (June 3, 1929.)

378. **False or Misleading Corporate Name and Advertising—Flannels, Canvasses, Sheetings, Drills, and Other Commodities.**—Respondent, a corporation, engaged in the sale and distribution of flannels, canvasses, sheetings, drills, and other similar commodities, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, adopted and used as a part of its corporate name the word "Mills," which said corporate name containing the word "Mills" it caused to be used on its stationery, including letterheads, billheads, and envelopes, which stationery it distributed in interstate commerce, when in truth and in fact, said respondent did not own, operate, or control a mill or factory wherein were manufactured the products sold and distributed by it in interstate commerce, but filled orders for such products from goods manufactured in mills or factories which it neither owned, operated, nor controlled.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "Mills" as part of its corporate or trade name, and from the use of the word "Mills" in any other way so as to import or imply that said corporation either owns, operates or controls a mill or factory in which are manufactured or fabricated the products sold by it; and from the use of the word "Mills" in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said corporation does own, operate, and control a mill or factory wherein are manufactured or fabricated the products sold by it in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 3, 1929.)

379. **False or Misleading Brands or Labels—Blankets.**—Respondent, a corporation, engaged in the manufacture of blankets and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation as to the facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, manufactured blankets and sold and distributed the same in interstate commerce bearing brands or labels affixed thereto, some of which brands or labels were of words and designs selected by said respondent, and others were of words and designs selected by its customers, but affixed to said blankets by said respondent, and which brands or labels contained the words "Fine wool" or "wool," when in truth and in fact said blankets so branded or labeled were not composed wholly of wool, but were composed in part of a material or materials other than wool.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "wool" or "woolen" in its advertisements, or on the labels, tags, or brands as descriptive of its said products, unless the said blankets so advertised, labeled, tagged, or branded are made of wool, or unless, when said blankets be manufactured partly of wool and partly of some other material or materials and the word "wool" or "woolen" is used as a brand or designation for the same, the said word "wool" or "woolen" shall be accompanied by a word or words displayed in type equally as conspicuous as that in which the word "wool" or "woolen" is printed, indicating clearly that the said products are not made wholly of wool.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 6, 1929.)

APPENDIX I

ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS

FEDERAL TRADE COMMISSION ACT[1]

[Approved Sept. 26, 1914]

[PUBLIC—No. 203—63D CONGRESS]

[H. R. 15613]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

[1] This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Reported decisions of the courts for the period covered by this volume (Jan. 30, 1928, to June 11, 1929) and arising under this act are printed in full in Appendix II hereof (see *infra*, p. 717 et seq.). Previously reported decisions will be found set forth in Appendix II of Volumes II–XI, inclusive, of the Commission's Reports.

It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.

Term, seven years.

Chairman to be chosen by commission.

Pursuit other business prohibited.

Removal by President.

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.

Vacancy not to impair exercise of power by remaining commissioners.

Seal judicially noticed.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES.

Commissioner's salary, $10,000.

SEC. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The

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unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962–1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerce on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report presenting the minority views respectively of Messrs. Stevens and Lafferty; report of Senator Newlands from the Committee on Interstate Commerce on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressmen Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840–8849; 9068; 14925–14933 (part 15); Dickinson for, part 9, pp. 9189–9190; Mann against, part 15, pp. 14939–14940; Morgan, part 9, 8854–8857, 9063–9064, 14941–14943 (part 15); Sims for, 14940–14941; Stevens of N. H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8849–8853 (part 9); 14933–14939 (part 15); and of Senators Borah against, 11186–11189 (part 11); 11232–11237, 11298–11302, 11600–11601 (part 12); Brandegee against, 12217–12218, 12220–12222, 12261–12262, 12410–12411, 12792–12804 (part 13), 13103–13105, 13299–13301; Clapp against, 11872–11873 (part 12), 13061–13065 (part 13), 13143–13146; 13301–13302; Cummins for, 11102–11106 (part 11), 11379–11389 11447–11458 (part 12), 11528–11539, 12873–12875 (part 13), 12912–12924, 12987–12992, 13045–

commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Appointment of secretary. Salary, $5,000.

Other employees. Salaries fixed by Commission.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefore approved by the commission.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

13052, 14768–14770 (part 15); Hollis for, 11177–11180 (part 11), 12141–12149 (part 12), 12151–12152; Kenyon for, 13155–13160 (part 13); Lewis for, 11302–11307 (part 11), 12924–12933 (part 13); Lippit against, 11111–11112 (part 11), 13210–13219 (part 13); Newlands for, 9930 (part 10), 10376–10378 (part 11), 11081–11101, 11106–11116, 11594–11597 (part 12); Pomerene for, 12870–12873 (part 13), 12993–12996, 13102–13103; Reed against, 11112–11116 (part 11), 11874–11876 (part 12), 12022–12029, 12150–12151, 12539–12551 (part 13), 12933–12939, 13224–13234, 14787–14791 (part 15); Robinson for, 11107 (part 11), 11228–11232; Saulsbury for, 11185, 11591–11594 (part 2); Shields against, 13056–13061 (part 13), 13146–13148; Sutherland against, 11601–11604 (part 12), 12805–12817 (part 13), 12855–12862, 12980–12986, 13055–13056, 13109–13111; Thomas against, 11181–11185 (part 11), 11598–11600 (part 12), 12862–12869 (part 13), 12978–12980; Townsend against, 11870–11872 (part 12); and Walsh for, 13052–13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 429–442. (See case also in Vol. II of Commission's Decisions, p. 564 at pp. 570–579.)

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES—Continued.

Commission may rent suitable offices.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing of accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.

Bureau of Corporations absorbed by Commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employees, records, papers, property, appropriations, transferred to Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in Washington, but Commission may meet elsewhere.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place.

May prosecute any inquiry anywhere in United States.

The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sec. 4.—DEFINITIONS.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members. "Corporation."

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act. "Documentary evidence."

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto. "Acts to regulate commerce."

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety;[2] also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen. "Antitrust acts."

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.[3]

Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful. Unfair methods unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce. Commission to prevent. Banks and common carriers excepted.

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[2] For text of Sherman Act, see footnote on pp. 691-693.

[3] Jurisdiction of Commission under this section limited by sec. 406 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See second paragraph of footnote on p. 677.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.—Continued.

Commission to issue complaint when unfair method used and to public interest.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

To serve same on respondent with notice of hearing.

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Action by Court. Notice to respondent. Decree affirming, modifying, or setting aside Commission's order.

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

Petition by respondent to review order to cease and desist.

To be served on Commission.

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

Sec. 5. UNFAIR COMPETITION, COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

Jurisdiction of Court exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Proceedings to have precedence over other cases.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.[4]

Liability under antitrust acts not affected.

Service of Commission's complaints, orders, and other processes.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (*a*) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Personal; or

At office or place of business; or

By registered mail.

Verified return by person serving, and return post-office receipt, proof of service.

Sec. 6. FURTHER POWERS.[5]

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

SEC. 6. That the commission shall also have power—

(*a*) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

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[4] For text of Sherman Act, see footnote on pp. 691–693. As enumerated in last paragraph of sec. 4 of this act, see p. 681.

[5] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42, Stat. 159.

(*b*) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

To require annual or special reports from corporations, except banks and common carriers.

Such reports to be under oath, or otherwise, and filed within such reasonable period as commission may prescribe.

(*c*) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts,[5] to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to made such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

To transmit findings and recommendations to Attorney General.

(*d*) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts[6] by any corporation.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(*e*) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts[5] in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(*f*) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient

To make public, as it deems expedient, portions of information obtained.

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[5] For text of Sherman Act, see footnote on pp. 691-693. As enumerated in last paragraph of sec. 4, of this act, see p. 681.

Sec. 6. FURTHER POWERS—Continued.

To make reports to Congress, together with recommendations for new legislation.

To provide for publication of its reports and decisions.

in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To classify corporations, and make rules and regulations incidental to administration of Act.

(*g*) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(*h*) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY.

Court may refer suit to Commission.

To ascertain and report an appropriate form of decree.

Commission to proceed on notice to parties and as prescribed by court. Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts,[7] the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS.[8]

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and

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[7] For text of Sherman Act, see footnote on pp. 691–693. As enumerated in last paragraph of sec. 4 of this act, see p. 681.

[8] Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT.[9]

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 subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any members of the commission may sign subpœnas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

May require attendance of witnesses and production of evidence.

Subpœnas, oaths, affirmations, examination of witnesses. Reception of evidence.

Witnesses and evidence may be required from any place in United States.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Disobedience to a subpœna. Commission may invoke aid of any United States court.

In case of contumacy or disobedience of subpœna, any district court in jurisdiction involved may order obedience.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Disobedience thereafter punishable as contempt.

Mandamus from district courts on application of Attorney General to enforce compliance with Act.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Commission may order depositions at any stage.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investi-

[9] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

May be taken before person designated by Commission.

gation. Such depositions may be taken before any person designated by the commission and having power to administer oaths.

Testimony to be reduced to writing, etc.

Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission

Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witness fees, same as paid for like services in United States courts.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Incriminating testimony or evidence no excuse for failure to testify or produce.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpœna of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture.

But natural person shall not be prosecuted with respect to matters involved.

But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpœna issued by it: *Provided,* That no natural person so

Perjury excepted

testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. PENALTIES.[10]

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpœna or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

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[10] 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.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc., or

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

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.

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.

Unauthorised divulgence of information by employee of Commission punishable by fine or imprisonment or both.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000,

Sec. 10. PENALTIES—Continued.

or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE.

Not affected by this act.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts[11] or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

THE CLAYTON ACT[1]

[Approved Oct. 15, 1914]

[PUBLIC—NO. 212—63D CONGRESS]

[H. R. 15657]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes

Sec. 1. DEFINITIONS.

"Antitrust laws."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved

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[11] For text of Sherman Act, see footnote on pp. 691-693. As enumerated in last paragraph of sec. 4 of this act, see p. 681.

[1] This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Subsequent reported decisions for the period covered by this and the preceding volumes (July 1, 1921, to June 11, 1929) and bearing on the provisions of this act affecting the Commission are: *Canfield Oil Co.* v. *Federal Trade Commission*, 274 Fed. 571 (see opinion set forth in Appendix II of Volume IV at p. 542 et seq.); *Sinclair Refining Co.* v. *Federal Trade Commission*, 276 Fed. 686 (see opinion set forth in Appendix II of Volume IV at p. 552 et seq.); *Auto Acetylene Light Co.* v. *Prest-O-Lite Co., Inc.*, 276 Fed. 537; *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 42 Sup. Ct. 360; *United Shoe Machinery Corporation* v. *United States*, 258 U. S. 451, 42 Sup. Ct. 363; *Aluminum Co. of America* v. *Federal Trade Commission*, 284 Fed. 401 (see opinion set forth in Appendix II of Volume V at p. 529 et seq.); *Standard Oil of N. J. et al.* v. *Federal Trade Commission*, 282 Fed. 81 (see opinion set forth in Appendix II of Volume V at p. 542 et seq.); *Legg* v. *Hood*, 113 S. E. 642 (Ga.); *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568 (see opinion set forth in Appendix II of Volume V at p. 599 et seq.); *Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774 (see opinion and decision set forth in Appendix II of Volume VI at p. 579 et seq.); *Federal Trade Commission* v. *Sinclair Refining Co. et al.*, 261 U. S. 463 (see opinion and decision set forth in Appendix II of Volume VI at p. 587 et seq.); *B. S. Pearsall Butter Co.*, 292 Fed. 720 (see opinion and decision set forth in Appendix II of Volume VI at p. 605 et seq.); *A. B. Dick Co.* v. *Fuller*, 6 F. (2d) 393; *National Biscuit Co. et al.* v. *Federal Trade Commission*, 299 Fed. 733 (see opinion and decision set forth in Appendix II of Volume VII at page 603 et seq.); *Aluminum Co. of America* v. *Federal Trade Commission*, 299 Fed. 361 (see opinion and decision set forth in Appendix II of Volume VII at page 618 et seq.); *Western Meat Co.* v. *Federal Trade Commission*, 1 F. (2d) 95 (see opinion and decision set forth in Appendix II of Volume VIII at page 569); *Butterick Co. et al.* v.

July second, eighteen hundred and ninety;[2] sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh,

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Federal Trade Commission, 4 F. (2d) 910 (see opinion and decision set forth in Appendix II of Volume VIII at page 602); *S. S. Kresge Co.* v. *Champion Spark Plug Co.*, 3 F. (2d) 415; *Swift & Co.* v. *Federal Trade Commission*, 8 F. (2d) 595 (see opinion and decision set forth in Appendix II of Volume VIII at page 616); *Western Meat Co.* v. *Federal Trade Commission*, 4 F. (2d) 223 (see opinion and decision set forth in Appendix II of Volume VIII at page 623); *Federal Trade Commission* v. *Thatcher Manufacturing Co.*, 5 F. (2d) 615 (see opinion and decision set forth in Appendix II of Volume IX at page 631); *Parker* v. *New England Oil Corporation*, 8 F. (2d) 392, 418; *The Q. R. S. Music Co.* v. *F. T. C.*, 12 F. (2d) 730 (see opinion and decision set forth in Appendix II of Volume X at page 683); *General Investment Co.* v. *N. Y. C. R. Co.*, 271 U. S. 228; *Connecticut Tel. & El. Co.* v. *Automotive Equipment Co.*, 14 F. (2d) 957, 967, 969 et seq.; *Continental Securities Co.* v. *M. C. R. Co.*, 16 F. (2d) 378; *Federal Trade Commission* v. *Western Meat Co. et al.*, 272 U. S. 554 (see opinion and decision set forth in Appendix II of Volume XI at page 629); *General Investment Co.* v. *N. Y. C. R. Co.*, 23 F. (2d) 822; *Lord* v. *Radio Corporation of America*, 24 F. (2d) 565; *Swift & Co.* v. *United States*, 276 U. S. 311; *Radio Corporation* v. *Lord*, 28 F. (2d) 257 (C. C. A.); *International Shoe Co.* v. *Federal Trade Commission*, 29 F. (2d) 518 (see opinion and decision set forth in Appendix II of this volume at p. 732); *Van Camp & Sons* v. *American Can Co.*, 278 U. S. 245; and *Porto Rican American Tobacco Co.* v. *American Tobacco Co.*, 30 F. (2d) 234.

It should be noted in connection with this law—

That the so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess., 39 Stat. 728, 734) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto * * *";

That the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 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, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

That by the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 456 at 482, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisition by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

That Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388), permits, subject to the provisions set forth, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products * * *." See also, in this general connection, the Cooperative Marketing Act, approved July 2, 1926, 44 Stat. 803, and the limitation imposed in connection with the appropriations for enforcing the Sherman Act as set forth in the following note:

[2] The Sherman Act (26 Stat. 209), which, as a matter of convenience is printed herewith. While the Act itself has not been amended (laying to one side provisions of other laws, as above noted, limiting the scope thereof), appropriations for the Department of Justice for the enforcement of the antitrust laws for the fiscal years 1920–1928, inclusive (41 Stat. 208, 41 Stat. 922, 41 Stat. 1411, 42 Stat. 613, 42 Stat. 1080, 43 Stat. 215, 43 Stat. 1027, and 44 Stat. 343 and 1194, respectively), were made contingent upon no part of the moneys being—

Sec. 1. DEFINITIONS—Continued.

eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce."

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That 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 as-

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"Spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful: *Provided further*, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products."

Such proviso, however, was not included in the appropriation for the fiscal year ending June 30, 1929.

The act, omitting the usual formal "*Be it enacted*," etc., follows:

CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL.

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

PERSON MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

COMBINATIONS IN TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

sociations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. PRICE DISCRIMINATION.[3]

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of com-

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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 subpœnas to that end may be served in any district by the marshal thereof.

FORFEITURE OF PROPERTY.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SUITS—RECOVERY.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared 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.

[3] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 691.

Sec. 2. PRICE DISCRIMINATION—Continued.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

merce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Vendor may select own customers if not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.[4]

Unlawful where effect may be to substantially lessen competition.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

May sue in any United States district court, and recover threefold damages, including cost of suit

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[5] may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect

[4] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 691.

[5] For text of Sherman Act, see footnote on pp. 691–693. As enumerated in Clayton Act, see first paragraph thereof on p. 690.

to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS.

Prima facie evidence against same defendant in private litigation.

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws [6] 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 pending proceeding by the United States under antitrust laws.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE.

Labor, agricultural, or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by antitrust laws with respect to their legitimate objects.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws [6] shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects

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[6] For text of Sherman Act, see footnote on pp. 691–693. As enumerated in Clayton Act, see first paragraph thereof on p. 690.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE—Continued.

thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.[7]

Of other corporation. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Purchase solely for investment excepted.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation enaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Formation of subsidiary corporations for immediate lawful business also excepted.

[7] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 691.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 714, sec. 3.)

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws,[8] nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Existing rights heretofore lawfully acquired not affected.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.[9]

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over $5,000,000.

[8] For text of Sherman Act, see footnote on pp. 691-693. As enumerated in Clayton Act, see first paragraph thereof on p. 690.

[9] By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or em-

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

undivided profits aggregating more than $5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

How eligibility determined.

Not to serve more than one bank, banking association or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares, to joint-stock land banks organized under the provisions of the Federal Farm Loan Act, or to other banking institutions which do no commercial banking business:[9a] *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

Certain savings banks, land banks, and noncommercial banking institutions excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

ployee 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 footnote on p. 691.

[9a] That part of the proceeding clause beginning with "to joint-stock land banks" added by Act of Mar. 4, 1929, ch. 681.

Class A director of Federal reserve bank excepted and

a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker from being an officer, director, or employee of not more than two banks, banking associations, or trust companies, or prohibit any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank, 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 in any such case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds, after reasonable notice and opportunity to be heard, that the public interest requires its revocation.

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.

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.[10]

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.[11] The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corpora-

How eligibility determined.

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[10] The part of the section immediately preceding beginning with, "*And provided further*, That nothing in this Act" to this point, amendments made by act May 15, 1916, ch. 120, act May 26, 1920, ch. 206, and Act Mar. 9, 1928, ch. 165.

[11] For text of Sherman Act, see footnote on pp. 691-693. As enumerated in Clayton Act, see first paragraph thereof on p. 690.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

tion next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY.

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than $500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

May prosecute in district court of United States for district where offense committed.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.

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.

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.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Commission to report violations, and its own findings to Attorney General.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS—Continued.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

If any common carrier shall violate this section it shall be fined not exceeding $25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Penalty.

Effective date extended to Jan. 1, 1921.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.[12]

Except as to corporations organized after Jan. 12, 1918.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE.[13]

Jurisdiction as respectively applicable vested in—

Interstate Commerce Commission;

Federal Reserve Board; and

Federal Trade Commission.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Commission or board to issue complaint if believes secs. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so

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12 Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

13 On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 691.

Respondent to have right to appear and show cause, etc.

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.

Intervention may be permitted for good cause.

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.

Transcript of testimony to be filed.

The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board.

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.

If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

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.

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board.

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.

Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commis-

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE—Continued.

Findings of commission or board conclusive if supported by testimony.

sion or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

Commission or board may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

To be served on commission or board which thereupon to certify and file transcript of record in the court.

Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.

Jurisdiction of Court of Appeals exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.[14]

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Service of commission's or board's complaints, orders, and other processes. Personal; or

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS.

Sec. 12. That any suit, action, or proceeding under the antitrust laws [14] against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS.

Sec. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or crimi-

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[14] For text of Sherman Act, see footnote on pp. 691-693. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 690.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS—Continued.

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

nal, arising under the antitrust laws [15] may run into any other district: *Provided*, That in civil cases no writ of subpœna shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS.

Deemed also that of individual directors, officers, etc.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws,[15] such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

A misdemeanor.

Penalty, fine or imprisonment, or both.

Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT.

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends

District attorneys, under direction of Attorney General, to institute proceedings.

Proceedings may be by way of petition setting forth the case, etc.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

[15] For text of Sherman Act, see footnote on pp. 691–693. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 690.

of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpœnas to that end may be served in any district by the marshal thereof.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.

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.

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws,[16] including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No preliminary injunction without notice.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the in-

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

[16] For text of Sherman Act, see footnote on pp. 691-693. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 690.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS—Continued.

jury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

Opposite party may move dissolution or modification on two days' notice.

Sec. 263 of Judicial Code repealed.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Sec. 266 not affected.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY.

Except as provided in sec. 16 of this act.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS.

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific, and describe acts to be restrained.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT.

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute,

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT—Contd.

any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Acts specified in this paragraph not to be considered violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT.

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL. PENALTIES.

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,*

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial may be by court, or upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured.

If accused natural person, fine to United States not to exceed $1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail.

Proceedings thereafter same as if rule had issued.

Sec. 23. EVIDENCE. APPEALS.

Evidence may be preserved by bill of exceptions.

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.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

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 comtempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT.

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.

WEBB ACT[1]

[Approved Apr. 10, 1918]

[PUBLIC—No. 126—65TH CONGRESS]

[H. R. 2316]

AN ACT To promote export trade, and for other purposes

Sec. 1. DEFINITIONS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale. "Export trade."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States. "Trade within the United States."

That the word "Association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations. "Association."

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety,[2] shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in Association not illegal if organized for and engaged in export trade solely.

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[1] With the exception of a reference thereto in the case of *United States* v. *United States Steel Corporation*, 251 U. S. 417 at 453, and in *Ex Parte Lamar*, 274 Fed. 160 at 171, this act appears as yet neither to have been involved in nor referred to in any reported case.

[2] For text of Sherman Act, see footnote on pp. 691-693.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE— STATUS UNDER SHERMAN ANTITRUST LAW—Continued.

Nor agreement nor act, if not in restraint of trade within the United States, or of the export trade of any domestic competitor, and

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.

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.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

Sec. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen,[3] shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS.

Sec. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen,[4] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in ex-

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[3] See *ante*, p. 690 et seq.

[4] See *ante*, p. 677 et seq.

port trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Even though acts involved done without territorial jurisdiction of United States.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION.

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION— Continued.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make 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.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

Commission given same powers as under Federal Trade Commission Act so far as applicable.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."[1]

Approved, April 10, 1918.

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[1] See *ante*, p. 677 et seq.

APPENDIX II

DECISIONS OF THE COURTS IN CASES INSTITUTED AGAINST OR BY THE COMMISSION [1]

FEDERAL TRADE COMMISSION *v.* ALFRED KLESNER, DOING BUSINESS UNDER THE NAME SHADE SHOP, HOOPER AND KLESNER [2]

(Court of Appeals of District of Columbia. Submitted March 5, 1928. Decided April 2, 1928)

No. 976

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 3 (4½), 68 (3)—DEALER IN WINDOW SHADES CAN NOT BE RESTRAINED FROM USING TERM "SHADE SHOP" TO IDENTIFY BUSINESS, SUCH WORDS NOT BEING SUBJECT TO APPROPRIATION AS TRADE-MARK OR TRADE-NAME (FEDERAL TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

One engaged in window shade business can not be restrained, under Federal Trade Commission Act, section 5 (15 USCA sec. 45), from using words "Shade Shop" as identification of business, on ground that such use was unfair competition, in absence of showing that he was attempting to dispose of goods under pretense that they were goods of another, since words indicative of character of business can not be exclusively appropriated, either as trade-mark or trade-name.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (3)—USER'S NAME IN CONNECTION WITH MARK DESIGNATING COMMON LINE OF BUSINESS IS SUFFICIENT TO DISTINGUISH ITS USE FROM OTHERS ENGAGED IN SAME BUSINESS, USING SAME MARK.

Name of user in connection with mark, when words designate common line of business, such as "Shade Shop," is sufficient to distinguish its use from others engaged in same business and using same trade-name.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (3)—PLACE OF BUSINESS MAY BE DISTINGUISHED FROM OTHERS USING SAME MARK DESIGNATING COMMON LINE OF BUSINESS BY OTHER MEANS THAN ADDITION OF PROPRIETOR'S NAME.

Rule that distinguishing place of business will justify use of mark designating common line of business, but used by others engaged in same business, may be satisfied by other means than addition of proprietor's name, and may be accomplished by any means that will inform public and distinguish place of business from other users of same or similar trade-name.

(The syllabus is taken from 25 F. (2d) 524)

Petition by the Federal Trade Commission against Alfred Klesner, doing business under the name of Shade Shop, etc., dismissed.

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[1] The period covered is that of this volume, namely, Jan. 30, 1928, to June 11, 1929, inclusive.

[2] The case is reported in 25 F. (2d) 524. Judgment of court reversed in *Federal Trade Commission* v. *Klesner,* 274 U. S. 145. The case before the Commission is reported in 5 F. T. C. 24.

Robert E. Healy, chief counsel, *A. F. Busick*, assistant chief counsel, and *R. P. Whiteley*, all of Washington, D. C., for petitioner.

H. S. Barger and *C. R. Ahalt*, both of Washington, D. C., for respondent.

Before MARTIN, Chief Justice, ROBB and VAN ORSDEL, Associate Justices.

VAN ORSDEL, *Associate Justice:*

The Federal Trade Commission filed its petition in this court for an injunction to enforce an order of the Commission against respondent Alfred Klesner, requiring him, his servants, agents, and employees, to "cease and desist from using the words 'Shade Shop,' standing alone or in conjunction with other words, as an identification of the business conducted by him, in any manner of advertisement, signs, stationery, telephone, or business directories, trade lists, or otherwise."

It appears that the Commission, in December 1920, on the complaint of one W. Stokes Sammons, issued a complaint against defendant charging him with unfair methods of competition in commerce under the Federal Trade Commission Act (38 Stats., 717). To the complaint, defendant answered; and upon issue joined and evidence adduced the order here sought to be enforced was made by the Commission. The complaint charged the defendant with using the words "Shade Shop" on a window at his place of business, on an automobile truck owned and operated by him, and in the telephone directory for the city of Washington, in such manner as to confuse, mislead, and deceive the general public into the erroneous belief that defendant's place of business was the place where a similar business was conducted by Sammons under the name of "The Shade Shop."

It appears that one H. S. Hooper, since the year 1904, was engaged in the decorating and window shade business, and that in 1909 the firm of Hooper & Klesner was formed, which succeeded to the business of Hooper. It further appears that in 1919 defendant purchased Hooper's interest in the business and has conducted it under the firm name of Hooper & Klesner; that he never did business under any other name; never stamped his shade goods with the name "The Shade Shop" or "Shade Shop"; that he has not used "Shade Shop" on his stationery, or in advertisements, or on signs or otherwise, except in conjunction with the firm name of Hooper & Klesner.

Considerable evidence was adduced showing the competitive character of the business between defendant and Sammons, and establishing some confusion in trade by customers going to defendant's shop when they were in fact intending to do business with Sammons. We think, however, that the case can be disposed of without an analysis of the testimony, since it clearly appears and is conceded that the use was limited, as charged in the complaint, to a sign or signs painted on his place of business, on an automobile used in connection with his business, and to a notice appearing in the classified business section of the telephone directory of the city of Washington. In each instance the name was [525] used in connection with the firm name Hooper & Klesner.

This action is sought to be sustained under section 5 of the Federal Trade Commission Act, which, among other things, provides "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 to be in 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 act then provides for the appearance of the party charged with unfair conduct, his right to be heard, and for the reduction of the testimony to writing, and the filing of a copy thereof in the office of the Commission; and in the event that the Commission finds that unfair methods have been employed, an order shall issue against the party charged, requiring him to "cease and desist from using such methods of competition."

In the present case it will be observed that the term "Shade Shop," as used by defendant, is merely descriptive of the trade or business conducted by the defendant, and is indicative of a place where window shades are made and sold. In other words, it is a generic name of a place where business of that sort is conducted. It is well settled that the exclusive use to such a name, either as a trade-mark or trade-name is not entitled to legal protection. In *Delaware & Hudson Canal Co.* v. *Clark*, 13 Wall. 311, the plaintiff had for many years adopted and used Lackawanna Coal as a trade name for his product, and he sought to restrain the defendant from applying the same name to coal produced in the same vicinity. Mr. Justice Strong, delivering the opinion of the court, said:

> There are two rules which are not to be overlooked. No one can claim protection for the exclusive use of a trade-mark or trade-name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could, the public would be injured rather than protected, for competition would be destroyed. Nor can a generic name, or a name merely descriptive of an article of trade, of its qualities, or ingredients, or characteristics, be employed as a trade-mark and the exclusive use of it be entitled to legal protection.

The court concludes its opinion with the significant observation that "if the plaintiff's sales are diminished, it is because they are not the only producers of Lackawanna Coal, and not because of any fraud of defendant."

While the rule here announced applies to a generic name descriptive of an article of trade, the rule is not different where the words, as in this case, are descriptive of the place where the goods are sold or produced. As was said in *Brown Chemical Co.* v. *Myer*, 139 U. S. 54: "The general proposition is well established that words which are merely descriptive of the character, qualities, or composition of an article, or of the place where it is manufactured or produced, cannot be monopolized as a trade-mark."

If the use here complained of was limited to the use of the words "Shade Shop" alone, the use could not be restrained, since it merely denotes the character of business conducted in the place where the sign appears. Its use is not different from that of signs commonly appearing upon the street, such as "barber shop", "candy shop", "hardware store", "jewelry store", etc. It is settled law that such words are incapable of exclusive appropriation as legal trade-marks or trade-names, since they are generic names descriptive in each instance of a place of business. There is a total absence of anything showing a use by defendant which would justify the charge of unfair competition, but on the contrary a use ordinarily employed by those engaged in his line of business.

To sustain the finding of the Trade Commission would, therefore, in the language of the court in *Trinidad Asphalt Manufacturing Co.* v. *Standard Paint Co.*, 163 Fed. 977, 981, "be a result unsustained by reason or authority if one, after vainly attempting through a trade-mark to secure a monopoly of a generic or descriptive word, should nevertheless be granted one by decree of a court, applying the doctrine of unfair competition to those who simply used the word in the appropriate naming or description of their goods, but in other respects plainly distinguished them from the goods of their competitor." Applying the reasoning of the court in that case, if the action of the Com[526]mission should be sustained in this case, then none of the large number of manufacturers of window shades could lawfully designate their places of business by the term "Shade Shop."

Sammons had no monopoly of the window-shade business, hence, in the absence of any showing that defendant was attempting to dispose of his goods under the pretense that they were the goods of Sammons, there is no ground whatever in law or reason for invoking the doctrine of unfair competition, since defendant had the common right belonging to the trade to use the mark as descriptive of his business. "Having the right to that use, courts will not interfere where the only confusion, if any, results from a similarity of name and not from the manner of use. The essence of the wrong in unfair competition consists of the sale of goods of one manufacturer or vendor for those of another, and if defendant so conducts its business as not to palm off its goods for those of complainant, the action fails." *Howe Scale Co.* v. *Wyckoff et al.*, 198 U. S. 118, 140.

The record is silent as to any attempt on the part of defendant or his employees to deceive or entice Sammons's customers into dealing with him. On the contrary his employees were instructed, when it appeared that customers were looking for Sammons, to direct them to his place of business. Undoubtedly Sammons's business was affected by defendant's competition, as it was by other dealers in window shades, but that is not sufficient to justify equitable intervention. As said in the *Clark case*:

> True it may be that the use by a second producer, in describing truthfully his product, of a name or a combination of words already in use by another, may have the effect of causing the public to mistake as to the origin or ownership of the product, but if it is just as true in its application to his goods as to those of another who first applied it, and who therefore claims an exclusive right to use it, there is no legal or moral wrong done. Purchasers may be mistaken, but they are not deceived by false representations, and equity will not enjoin against telling the truth.

But the use made by defendant is even more restrictive, since it appears that the name was used invariably in connection with the firm name, Hooper & Klesner, which designated his place of business from other places using similar trade names. In the absence of trade-mark rights and any showing of fraud in business methods, this is the most that the courts have ever required. The name of the user in connection with the mark, when the word designates, as in this instance, a common line of business, is held sufficient to distinguish its use from others engaged in the same business and using the same trade name. *Howe Scale Co.* v. *Wyckoff et al.*, 198 U. S. 118; *Waterman* v. *Waterman*, 235 U. S. 88; *Elgin Watch Co.* v *Illinois Watch Co.*, 179 U. S. 664.

This rule as to distinguishing the place of business may be satisfied by other means than the addition of the proprietor's name. It may be accomplished by any means that will inform the public and distinguish the place of business from other users of the same or similar trade name. *Weinstock, Lubin & Co.* v. *Marks*, 109 Cal. 529.

A question of the authority of the Commission, under the statute, to assume jurisdiction of this case is suggested, since this is merely a controversy between private individuals, cognizable by a court of equity, and not a case involving any question of unlawful monopoly or of interest to the public. Inasmuch, however, as we have disposed of the case on its merits, inquiry into the matter of jurisdiction is avoided.

The petition is dismissed with costs.

INDIANA QUARTERED OAK CO. *v.* FEDERAL TRADE COMMISSION [1]

(Circuit Court of Appeals, Second Circuit. May 14, 1928)

No. 271

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—FACT FINDINGS OF FEDERAL TRADE COMMISSION, SUPPORTED BY ANY EVIDENCE, ARE BINDING ON COURTS.

Findings of fact by the Federal Trade Commission, having any evidence to support them, are conclusive, and binding on courts reviewing the weight of the testimony.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—THAT TERM "PHILIPPINE MAHOGANY" HAS ACQUIRED SECONDARY MEANING, TO INCLUDE WOODS NOT IN MAHOGANY FAMILY, HELD NOT TO AVOID CHARGE OF DECEIVING PUBLIC (FEDERAL TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

That term "Philippine mahogany" may have acquired a secondary meaning in the trade, to include woods found in Philippine Islands which do not belong to mahogany tree family, botanically or otherwise, *held* not to permit petitioner to escape charge of deception or of misleading public, under Federal Trade Commission Act, section 5 (15 USCA sec. 45), where understanding that Philippine mahogany is not mahogany is limited to dealers actually selling rough lumber.

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[1] The case is reported in 26 F. (2d) 340. Petition for writ of certiorari by the company denied Oct. 15, 1928. 278 U. S. 623. The case before the Commission is reported in 11 F. T. C. 271.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—SALE OF WOODS NOT IN MAHOGANY FAMILY AS "PHILIPPINE MAHOGANY" HELD UNFAIR COMPETITION, OF WHICH FEDERAL TRADE COMMISSION COULD ASSUME JURISDICTION IN PUBLIC INTEREST (FEDERAL TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

Advertising and sale of inferior woods not belonging to mahogany tree family as "Philippine mahogany," resulting in deceiving purchasers into believing woods are true mahogany, *held* unfair method of competition, justifying Federal Trade Commission in assuming jurisdiction in the public interest, under Federal Trade Commission Act, section 5 (15 USCA Sec. 45.)

(The syllabus is taken from 26 F. (2d) 340)

Petition by the Indiana Quartered Oak Co. to review an order of the Federal Trade Commission requiring petitioner to desist from advertising, describing, selling, or offering for sale under the term "mahogany," or "Philippine mahogany," woods which are imported from the Philippine Islands. Order affirmed.

Charles Neave, of New York City (*Daniel R. Forbes*, of Washington, D. C., and *Alexander C. Neave*, of New York City, of counsel), for petitioner.

F. Granville Munson, Major, Judge Advocate, U. S. Army, of Washington, D. C., for government of Philippine Islands.

Robert E. Healy, chief counsel, *Adrien F. Busick*, assistant chief counsel, and *M. Markham Flannery*, all of Washington, D. C., for respondent.

Marcus Borchardt, of Washington, D. C., *George Gordon Battle*, of New York City, and *Davis, Polk, Wardwell, Gardiner & Reed*, of New York City (*Havens Grant*, of New York City, of counsel), amici curiae.

Before MANTON, L. HAND, and SWAN, Circuit Judges.

MANTON, *Circuit Judge:*

The Federal Trade Commission, after protracted hearings, resulting in a very large record, by its order restrained the petitioner from "advertising, describing or otherwise designating or selling, or offering for sale under the term 'mahogany' or 'Philippine mahogany', * * * woods known under the common or trade names 'red lauan' 'white lauan', 'tanguile', 'narra', 'apitong', 'bataan', 'lamao', 'orion', 'batang', 'bagaac', 'batak' and 'balacbacan', * * * unless such wood * * * from which products are made is derived from the trees of the mahogany or Meliaceae family."

The Commission made findings, supported by evidence, to which exceptions are taken, that the woods have been known and traded in for years, both in the Philippines and in the United States under the names of "lauan" and "tanguile" and having other trade names as referred to in the order of the Commission; that about 85 per cent of the Philippine woods sold as "Philippine mahogany" is imported through the Pacific coast ports under the other trade names as set forth; that some importers sell these woods to lumber dealers and furniture manufacturers under their native or trade names. It also found that a substantial number of lumber dealers in this country use and deal in woods of the type sold by the respondent as Philippine mahogany under such native or trade names.

There is a conflict of evidence as to the tree family of these woods, but there is evidence to support the finding of the Commission that the lauan and tanguile sold by respondent as Philippine mahogany is the product of the tree family scientifically known as Dipterocarpaceae, which tree family is not scientifically or botanically related to the tree family Meliaceae, the product of which constitutes true mahogany. Of the genera of this Meliaceae family but one, Swietenia, produces true mahogany and there are five known species of Swietenia. The Commission has found that trees of the Swietenia group producing mahogany grow principally in the West Indies, Southern Florida, Southern Mexico, Central America, Venezuela and Peru, and it also has found that [341] no species of the genus Swietenia of this tree family grows in the Philippine Islands except such as are planted for decorative or experimental purposes. There is evidence to support the finding that the Spanish words "Caoba des Filipinos", which means Philippine mahogany, are used to designate native woods resembling mahogany in grain, texture and color; but while the term was known in the Philippines, it was not used in connection with the sale of lumber.

The term Philippine mahogany was not used prior to the American occupation, and it appears that prior to 1916 the Philippine government, through its director of forestry, opposed the practice of American importers selling Philippine hardwoods as "Philippine mahogany." Woods of widely different kinds are shown to have properties and characteristics in common, but it is the difference in such properties and characteristics that distinguish one wood from the other and the ultimate fact is made known by the test which consists in comparison or contrast of such properties and characteristics. Men engaged in the lumber business or wood-working trade recognize different woods by certain characteristics which are peculiar to these woods, and since such characteristics are produced in the growth of the tree, they are regarded as botanical characteristics and are considered in classifying or identifying the different kinds of wood which the lumber or wood-working trade handles.

The Commission has found that laborers in the lumber yard who distinguish between the different kinds of lumber by considering the grain, pore, scent, weight, or other identifying characteristics are guided by botanical properties and differences inherent in the wood as formed in the tree, and these characteristics correspond with like characteristics placed by nature in the trees of the same species. Wood technologists, by reason of their expert knowledge, compare these and other qualities and characteristics with such precise results as to satisfy the requirements of both science and commerce and, according to such identification, neither lauan nor tanguile are mahogany botanically or otherwise. It is found that many of the characteristics and virtues possessed by mahogany are lacking in the Philippine hardwood sold by the respondent as "Philippine mahogany," and this prevents such hardwoods from serving such uses for which mahogany is particularly adapted, and there is evidence to support the finding that such woods are not suitable for cabinet-making because of the prevalence of wormholes which constitute serious defects and that they are too soft for flooring and not suitable for the construction of lamps because they do not take the required finish; that they are not susceptible to the finish required by piano manufacturers on the exposed surfaces of pianos nor are they suitable for carving. When used in furniture, it is necessary to fill the wormholes before the wood is stained or varnished and such filling destroys the even appearance of the surface. They do not retain subsurface luster peculiar to mahogany and, unlike mahogany, they do not beautify with age. The Commission has found that the general public is deceived when lauan or tanguile is sold for mahogany.

It is now well settled that findings of fact by the Commission, having any evidence to support them, are conclusive and binding upon the courts reviewing the weight of the testimony. *Fed. Trade Comm.* v. *Beech-Nut Co.*, 257 U. S. 441; *Harriet Hubbard Ayer, Inc.* v. *Fed. Trade Comm.*, 15 Fed. (2d) 274, 276; *Oppenheim, Obendorf & Co.* v. *Fed. Trade Comm.*, 5 Fed. (2d) 574; *Natl. Biscuit Co.* v. *Fed. Trade Comm.*, 299 Fed. 733.

It is established that not all trees, shrubs or bushes belonging to the Meliaceae, the mahogany tree family, produce mahogany lumber. But there is ample expert testimony establishing that no wood is mahogany unless it is wood from the tree of the mahogany tree family and no wood is true mahogany unless it is of the genus Swietenia of that family. It becomes unnecessary for us to discuss here the difference of expert opinion as to whether the trade designation mahogany should be confined to one or more species of the genus Swietenia, for wood from trees which in no way belong to either the genus or mahogany tree family, is neither true mahogany nor any kind of mahogany. And the experts justified the findings of the Commission that the woods imported from the Philippine Islands and sold by the respondent as "Philippine mahogany" are not from any tree of the Meliaceae tree family. The Commission found that the representation of these woods as Philippine mahogany has caused dealers in furniture and allied commodities to purchase such wood products in the belief that they are mahogany woods and in turn to sell to retail dealers articles of furniture and allied commodities for articles of mahogany woods which, when they ultimately reach the consuming public, become a fraud upon it. It found that such sales and practices deceived a substantial por[342]tion of the trade and the purchasing public in substantial numbers, because such purchases were made or induced under the belief that they were products made of true mahogany and therefore there was injury to the purchasing public and to the honest competitors of the petitioner. To support this finding, there was much testimony of witnesses who were engaged in the furniture business for a long period of years.

If, as argued by the petitioner, the term "Philippine mahogany" has acquired a secondary meaning in that the trade does not understand it to mean genuine mahogany, but a wood having some of the characteristics and qualities of mahogany, that will not permit the petitioner to escape the charge of deception or misleading the public.

The trade, as a whole, does not understand that "Philippine mahogany" is not mahogany, but such understanding is limited to dealers who actually sell the rough lumber. Retailers of furniture, builders of houses and boats, testified that they understood the word to mean genuine mahogany. Indeed, some of the manufacturers of furniture who used the lumber as a raw material, do not understand that it is not true mahogany. If the term deceives the purchasing public, its use may not be continued. As said in *Federal Trade Comm.* v. *Winsted Hosiery Co.*, 258 U. S. 483:

> While it is true that a secondary meaning of the word "Merino" is shown, it is not a meaning so thoroughly established that the description which the label carries has ceased to deceive the public; for even buyers for retailers, and sales people, are found to have been misled. * * *
>
> The fact that misrepresentation and misdescription have become so common in the knit underwear trade that most dealers no longer accept labels at their face value does not prevent their use being an unfair method of competition. A method inherently unfair does not cease to be so because those competed against have become aware of the wrongful practice. Nor does it cease to be unfair because the falsity of the manufacturer's representation has become so well known to the trade that dealers, as distinguished from consumers, are no longer deceived.

False advertising and selling the commodity as and for a different commodity has been denounced by the courts as a method of unfair competition within the meaning of the statute here invoked. *Procter & Gamble Co.* v. *Fed. Trade Comm.*, 11 Fed. (2d) 47; *Guarantee Veterinary Co.* v. *Fed. Trade Comm.*, 285 Fed. 853; *Royal Baking Powder Co.* v. *Fed. Trade Comm.*, 281 Fed. 744. The same rule obtains in the English courts (*Lemy* v. *Watson*, 31 L. T. 612 (1915) and *Steinway* v. *Henshaw*, 5 R. P. C. 79).

It was the petitioner's advertising of lauan and tanguile woods as "Philippine mahogany" that has worked deception upon the public. Purchasers from petitioner have relied upon its representations and have sold the products made from these Philippine woods as mahogany. Mahogany wood has had a long established reputation; deception on the public in the sale of inferior woods which are not true mahogany (which deception reaches the ultimate purchaser even though the intermediate customers knew that the woods were not mahogany) is an unfair method of competition in commerce under section 5 of the Trade Commission Act (38 Stat. 717, 719). *Warner & Co.* v. *Lilly & Co.*, 265 U. S. 526; *Cocoa Cola Co.* v. *Gay-Ola Co.*, 200 Fed. 720.

It was not necessary for the Commission to establish intent to deceive the purchasing public. For the test of unfair competition was whether the natural and probable result of the use by the petitioner of such woods was deceptive to the ordinary purchaser and made him purchase that which he did not intend to buy. *Fed. Trade Comm.* v. *Balmé*, 23 Fed. (2d) 615; *Straus* v. *Notaseme Hosiery Co.*, 240 U. S. 179, 182.

It is argued that there is a want of public interest and that the Federal Trade Commission was not justified in assuming jurisdiction under section 5 of the Federal Trade Commission Act (38 Stat. 717, 719). That act provides that "if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public," jurisdiction may be taken by the Commission.

The practices here involved affect the public who buy furniture and other products manufactured from mahogany wood as well as intermediate dealers in mahogany, and this was sufficient to sustain the Trade Commission in assuming jurisdiction. *Federal Trade Comm.* v. *Winsted Hosiery Co.*, 258 U. S. 483.

SWAN, *Circuit Judge:*

I reluctantly concur in the result because the Commission has made findings of deception of the public, which there is some evidence to support, though, in my opinion, it is greatly outweighed [343] by contrary evidence. The purchasing public knows little, and cares less, I think, about the botanical characteristics of mahogany. The Philippine government, our own departments of War, Commerce, and Agriculture, and the Interstate Commerce Commission have been accustomed for years to refer to the woods in question as "Philippine mahogany." The National Hardwood Lumber Association has, since 1916, established rules for grading "Philippine mahogany." This term is used in foreign countries also. Combined with the word "Philippine," "mahogany" is used in its commercial as distinguished from its botanical sense. Such usage is common in the lumber industry, witness: Douglas fir or Oregon pine, which is a false hemlock; red cedar, which is a juniper; and many other instances which might be cited. Interference with such commercial usage does not seem to me justifiable, but in view of the Commission's findings the court is powerless.

PHILIP CAREY MANUFACTURING CO. ET AL. *v.* FEDERAL TRADE COMMISSION[1]

(Circuit Court of Appeals, Sixth Circuit. November 12, 1928)

No. 5023

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—BEFORE FEDERAL TRADE COMMISSION COULD ENTER ESPIONAGE ORDER, IT MUST HAVE FOUND ON SUBSTANTIAL EVIDENCE INFORMATION WAS UNLAWFULLY USED TO STIFLE COMPETITION.

Before Federal Trade Commission was warranted in entering espionage order, it was necessary that it find on substantial evidence that information obtained regarding facilities, capacities, and extent of operations of competitor was unlawfully used to hinder or stifle competition.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—EVIDENCE DID NOT SUPPORT FEDERAL TRADE COMMISSION'S FINDING THAT EVIDENCE OBTAINED REGARDING COMPETITOR'S FACILITIES, CAPACITIES, ETC., WAS UNLAWFULLY USED TO STIFLE COMPETITION.

Evidence *held* insufficient to support Federal Trade Commission's finding that evidence obtained regarding facilities, capacities, and extent of operations of competitor in business of making preformed expansion joints was unlawfully used to hinder or stifle competition.

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[1] The case is reported in 29 F. (2d), 49. The case before the Commission is reported in 11 F. T. C. 228.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½—THAT PETITIONERS' REPRESENTATIVE TOLD PROSPECTIVE PURCHASER OF COMPETITOR'S PRODUCT IT WOULD NOT BE PASSED BY ENGINEERS WAS NOT EVIDENCE OF UNFAIR COMPETITION, WHERE PRODUCT WAS REJECTED.

That petitioner's representative had told prospective purchaser of competitor's preformed expansion joint that he would not be able to use it, "that it would not be passed by engineers," was not evidence of unfair method of competition, where witness later purchased it, and it was rejected by engineers, but later its use was permitted on condition that he use double thickness.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½—EVIDENCE DID NOT SUPPORT FEDERAL TRADE COMMISSION'S FINDING THAT PETITIONERS DISPARAGED COMPETITOR'S PRODUCT.

Evidence *held* insufficient to support Federal Trade Commission's finding that petitioners had represented to prospective purchasers that preformed expansion joints of their competitors were unsuitable for purposes intended, and would not be passed or accepted.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½—PROOF THAT SALESMEN HERE AND THERE OUT OF 600 SPOKE DISPARAGINGLY OF COMPETITOR'S PRODUCT DID NOT AMOUNT TO SUBSTANTIAL EVIDENCE OF UNFAIR METHOD OF COMPETITION.

Proof that salesman here and there, out of as many as 600, spoke disparagingly of product of competitor (not more than dozen times in all), does not amount to substantial evidence of an unfair method of competition.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 68 (9)—PETITIONERS SENDING REPORTS TO SALESMEN IN REGULAR ROUTINE, SHOWING BANKRUPTCY PETITION WAS FILED AGAINST COMPETITOR, WAS NOT UNFAIR COMPETITION, EVEN IF SALESMEN USED INFORMATION.

Petitioners' sending reports to their salesmen, regarding competitors and customers received from mercantile agency, in regular routine, showing that bankruptcy petition had been filed against competitor, was not unfair competition, even if salesmen used information, which was not shown by evidence.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½—CIRCUIT COURT OF APPEALS, REVIEWING FEDERAL TRADE COMMISSION'S ORDER TO DESIST FROM CERTAIN ACTS OF UNFAIR COMPETITION, WILL NOT DECIDE DISPUTED QUESTIONS OF FACT.

Circuit Court of Appeals reviewing an order of the Federal Trade Commission, commanding petitioners to desist from certain acts of unfair competition, will not decide disputed questions of fact, on which Commission made no finding.

(The syllabus is taken from 29 F. (2d) 49)

Petition by the Philip Carey Manufacturing Co. and another to review an order of the Federal Trade Commission, commanding petitioners to desist from doing certain acts. Order reversed.

Alfred C. Cassatt, of Cincinnati, Ohio (*Richard P. Ernst* and *Frank W. Cottle*, both of Cincinnati, Ohio, on the brief), for petitioners.

James M. Brinson, of Washington, D. C. (*Robert E. Healy* and *Adrien F. Busick*, both of Washington, D. C., on the brief), for respondent.

Before DENISON, MOORMAN and KNAPPEN, *Circuit Judges*, KNAPPEN, J., dissenting.

MOORMAN, *Circuit Judge:*

Petition to review an order of the Federal Trade Commission commanding petitioners to desist from: (1) Employing or using any system of espionage whereby officers, agents and employees of petitioners obtain or seek to obtain information as to facilities, capacities, operations or customers of any competitor; (2) circulating, representing or publishing among prospective purchasers of preformed bituminous expansion joint any false or misleading statement concerning the ability of any competitor to fill orders or make deliveries; (3) circulating or publishing among prospective purchasers of preformed [50] bituminous expansion joint any false or misleading statement concerning the acceptableness or adaptability for the use intended of the product of any competitor; and (4) circulating or publishing among prospective purchasers of preformed bituminous expansion joint any false or misleading statement concerning the financial standing, business or business methods of any competitor.

The complaint on which this order was entered was issued May 23, 1924, and charged the petitioners with violating the provisions of section 5 of the act of September 26, 1914 (Title 15, sec. 45, USCA), and section 3 of the act of October 15, 1914 (Title 15, sec. 14, USCA), by indulging in unfair methods of competition as specifically set out. Upon the hearing the Commission dismissed the charges made under the act of October 15, and failed to make any findings of fact or orders on some of the charges made under the act of September 26, but did make findings of fact on which it based its order referred to.

It is urged upon us in this review that the order of the Commission must be set aside because the findings upon which it is based are not supported by substantial evidence.[2] Section 1 of the order deals with espionage and is based upon the finding that petitioners had sent spies under assumed names to plants of competitors to report on facilities, capacities and extent of operations, and had used the information so obtained as a basis for representing to prospective customers that such competitors could not make extensive deliveries or fill orders of magnitude, "though such reports showed that such competitors were taking care of all business coming to them and planning to expand so as to take care of more business if and when it was obtained."

The evidence touching this subject shows that in April of 1922 an employee of the petitioners, representing himself as a possible customer, called upon the manager of a plant which was manufacturing expansion joints for the Servicised Products Co. and obtained and furnished to petitioners certain information concerning the methods and capacity of the plant; that later, in June, another employee of

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[2] *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483; *Moir, etc., v. Federal Trade Commission*, 12 Fed. (2d) 22; *Harriet Hubbard Ayer v. Federal Trade Commission*, 15 Fed. (2d) 274; *Arkansas Wholesale Grocers' Ass'n v. Federal Trade Commission*, 18 Fed. (2d) 866.

the petitioners called again at the same plant, obtained practically the same information, and furnished it to the sales manager of the petitioners. These reports were shown by petitioners to an examiner of the Federal Trade Commission the latter part of 1922. The other instance of alleged espionage occurred in the fall of 1923, when an employee of the petitioners, representing himself as a possible customer, called at a plant of the Servicised Corporation in Illinois and obtained similar information which he transmitted to the office of petitioners in Chicago.

The old method of making expansion joints was to pour heated bituminous materials into the space between the parts to be joined. The petitioners, acting under patents which they held, were the first to manufacture and sell a preformed joint, and for several years they had a practical monopoly on such joints. As competitors came into the field controversies arose as to whether they were infringing upon the petitioners' patents; and petitioners claim that the visits to the plants of the Servicised company were made for the purpose of ascertaining whether the product which that company was making was an infringement upon their patents. The information which they sought and obtained did not relate to any secret process or formula, but was such as the Servicised company was willing to furnish to any possible customer. It has never been held that the obtaining of this kind of information, in the manner in which petitioners obtained it, plus a use of it without misrepresentation, amounts to unfair practice under the statute. We do not find it necessary to consider that question because before the Commission was warranted in entering the espionage order it was necessary that it find upon substantial evidence that the information was unlawfully used to hinder or stifle competition. *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U. S. 441. There was a finding by the Commission that it was so used; but we find no substantial evidence in the record to support that finding.

Paragraph 2 of the order commanding petitioners to desist from circulating or using among prospective purchasers of expansion joints any false or misleading statement concerning the ability of any competitor to fill orders or make deliveries rests upon the finding by the Commission that the information obtained from the visits referred to was used as a basis for such representation. As we have said, there is no evidence to support that finding. Indeed, the sole contention of respondent on this point is that illegal use is to be inferred from the wrongful procure[51]ment. This in our opinion can not be done as against the showing made by the petitioners that the information was obtained for a lawful purpose and was not otherwise used.

Section 3 of the order deals with the circulation among prospective purchasers of expansion joints of false or misleading statements concerning the financial standing and the business or business methods of competitors. The finding of fact upon which this part of the order is based is that petitioners had represented to prospective purchasers that the product of their competitors was unsuitable for the purpose intended and would not be passed or accepted. There are some eight or ten instances disclosed in the evidence in which salesmen for petitioners spoke disparagingly of some competitor's product. L. H. Tower, who had been assistant sales manager for the

Carey company, but at the time of the hearing was a salesman for the Servicised company, testified that he and Schueler, manager of the Chicago office of petitioners, instructed salesmen to say to prospective purchasers that in cold weather the Servicised joint would crack and break and in hot weather it would "stick together on the job." This testimony would be important in some circumstances; but it is not important where, as here, there is no showing that any salesman ever did this, and where there is a showing of only a small number of other disparaging comments—eight or ten in the course of several years among many salesmen throughout the country. When so considered it does not, we think, lend authority or purpose to the incidents relied upon.

One witness testified that he was about to purchase the Servicised joint when a representative of the Carey company told him that he would not be able to use it; "that it would not be passed by the engineers." Witness purchased it and it was rejected by the engineers; but later its use was permitted on condition that he use a double thickness. We find no evidence of unfair method of competition in this. Nor do the other incidents relied upon, when considered in connection with all the proofs, amount to such method. They cover a period of four years, during which the petitioners had salesmen and distributors in many cities of the country. In 1926 they had more than 600 salesmen selling their products, including this expansion joint. They had branch offices and distributors in almost all of the larger cities. They had many competitors, some of them, including the Servicised company, doing business all over the United States, and it would be strange indeed if some of their salesmen and also the salesmen of other companies had not made disparaging remarks about competitors.

It is undoubtedly true that a single act may constitute substantial evidence of an unfair method of competition, *Fox Film Corporation* v. *Federal Trade Commission*, 296 Fed. 353; but in our opinion when all the facts are considered in this case there is no act or combination of acts which can be given that effect. Saving the testimony of Tower referred to, which was denied by Schueler, the evidence shows that petitioners not only did not authorize their salesmen to disparage the products of their competitors, but expressly instructed them not to do so. Their policy, as disclosed in the evidence, was to sell their product on its merits and not on the demerits of other like products. Proof that a salesman here and there out of many—as many as six hundred at one time—spoke disparagingly of the product of a competitor (not more than a dozen times in all) does not amount to substantial evidence of an unfair method of competition.

The final paragraph of the order is based on a finding that agents and employees of the petitioners circulated among their salesmen a statement that a bankruptcy petition had been filed against the Servicised Products Co. and caused their salesmen to use the information in connection with the sale of their goods in competition with the Servicised company. The finding recites that a petition in bankruptcy was filed against the Servicised company and Alfred C. Fisher by three competitors, one of which was a licensee of petitioners and another a creditor of a company which had made joints for the Servicised company but was then a competitor of that company. It also recites that the bankruptcy proceedings were never pressed, and that at the time the Servicised company was not strong financially but was solvent and meeting its obligations.

The evidence on this point shows that petitioners regularly received reports from R. G. Dun & Co. in respect to customers, contractors and competitors; that as these reports came in copies were made and sent out to petitioners' salesmen; that one of the reports showed that a bankruptcy petition had been filed against the Servicised Products Company by the three creditors mentioned; and that a copy of this report was sent out to the salesmen in the regular routine. It does not appear that petitioners had anything to do with the filing of this bankruptcy petition, or that they knew it had been filed until the report came in in the regular course [52] from the rating company. Nor was there any evidence to show that any of their salesmen ever used this information after it was furnished to them. Perhaps they did. It was true, and we know of no standard of practice which forbids one from telling the truth—even about a competitor.

It is said, however, in argument that petitioners made exclusive contracts with distributors; that in some cases they used the Moeller patent as a weapon to intimidate competitors or drive them out of business, and in others to formulate satisfactory arrangements with companies operating under other patents; that they sought to have engineers provide in their specifications for highway construction that the "Carey joint or its equal" should be used; and that they now occupy a dominant place in the expansion joint industry. Upon none of these charges was there a finding by the Commission. Some of them were not covered by the complaint; as to those that were, the Commission either dismissed the complaint or made no finding of fact. We are not called upon to decide these disputed questions, and we find nothing in the evidence concerning them to support any inference that would add weight to the findings which the Commission did make. Petitioners, it is true, are the largest manufacturers and sellers of preformed expansion joints. For several years they had a monopoly in that business—a lawful monopoly by virtue of patents which they owned. They had the right to protect their patents, and there is no evidence to show that under the guise of doing so they were guilty of unfair practice. But aside from these considerations, the Commission made no finding on any of these disputed points, and we see nothing in the evidence concerning them which adds any force to the findings which the Commission did make. Those findings, as we have said, have no support in the evidence.

The order is reversed.

KNAPPEN, *Circuit Judge*, dissenting:

I am not convinced that the action of the Commission should be set aside. Not only does the conduct of the petitioners impress me as highly unethical, to say the least, but I am disposed to think that generally at least the findings of the Commission are supported by substantial testimony, and so are binding upon us (38 U. S., c. 311, p. 720, sec. 5) unless the facts found fail to constitute, in law, unfair competition, which I am not prepared to say is the case here. I think the Commission was not bound to conclude that the only purpose of sending persons, not customers, to the place of business of its competitor was to ascertain whether petitioners' patents were being infringed. Nor do I think it a sufficient answer to the charge of espionage that the competitors would have given to a good-faith intended and enquiring customer the same information given to the secret representatives of petitioners. Method, motive, and purpose may well make unfair a competition which otherwise might not be so, and there seems to me substantial evidence of a purpose to drive the competitor out of business. Moreover, I am not convinced that competition may fail to be unfair merely because it was not exercised all the time. The useful purpose of the statute here invoked is preventive, not punitive, and I am not convinced that the unfair competition was so trivial as to be negligible.

There may perhaps be room for a modification in some respects of the findings or the scope of orders to cease and desist, although I am not so convinced. But I am impressed that the situation called for a reasonable measure of relief, and that the Commission's order should not be set aside.

INTERNATIONAL SHOE CO. *v.* FEDERAL TRADE COMMISSION[1]

(Circuit Court of Appeals, First Circuit. November 27, 1928)

No. 2225

MONOPOLIES KEY—NO. 12 (2)—CONTRACTS AND STOCK ACQUISITIONS ARE CONDEMNED WHERE EFFECT CREATES REASONABLE PROBABILITY OF LESSENED COMPETITION OR MONOPOLY (CLAYTON ACT, SECS. 3, 7; 15 USCA SECS. 14, 18).

Contracts dealt with by Clayton Act, section 3 (15 USCA sec. 14), and stock acquisitions referred to in section 7 (15 USCA sec. 18), are condemned, where effect creates reasonable probability, not mere possibility, that competition will be substantially lessened or monopoly created.

[519] TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—NO. 80½—COURT'S JURISDICTION TO REVIEW ORDER OF FEDERAL TRADE COMMISSION IS LIMITED TO STATUTORY GROUNDS.

Jurisdiction of Circuit Court of Appeals to review order of Federal Trade Commission is limited somewhat narrowly to grounds prescribed in statute.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—NO. 80½—FEDERAL TRADE COMMISSION'S ORDER REQUIRING SHOE MANUFACTURER TO DIVEST ITSELF OF STOCK OF ANOTHER SHOE MANUFACTURER HELD PROPER (CLAYTON ACT, SEC. 7; 15 USCA SEC. 18).

Order of Federal Trade Commission, directing shoe manufacturer to divest itself of stock of another shoe manufacturer, *held* proper, under Clayton Act, section 7 (15 USCA sec. 18), prohibiting corporation engaged in commerce to acquire stock of another, where effect may be to substantially lessen competition, notwithstanding strained financial condition of second company.

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[1] The case is reported in 29 F. (2d) 518. Judgment of court reversed in *International Shoe Co. v. Federal Trade Commission,* 280 U. S. 291, 50 Sup. Ct. Rep. 89. The case before the Commission is reported in 9 F. T. C. 441.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½—FINDINGS OF FEDERAL TRADE COMMISSION, SUPPORTED BY EVIDENCE, ARE CONCLUSIVE.

Findings of Federal Trade Commission, if fully supported by testimony, are conclusive on Circuit Court of Appeals.

(The syllabus is taken from 29 F. (2d) 518)

Petition by the International Shoe Co. to review an order of the Federal Trade Commission directing petitioner to divest itself of certain stock. Order affirmed.

Frank Y. Gladney and *R. E. Blake*, both of St. Louis, Mo. (*J. D. Williamson*, of St. Louis, Mo., of counsel; *Clifford P. Warren*, of Boston, Mass., on the brief), for petitioner.

Adrien F. Busick, *Baldwin B. Bane*, and *A. R. Brindley*, all of Washington, D. C. (*Robert E. Healy*, of Washington, D. C., on the brief), for the Commission.

Before BINGHAM, JOHNSON, and ANDERSON, Circuit Judges.

ANDERSON, *Circuit Judge:*

This is a proceeding to review an order of the Federal Trade Commission directing the petitioner to divest itself of the stock of the W. H. McElwain Co., found to have been acquired in violation of section 7 of the Clayton Act, and of the properties of said company taken over through such stock acquisition after the Commission had issued its complaint. Section 7 of the Clayton Act (38 Stat. 730, 15 USCA, sec. 18) provides:

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.

By section 11, it is provided that, after hearing, the Commission shall state its findings of fact and cause an order to be served requiring the respondent to cease and desist from the violation charged and found. This section also provides for a review by a court of appeals and that "the findings of the Commission * * * as to the facts, if supported by testimony, shall be conclusive."

The scope of this statute and of the reviewing proceeding have been clearly defined in recent authoritative decisions.

In *United Shoe Machinery Co.* v. *United States*, 258 U. S. 451, 459, Mr. Justice Day says:

The Sherman Act and the Clayton Act provide different tests of liability. This was determined in the recent case of *Standard Fashion Co.* v. *Magrane-Houston Co., ante, 346.* In that case we pointed out that the Clayton Act was intended to supplement the Sherman Act, and within its limited sphere established its own rule.

And in *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, the phrase "may be to substantially lessen competition" found in both sections 3 and 7, was dealt with as follows:

> Section 3 condemns sales or agreements where the effect of such sale or contract of sale "may" be to substantially lessen competition or tend to create monopoly. It thus deals with consequences to follow the making of the restrictive covenant limiting the right of the purchaser to deal in the goods of the seller only. But we do not think that the purpose in using the word "may" was to prohibit the mere possibility of the consequences described. It was intended to prevent such agreements as would under the circumstances disclosed probably lessen competition, or create an actual tendency to monopoly. That it was not intended to reach every remote lessening of competition is shown in the requirement that such lessening must be substantial.

Otherwise stated, contracts dealt with by section 3, and stock [520] acquisitions referred to in section 7, are condemned where the effect creates a reasonable probability—not a mere possibility—that competition will be substantially lessened or a monopoly created. Compare *Swift* v. *Federal Trade Commission*, 8 Fed. (2d) 595, 597; *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, and footnotes to Mr. Justice Brandeis' dissenting opinion, pages 431 et seq., quoting from the committee reports, etc., when the Clayton Act was under discussion in Congress. *Federal Trade Commission* v. *Eastman Kodak Co.*, 274 U. S. 619.

A recent and closely applicable decision is *Federal Trade Commission* v. *Pacific Paper Association*, 273 U. S. 52. In that case, the Court of Appeals for the Ninth Circuit had reversed paragraphs b and c of the order of the Commission, made on stipulated facts, from which the Commission found that the respondents had acted in violation of section 5 of the Federal Trade Commission Act (38 Stat. 717).

But the Supreme Court reversed the Court of Appeals, holding (273 U. S. 63) that "the weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn from them, is for the Commission. Its conclusion that the habitual use of the established list lessens competition and fixes prices in interstate territory can not be said to be without sufficient support."

The jurisdiction of this court to review is not broad and general; it is limited, somewhat narrowly, to the grounds prescribed in the statute.

Petitioner's learned counsel states, near the beginning of his brief, that there is no dispute about the facts, not a single conflict in the testimony of the witnesses, and that "the issue is nothing more than conflicting inferences, conclusions or opinions from the undisputed facts shown on the record."

This essentially accurate characterization of the bulky record of over 700 pages would, under the doctrine above stated in the *Pacific Paper Association case*, warrant this court in dismissing the petition without substantial discussion of petitioner's contention—elaborated in a brief of over 100 pages—that the Commission's inferences were wrong. It is not seriously contended that any of the findings of fact of the Commission are unsupported by the testimony. Petitioner merely seeks to induce this court to hold the Commission wrong in its inferences from the facts, and on that ground alone to reverse the order.

Nevertheless, we have carefully examined the record and the petitioner's two briefs, with the result that we find that the inferences of the Commission are not only reasonably drawn from undisputed facts, but that no other inferences could, reasonably, be so drawn.

In brief outline the facts are as follows:

The International Shoe Co., with headquarters in St. Louis, grew out of a consolidation, some years ago, of three shoe manufacturing concerns. In 1921 it owned and operated at least thirty-two shoe factories in Missouri, Illinois, and Kentucky, with a daily capacity of more than 70,000 pairs of shoes. It also owned tanneries. It manufactured a general line of leather shoes for men, women, boys, girls and infants, and sold them in interstate commerce in practically all the States of the United States. The W. H. McElwain Co. was then a Massachusetts corporation, with headquarters in Boston, owning and operating tanneries, and shoe factories having a daily capacity of about 40,000 pairs, where it manufactured leather shoes for men, boys, and misses, which it sold in at least thirty-five States of the United States. It also owned, in whole or in part, several branches or distributing houses. Its main output were dress shoes for men, thus distinguished from work shoes. The petitioner was the largest shoe manufacturer in the United States, and the McElwain company the largest in New England, and the fourth or fifth in the United States.

Both concerns started from small beginnings, had been well and aggressively managed, and had for over twenty years been expanding their output, both in varieties of shoes manufactured and in the territory in which they marketed their shoes. Both companies showed marked tendencies towards what has come to be called the "integration of the industry," i. e., covering the field, from raw material (mainly hides) to actual wearer.

Paragraph 3 of the complaint reads:

On or about May 11, 1921, while the International Shoe Co. and the W. H. McElwain Co. were engaged in commerce in competition with each other as aforesaid, the International Shoe Co. acquired the whole, or substantially all, of the stock or other share capital of said W. H. McElwain Co., and still owns and controls such stock or share capital so ac[521]quired. Such acquisition of such stock or share capital of the W. H. McElwain Co. was contrary to law and violative of said act of Congress approved October 15, 1914 (the Clayton Act), and especially section 7 thereof. The effect of the acquisition by the respondent of such stock or other share capital of the W. H. McElwain Co. was, to wit:

(*a*) To substantially lessen competition between the W. H. McElwain Co., the corporation whose stock was so acquired, and the International Shoe Co., the corporation making the acquisition;

(*b*) To restrain commerce in the shoe business in the several sections and communities of the United States in which the respondent and the said W. H. McElwain (Company) were engaged in business in interstate commerce, as aforesaid;

(*c*) To tend to create in the respondent a monopoly in interstate commerce in the shoe business.

After hearing, the Commission on November 25, 1925, made a long report of its findings of fact, paragraphs 5 and 6 of which are as follows:

Paragraph 5. The shoes produced by W. H. McElwain Co. in 1921 and for some time prior thereto were sold to retail dealers at about six to nine dollars per pair. At the same time the International Shoe Co. produced a line of men's dress shoes known as the "Patriot" brand, and of that brand ten styles of low shoes and twenty-two styles of high shoes were similar in style, comparable in price, and equal or superior in quality to the men's high and low dress shoes produced by the W. H. McElwain Co. The "Patriot" shoes manufactured and sold by respondent were sold to retailers at about the same price per pair as the shoes manufactured and sold by W. H. McElwain Co. Both companies made and sold medium priced dress shoes and sold such shoes to retail dealers in the same States, and in many of the same cities and towns, and in some instances to the same dealers. On and prior to May 11, 1921, both companies were engaged in manufacturing and selling leather dress shoes in commerce among the several States and the District of Columbia, in competition with each other, and with others similarly engaged. The competition in commerce between the two companies was substantial.

Paragraph 6. Respondent is the largest manufacturer of leather shoes in the United States. In its catalogue for the spring and summer of 1921 respondent listed and described 69 types or styles of low shoes and 62 types or styles of high shoes for women; 39 types or styles of leather low shoes and 76 types or styles of leather high shoes for men; 32 styles or types of leather low shoes, and 45 styles or types of leather high shoes for children; 32 styles or types of leather high shoes for boys; 37 styles or types of leather shoes for infants, and 61 styles or types of leather high work shoes for men. In addition, respondent's catalogue listed and described about 50 varieties of cloth or canvas shoes, and 16 varieties of rubber soled shoes.

The findings in these paragraphs are fully supported by the testimony, and are therefore conclusive on this court. The acquisition of the stock was admitted; concededly it eliminated all competition.

Petitioner seeks to escape from the findings, fully supported by testimony, and the fair inferences therefrom, to the effect that the two concerns were in substantial competition when the petitioner purchased all of the McElwain company's stock (except 50 shares of first preferred and 35 shares of the common), by contending that the McElwain company was then insolvent, in the sense that "it was unable to pay its debts as they became due," and that therefore it was no longer a potential or prospective competitor.

The Commission expressly found that the McElwain company was not insolvent within the bankruptcy act definition. Plainly it was not. After weeks of negotiation, petitioner's executive officers—undoubtedly as competent a set of shoe manufacturers as there are in the world—concluded that the McElwain company's equity, above its debts of some $17,000,000, was $9,460,832.50; it purchased the stocks on that basis, after inventory, appraisal and audit of the McElwain company's assets. The McElwain company's capital stock then outstanding was: First preferred, par value $6,993,100, mostly held by the investing public; second preferred stock, $2,600,000, largely held by the employees and officials of the company; and the common stock $3,494,800, mainly held by the executive staff.

While the McElwain company had suffered substantial losses in the tremendous slump in prices of 1920–21, there is no foundation whatever for the petitioner's contention that (except for this purchase) the concern would have gone out of existence and therefore out of competition with the petitioner. On the contrary, there were several [522] alternatives—all reasonable and inconsistent with the petitioner's theory that the McElwain company's losses suffered and consequent shortage of working capital, would (except for the merger with petitioner) have put it out of the shoe-producing business. Some of these alternatives are:

(*a*) The McElwain company's bank creditors might have carried the concern, just as at that time the banks were carrying a very large percentage of the business concerns in this community. It was a period of "frozen credits," a time when there was practically a conceded moratorium to a large share of our business concerns, which competed fiercely for rehabilitating trade.

(*b*) If a receivership had been found a necessary expedient, competition under receivership management would have been likely to be intensified, not eliminated.

(*c*) In case of actual bankruptcy, the holders of the preferred stock (one or both classes) would in their own interest have taken over the property, kept it in active operation and therefore in competition.

To hold, as petitioner's counsel ask this court to hold, that the Commission was bound to draw the inference that the McElwain company's financial condition was such that it would have ceased to be a competitor of the International in the shoe business, would be for the court, ultra vires, to substitute a highly speculative prophecy for the Commission's fair and soundly-grounded contrary inference.

About two years after this purchase, in May, 1923, the Commission filed this complaint, alleging violation of section 7 of the Clayton Act. On July 5, 1923, the petitioner filed its answer; the fourth paragraph of this reads as follows:

Fourth. And further answering respondent would respectfully show the Commission that upon receipt of the complaint, and upon being advised that there was a possible technical violation of section 7 of the Clayton Act, in its acquisition and ownership of the share capital of W. H. McElwain Co., this respondent took the necessary steps to remedy any such technical violation; that it has divested itself of any and all stock or share capital of W. H. McElwain Co.; that it does not now own or control any stock or share capital of said W. H. McElwain Co.; and that no officer, director, or stockholder of respondent owns or controls any stock or share capital of said W. H. McElwain Co. Therefore, the premises considered, this respondent respectfully asks that this complaint be dismissed.

This divestment, it is admitted, was nothing but an absorption by the petitioner of the assets of the McElwain company, carried through by petitioner by putting the stocks into the hands of dummies who passed the requisite votes and signed the papers. The Commission was fully warranted in finding that "the transactions * * * were not bona fide * * * and that the transfer to the respondent of the assets, properties, rights and privileges of the W. H. McElwain Co. was a mere artifice and subterfuge to evade said act of Congress." The best that petitioner's counsel is able to say in defence of this transaction is that it did not deceive the Commission.

The Commission's report and order were filed on November 25, 1925. The order required the International company to submit within sixty days a plan of compliance. The effective date was thereafter on the petitioner's application extended from time to time; and then suspended until the Supreme Court should announce its decision in the case of *Federal Trade Commission* v. *Thatcher Mfg. Co.*, then before that court on certiorari. The *Thatcher case* was decided November 23, 1926 (272 U. S. 554), after which petitioner sought and obtained a full rehearing upon the merits. The case was reargued on March 18, 1927; on May 7, 1927, the Commission reaffirmed its former position, thus making the effective date of the Commission's order May 7, 1927. Thereafter, the petitioner submitted a plan of compliance which was disapproved on June 30, 1927. The petition was filed in this court on March 3, 1928.

This history makes it fairly clear that the petitioner's attempt to transmute its acquisition of the stocks into an acquisition of the assets must have been grounded on the advice of counsel that the original purchase and holding were illegal, and on the hope that the Supreme Court in the *Thatcher case* would hold such acquisition of the assets, although after complaint filed, effective to oust the Commission's jurisdiction. The Supreme Court did not so hold. A bare majority of the court held that the Commission's order and the decree below should be reversed (as to the main portion) on the ground that the purchasing corporation had used its stock control in order to obtain the transfer of the business and assets before the Commission had instituted proceedings. The court, by Mr. Justice McReynolds, said:

> The act has no application to ownership [523] of a competitor's property and business obtained prior to any action by the Commission, even though this was brought about through stock unlawfully held. * * * If purchase of property has produced an unlawful status a remedy is provided through the courts. The Commission is without authority under such circumstances.

This ruling evoked a dissent from Mr. Justice Brandeis, concurred in by the Chief Justice, Mr. Justice Holmes and Mr. Justice Stone; who were of the opinion that the Commission could deal effectively with the matter, even although through the stock the purchasing company had obtained the assets of its competitors before the institution of the proceeding before the Commission under section 7.

Neither opinion leaves petitioner a chance to argue that this pseudo-purchase of assets after complaint filed has affected the Commission's jurisdiction.

Another groundless contention of the petitioner is "that in substance and reality the purchase was one of assets and business." It was not. The petitioner refused to have anything to do with the merger on the basis of purchasing assets and business; it not only insisted upon the purchase of the stocks, but insisted that the purchase price, nearly $9,500,000, should be so divided among the three classes of stocks as to require a sacrifice of 17½ per cent (about $1,220,000) from par by the holders of the first preferred (the investing public), and 25 per cent (about $650,000) by the second preferred; in order that the holders of the common stock—which had been wiped out by the losses—might obtain 50 per cent. The common stock then had the voting power and was held mostly by the executive forces; the purchaser wanted, for obvious business reasons, to retain the effective managerial forces of this concern in good courage and friendly attitude, when undertaking long distance management of the McElwain company's great business. The motives on both sides to put through a merger so advantageous to voters in the selling company are obvious.

Finally, petitioner argues that no such case of monopoly or damage to the public interest is made out as would ground a case under the Sherman Act. A sufficient answer is that the case is not brought under the Sherman Act, but under the Clayton Act; and "the Sherman Act and the Clayton Act provide different tests of liability." *United Shoe Machinery Company* v. *United States*, *supra*.

The order of the Federal Trade Commission is affirmed.

FEDERAL TRADE COMMISSION v. BRADLEY

BRADLEY v. FEDERAL TRADE COMMISSION[1]

(Circuit Court of Appeals, Second Circuit. March 18, 1929)

Nos. 129, 157

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 68(3)—FEDERAL TRADE COMMISSION'S ORDER TO CEASE USE OF WORD "ENGLISH" IN DESIGNATING SOAP MANUFACTURED IN UNITED STATES HELD JUSTIFIED (FEDERAL TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

Advertising and sale of soap as "English Tub Soap," manufactured and distributed in United States, *held* to justify order of Federal Trade Commission, under Federal Trade Commission Act, sec. 5 (15 USCA sec. 45), directing respondent to cease and desist from use of word "English" in designation of, or in advertising, branding, labeling, or description of, soap sold and distributed by him in interstate commerce, unless manufactured in England.

(The syllabus is taken from 31 F. (2d) 569)

Petition to review order of the Federal Trade Commission. Order affirmed.

Mr. James M. Brinson, *Mr. Robert E. Healy*, *Mr. Adrien F. Busick*, and *Mr. Alfred M. Craven*, all of Washington, D. C., for Federal Trade Commission.

Mr. Walter D. Yankauer and *Schaffer & Lake*, all of New York City, for Bradley.

Before L. HAND, SWAN, and CHASE, Circuit Judges.

PER CURIAM. The order to cease and desist of the Federal Trade Commission of January 21, 1928, is affirmed, and an order of this court will be entered perpetually enjoining James J. Bradley in the terms of said order to cease and desist.

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[1] The case is reported in 31 F. (2d) 569.

The case before the Commission is reported in 11 F. T. C. 467. As set forth in the syllabus of the case, the Commission found that respondent, engaged in the sale of toilet and bath soaps, designated a certain domestic soap, of uniform size and shape, manufactured for him by a domestic manufacturer, "English Tub Soap," and conspicuously so stamped each cake thereof, the individual wrappers thereof, and the containers in which packed, together with the words "Hanson-Jenks Limited London—New York," upon each cake, the words (following his trade name) "Sole Agts. U. S. and Canada," upon said wrappers, and the phrase "The Original Hanson-Jenks Tub Soap," upon the said containers; with the capacity and tendency to mislead and deceive many retail dealer vendees and many of the purchasing public into believing the aforesaid soap to have been manufactured in England and imported into the United States, and into purchasing the same in such belief, and with the effect of so doing, and of placing in the hands of dealers a means of committing a fraud upon the public by so representing, offering and selling the aforesaid soap, and of diverting trade from competitors dealing in genuine English imported soaps, and rightfully and lawfully so representing the same, and competitors dealing in domestic soaps without misrepresenting the same as above set forth.

The Commission's order required respondent, his agents, etc., to cease and desist from—

"The use of the word 'English' in the designation of, or in the advertising, branding, labeling, or description of soap sold and distributed by him in interstate commerce, unless said soap be manufactured in England."

ROYAL BAKING POWDER CO. v. FEDERAL TRADE COMMISSION ET AL.

(Court of Appeals of District of Columbia. Submitted April 2, 1929. Decided May 6, 1929 [1])

No. 4740

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—INJUNCTION AGAINST TRADE COMMISSION REOPENING ORDER DISMISSING PROCEEDING FOR UNFAIR COMPETITION TO HEAR FURTHER TESTIMONY WAS PROPERLY DENIED, LEGAL REMEDY BEING ADEQUATE (FEDERAL TRADE COMMISSION ACT, SEC. 5; 15 USCA SEC. 45).

Where Federal Trade Commission made order requiring complainant to show cause why its prior order dismissing proceeding against complainant for using unfair methods of competition in interstate commerce in violation of Federal Trade Commission Act, secton 5 (15 USCA sec. 45), should not be reopened for taking of additional evidence, complainant had adequate remedy by appearing and showing cause why threatened order should not be entered, and, if threatened order were granted, by bringing action in Circuit Court of Appeals to have order set aside, and injunctive relief was properly denied.

(The syllabus is taken from 32 F. (2d) 966)

Appeal from the Supreme Court of the District of Columbia. Affirmed.

Mr. Matthew E. O'Brien and *Mr. Matthew H. O'Brien*, both of Washington, D. C., for appellant.

Mr. Robert E. Healy, *Mr. Adrien F. Busick*, and *Mr. Martin A. Morrison*, all of Washington, D. C., for appellees.

[967] Before MARTIN, Chief Justice; ROBB and VAN ORSDEL, Associate Justices.

VAN ORSDEL, *Associate Justice:*

This appeal is from a decree of the Supreme Court of the District of Columbia dismissing a bill of complaint filed by appellant, the Royal Baking Powder Co., against the Federal Trade Commission and the individual commissioners, appellees, seeking relief by writ of injunction against the action of the Commission alleged to be in excess of its jurisdiction. For convenience appellant will be hereafter referred to as "the company", and appellees as "the Commission".

It appears that the Commission issued an original and supplemental complaint against the company; one in February, 1920, and the other in April, 1923, under "Docket No. 540". The Commission charged the company with the use in interstate commerce of certain methods of competition alleged to be unfair and in violation of section 5 of the Federal Trade Commission Act (38 Stats. 717).

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[1] The case is reported in 32 F. (2d) 966. Motion to modify opinion denied and petition for rehearing denied May 28, 1929. Petition by company for writ of certiorari denied by Supreme Court on Oct. 21, 1929. 280 U. S. 572. Petition for rehearing denied Nov. 4, 1929.

The company answered the complaints, and evidence was taken by a trial examiner, who reported on November 12, 1925, to the effect that the complaints were without merit and that there was no violation of the act by the company. Arguments were had before the Commission, and on March 23, 1926, the Commission issued and served upon the company its final order in Docket 540, dismissing the supplemental and amended complaint, which order was enrolled and recorded. On the same day counsel for the Commission filed a motion praying that the order of dismissal be vacated and a rehearing granted, and that an order to cease and desist from certain specific practices charged in the complaint be issued against the company. The motion was argued before the Commission, but before it was decided counsel for the Commission asked leave to file a supplemental motion on the ground of the discovery of new and additional evidence sufficient to require further proceedings in the cause.

On July 7, 1926, the Commission entered an order in cause Docket No. 540 vacating the order of dismissal issued March 23, 1926, and reopening the case for the taking of certain additional evidence on matters specified in the order.

On September 29, 1926, the Commission directed that the company be required to appear on the 8th day of October, 1926, and show cause why the following order should not be made: "It is ordered that the order of the Commission dismissing this case on March 23, 1926, and that the order entered by the Commission on July 7, 1926, relating to the reopening of the case for certain purposes only, be and the same is hereby vacated, set aside and held for naught. It is further ordered that this case be and the same is hereby reopened for the taking of additional evidence relative to the issues raised by the pleadings and occurring since the close of the taking of evidence on May 2, 1925. It is further ordered that evidence be also taken concerning the publication and circulation by the respondent of copies of the report upon the facts filed November 10, 1925, by Trial Examiner Edward M. Averill, and that publication and circulation by the respondent of other matters relevant to the issues involved in this proceeding down to the closing of the taking of such additional evidence pursuant to this order."

To prevent the making of this order, plaintiff company filed in the court below a petition for a writ of certiorari asking the court to review the entire record of the case before the Commission with the alternative prayer that in the event that the court should find that the writ of certiorari should not be granted the case should be transferred to the equity side of the court. The court below denied the writ of certiorari and transferred the case to the equity side of the court, where an amended petition was filed, and from the decree dismissing that petition the case was brought here on appeal.

It will be observed that the only ground for injunction is the alleged threat of the Commission to enlarge the purposes for which Docket 540 had been reopened by the order of July 7, vacating its former order of dismissal, and this is the only irreparable injury against which injunction is sought. It is, therefore, in the position of seeking an injunction against an anticipated order which the Commission may or may not make. Had the company appeared and shown cause as directed on the 8th day of October, 1926, it is not certain that the order set out in the notice would have been entered. The Commission might well have adhered to its original order of dismissal or its later order of July 7, 1926, and denied the motion of counsel for the Commission. It is clear that there is no such threatened invasion of the company's rights as would justify an injunctive order.

But, assuming that on hearing on October the 8th the Commission had granted the alleged threatened order, the company [968] would be in no better position. It would be met by the objection that it could have reserved its exceptions to the order and when the case was finally disposed of before the Commission, if adverse to the interests of the plaintiff, it had a plain and adequate remedy at law through section 5 of the statute, which provides a remedy for the enforcement of the orders of the Commission through an action brought in the proper Circuit Court of Appeals, and a remedy by which any person, partnership, or corporation, against whom an order has been issued by the Commission, may bring an action in the same court to have the order set aside.

It is well settled that the right of review herein afforded by the Circuit Court of Appeals constitutes a "plain, speedy, and adequate remedy at law", and is a bar to the remedy by injunction. *Federal Trade Commission* v. *Claire Furnace Co.*, 274 U. S. 160; *Coffin Bros.* v. *Bennett*, 277 U. S. 29; *McCoy* v. *Shaw*, 277 U. S. 302.

The decree is affirmed with costs.

APPENDIX III

RULES OF PRACTICE BEFORE THE COMMISSION

I. SESSIONS

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Principal office.

Commission may exercise power elsewhere.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Hearings as ordered.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.

Sessions for orders and other business.

Quorum.

All orders of the Commission shall be signed by the secretary.

Orders signed by secretary.

II. COMPLAINTS

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Who may ask complaint.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Form of application.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.

Commission to investigate.

Issuance and service of complaint.

III. ANSWERS

Time allowed for answer. (1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint), file with the Commission an answer to the complaint. Form of answer. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Failure to deny any allegation. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

If respondent desires to waive hearing. (2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

Failure to answer. (3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Number of copies: signature; etc. (4) Three copies of answers must be furnished. All answers must be signed in ink by the respondent or by his duly authorized attorney and must show the office and post-office address of the signer. All answers must be typewritten or printed. If typewritten, they must be on paper not more than 8½ inches wide and not more than 11 inches long. If printed, they must be on paper 8 inches wide by 10½ inches long.

IV. SERVICE

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the Commission, either (*a*) by delivering a copy thereof to

Personal, or

the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed, as aforesaid, shall be proof of the service of the same.

By leaving copy or

By registered mail.

Return.

V. INTERVENTION

Form of application.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Permitted by order.

Size of paper, margin, etc., used on application.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

VI. CONTINUANCES AND EXTENSIONS OF TIME

In discretion of Commission.

Continuances and extensions of time will be granted at the discretion of the Commission.

VII. WITNESSES AND SUBPŒNAS

Examination ordinarily oral.

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Subpœnas for witnesses.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpœnas for production of documentary evidence.

Subpœnas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witness fees and mileage.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

VIII. TIME FOR TAKING TESTIMONY

Examination of witnesses to proceed as fast as practicable.

Notice to counsel.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

IX. OBJECTIONS TO EVIDENCE

To state grounds of objection, etc.

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

X. MOTIONS

To briefly state nature of order applied for, etc.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS

By single commissioner.

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

General counsel or assistant to conduct hearing.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

XII. HEARING BEFORE EXAMINERS

Examiner to take testimony.

When issue in the case is set for trial it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown, the Commission shall extend the time. The examiner shall, within 20 days after the receipt of the stenographic report of the testimony (unless the time be extended by the Commission on application within that period by the chief trial examiner stating reasons for the delay), make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

Testimony to be completed within 30 days except for good cause.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument on exceptions.

Examiner under certain circumstances to receive from each side statements of its contentions after testimony and before his report.

When, in the opinion of the trial examiner engaged in taking testimony in any formal proceeding, the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel at the close of the taking of testimony announce to the attorneys for the respondent and for the Commission that the examiner will receive at any time before he has completed the drawing of the "Trial Examiner's Report upon the Facts" a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Time allowance for submission of tentative findings.

Any tentative draft of finding or findings submitted by either side shall be submitted within 10 days after the closing of the taking of testimony and not later, which time shall not be extended.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS

Commission may order.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Before any person designated.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Applications for depositions.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

Testimony of witness.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer.

Deposition to be forwarded.

After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

And filed. Copy to defendant or his attorney.

Size of paper, etc.

Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days. Notice

No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing. Limitations as to time.

XIV. DOCUMENTARY EVIDENCE

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed. Relevant and material matter only to be filed.

XV. BRIEFS

All briefs must be filed with the secretary of the Commission, and briefs on behalf of the Commission must be accompanied by proof of the service of the same as hereinafter provided, or the mailing of same by registered mail to the respondent or its attorney at the proper address. Twenty copies of each brief shall be furnished for the use of the Commission unless otherwise ordered. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Every brief, except the reply brief on behalf of the Commission, hereinafter mentioned, shall contain in the order here stated: Filed with secretary. Proof of service. Number. To contain exceptions to trial examiner's report. Form.

(1) A concise abstract or statement of the case. Abstract of case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point. Brief of argument.

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. Index.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 by 10½ inches, with inside margins Printing.

not less than 1 inch wide, and with double-leaded text and single-leaded citations.

Reply brief. The reply brief on the part of the Commission shall be strictly in answer to respondent's brief.

Time for briefs. The time within which briefs shall be filed is fixed as follows: For the opening brief on behalf of the Commission, 30 days from the day of the service upon the chief counsel or trial attorney of the Commission of the trial examiner's report; for brief on behalf of respondent, 30 days after the date of service upon the respondent or his attorney of the brief on behalf of the Commission; for reply brief on behalf of the Commission, 10 days after the filing of the respondent's brief. Reply brief on behalf of respondent will not be permitted to be filed. Applications for extension of time in which to file briefs shall be by petition in writing, stating the facts on which the application rests, which must be filed with the Commission at least 5 days before the time fixed for filing such briefs. Briefs not filed with the Commission on or before the dates fixed therefor will not be received except by special permission of the Commission. Appearance of additional counsel in a case shall not, of itself, constitute sufficient grounds for extension of time for filing brief or for postponement of final hearing.

Service of Commission brief. Briefs on behalf of the Commission may be served by delivering a copy thereof to the respondent's attorney or to the respondent in case respondent be not represented by attorney, or by registering and mailing a copy thereof addressed to the respondent's attorney or to the respondent in case respondent be not represented by attorney, at the proper post-office address. Written acknowledgment of service, or the verified return of the party making the service, shall constitute proof of personal service as hereinbefore provided, and the return post-office receipt aforesaid for said brief when registered and mailed shall constitute proof of the service of the same.

Oral arguments. Oral arguments may be had only as ordered by the Commission on written application of the chief counsel or of respondent filed not later than 5 days after expiration of time allowed for filing of reply brief of counsel for the Commission.

XVI. REPORTS SHOWING COMPLIANCE WITH ORDERS

Report of compliance. In every case where an order is issued by the Commission for the purpose of preventing violations of law the respondent or respondents therein named shall file with the Commission, within the time specified in said order, a report in writing setting forth in detail the manner and form in which the said order of the Commission has been complied with.

XVII. REOPENING PROCEEDINGS

In any case where an order to cease and desist, an order dismissing a complaint, or other order disposing of a proceeding is issued the Commission may, at any time within 90 days after the entry of such order, for good cause shown in writing and on notice to the parties, reopen the case for such further proceedings as to the Commission may seem proper. Reopening of proceedings.

XVIII. ADDRESS OF THE COMMISSION

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed. Federal Trade Commission, Washington, D. C.

TABLE OF COMMODITIES

ORDERS

STIPULATIONS

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ORDERS

[1] For index by commodities involved, rather than practices, see Table of Commodities, p. 753.

STIPULATIONS

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