FEDERAL TRADE COMMISSION DECISIONS

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FINDINGS AND ORDERS OF THE FEDERAL TRADE COMMISSION

MAY 22, 1922, TO FEBRUARY 13, 1923

PUBLISHED BY THE COMMISSION

VOLUME V

WASHINGTON
GOVERNMENT PRINTING OFFICE
1924

MEMBERS OF THE FEDERAL TRADE COMMISSION.

AS OF FEBRUARY 13, 1923.

VICTOR MURDOCK, *Chairman.*
Took oath of office September 4, 1917, and October 4, 1918.[1]
JOHN F. NUGENT, *Vice Chairman.*
Took oath of office January 15, 1921.
HUSTON THOMPSON.
Took oath of office January 17, 1919, and September 26, 1919.[1]
VERNON W. VAN FLEET.
Took oath of office June 30, 1922.
NELSON B. GASKILL.
Took oath of office January 31, 1920.
OTIS B. JOHNSON, *Secretary.*
Took oath of office August 8, 1922.

During the period May 22, 1922, to February 13, 1923, there also served as secretary—

J. P. YODER.
Took oath of office April 1, 1919; resigned August 5, 1922.

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[1] Second term.

PREFACE.

This, the fifth volume of the Commission's decisions, covers the period from May 22, 1922, to February 13, 1923, inclusive. It may be noted that the period so covered falls short of 9 months as compared with a little less than 11 months covered by Volume IV, and 12 months covered by Volume III—a fact due to the continually increasing number of cases brought before the Commission. The steadily widening range of the subjects covered in these cases has already been referred to in connection with the publication of previous volumes of the Commission's findings and orders.

Reference should perhaps be made to the subject index in the back of the volume. An unfair method of competition consists of the *doing* of things through which an unfair end may be accomplished. With this in mind an effort has been made to have the index consistently carry out this thought, i. e., express the action under consideration. Suitable cross references, of course, have been inserted where required by convenience or by established nomenclature.

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

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TABLE OF CASES.

[The names in all CAPITALS refer to cases in which orders to cease and desist have been entered by the Commission, and which are reported in full in this volume. Those in first letter caps, ordinary type, also refer to cases in which such orders have been issued, but which are not here reported in full. The names in *italics* refer to cases in which the Commission has entered orders of discontinuance or dismissal only.]

TABLE OF CASES IN WHICH PETITIONS FOR REVIEW OF ORDERS OF THE COMMISSION HAVE BEEN FILED IN THE CIRCUIT COURTS OF APPEALS FROM MAY 22, 1922, TO FEBRUARY 13, 1923.

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS MAY 22, 1922, TO FEBRUARY 13, 1923

FEDERAL TRADE COMMISSION

v.

CIGAR MANUFACTURERS' ASSOCIATION OF TAMPA, FLORIDA, ET AL.

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

Docket 709—May 22, 1922.

SYLLABUS.

Where an unincorporated Association composed of cigar manufacturers producing the larger part of the cigars manufactured in a certain territory agreed on a uniform stand regarding labor policies and with the intent and effect of coercing cigar manufacturers whose labor policies did not conform to those of the Association, made and respected contracts with three cigar box manufacturers upon whom the cigar manufacturers in that territory, both members and nonmembers of the Association, were dependent for a supply of cigar boxes, to take said box manufacturers' entire output at stipulated prices for an extended period, and declined to furnish, or permit the box manufacturers to furnish, cigar boxes to competing manufacturers whose labor policies did not conform to those of the Association, and thereby eliminated competition between cigar box manufacturers in the sale of their products, caused competing cigar manufacturers to do business under a handicap or curtail production or cease from business entirely, and unduly hindered commerce in the sale of cigars:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that The Cigar Manufacturer's Association of Tampa, Florida, an incorporated association, Jose Escalante as President of said association, Enrique Pendas, as Treasurer of said association, A. A. Martinez, as Secretary of said association, (and each of the aforesaid officers of said association as individuals), Porto Rican American Tobacco Company, a corporation, C. H. S. Cigar Company, a corporation, Francisco Arango Company, a corporation, Facundo Arguelles and Celestine Lopez, copartners under the firm name and style of Arguelles, Lopez and Brothers, Matthew W. Berriman and Edward C. Berriman, copartners under the firm name and style of Berriman Brothers, Alvara

Garcia, doing business under the trade name of Garcia and Vega, Perfecto Garcia, Manuel Garcia, Jose Garcia and Angel Garcia, copartners under the firm name and style of Perfecto Garcia and Brothers, V. Guerra Diaz and Company, a corporation, Preferred Havana Tobacco Company, a corporation, American Cigar Company, a corporation, Moises Bustillo and Leopold Bustillo, copartners under the firm name and style of M. Bustillo and Company, Corral Wodeska and Company, a corporation, Cuesta Rey and Company, a corporation, J. M. Martinez Company, a corporation, Morgan Cigar Company, a corporation, Jose Escalante and Company, a corporation, F. Lozano Son and Company, a corporation, E. Redensberg and Sons, a corporation, J. W. Roberts and Son, a corporation, Salvadore Rodriguez, a corporation, Sanchez and Haya, a corporation, San Martin and Leon Company, a corporation, A. Santaella and Company, a corporation, Tampa-Cuba Cigar Company, a corporation, Celestine Vega and Company, a corporation, E. M. Schwartz and Company, Inc., a corporation, (each of said above-named respondents, individually, and as members of the said Cigar Manufacturers' Association of Tampa, Florida), The Tampa Box Company, a corporation, D. N. Holway, J. W. Young, and J. Van Roe, copartners under the firm name and style of D. N. Holway and Company, and George F. Weidman, T. D. Fisher, and J. A. B. Anderson, copartners under the firm name and style of Weidman-Fisher & Company, hereinafter referred to as the respondents, have been, and are now using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Cigar Manufacturers' Association of Tampa, Florida, is a voluntary, unincorporated association of cigar manufacturers, the membership of which is limited to manufacturers of cigars engaged in business as such in the city of Tampa, Florida, and in the vicinity thereof, who subscribe to its articles of association and comply with its by-laws and rules; that the executive authority of said respondent is vested by its articles of association in a President, Vice President, Treasurer and Secretary, and a Board of Directors, and that the duty of said several officers, and said Board of Directors are prescribed and defined by said articles of association.

That the respondent, Jose Escalante, is the President of said respondent (Cigar Manufacturers' Association of Tampa, Florida) and

the respondent Enrique Pendas, and A. A. Martinez, are, respectively, Treasurer and Secretary thereof.

That the respondents, C. H. S. Cigar Company, Francisco Arango Cigar Company, V. Guerra Diaz and Company, Corral Wodeska and Company, Cuesta Rey and Company, Jose Escalante and Company, F. Lozano Son and Company, J. M. Martinez Company, Morgan Cigar Company, E. Redensberg and Sons, J. W. Roberts and Son, Salvadore Rodriguez, Sanchez and Haya, San Martin and Leon Company, A. Santaella Cigar Company, Tampa-Cuba Cigar Company, Celestine Vega and Company, are each corporations organized, existing and doing business under and by virtue of the laws of the State of Florida, and each is engaged in the business of manufacturing cigars at the city of Tampa or within the vicinity thereof.

That the respondent E. M. Schwartz and Company, Inc., is a corporation, organized and existing under the laws of the State of New York, and operating a factory for the manufacture of cigars in the city of Tampa, Florida, under the name of Jose Lovera Company; that the respondent, Preferred Havana Tobacco Company is a corporation, organized and existing under the laws of the State of New York and operating a factory for the manufacture of cigars in the said city of Tampa, Florida, under the name of Bustillo Brothers and Diaz; that the respondent, Porto Rican American Tobacco Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and operating a factory for the manufacture of cigars in the city of Tampa, Florida, under the name of M. Alvarez and Company; that the respondent, American Cigar Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and operating three factories for the manufacture of cigars in said city of Tampa, under the name of Havana-American Cigar Company, Stachelberg-Vega and Company, and M. Vallez and Company, respectively.

That the respondents Facundo Arguelles and Celestine Lopez are copartners doing business under the firm name and style of Arguelles, Lopez and Brothers; that the respondents Matthew W. Berriman and Edward C. Berriman are copartners doing business under the firm name and style of Berriman Brothers; that the respondent Alvara Garcia is a sole trader doing business under the trade name of Garcia and Vega; that the respondents Perfecto Garcia, Manuel Garcia, Jose Garcia, and Angel Garcia are copartners doing business under the firm name and style of Perfecto Garcia and Brothers; that the respondents Moises Bustillo and Leopold Bustillo are copartners doing business under the firm name and style of M. Bustillo and Company, and that each of said copartners and said respondent

Alvara Garcia, maintains a factory in the city of Tampa, Florida, or in the vicinity of said city for the manufacture of cigars.

That the respondent Tampa Box Company is a corporation organized and existing under and by virtue of the laws of the State of Florida; that the respondents D. N. Holway, J. W. Young, and J. Van Roe are copartners doing business under the firm name and style of D. N. Holway and Company, and that the respondents George F. Weidman, T. D. Fisher, and J. A. B. Anderson, are copartners doing business under the firm name and style of Weidman-Fisher & Company; that the last-named corporation and said two copartnerships are each engaged in the business of manufacturing cigar boxes in the city of Tampa, Florida.

PAR. 2. That each of the above named respondent cigar manufacturers is a manufacturer of cigars within the City of Tampa, Florida, or within the vicinity thereof and in the course of such business sells the cigars so manufactured by it, to purchasers throughout the United States, and causes the cigars so manufactured and sold by it to be shipped through and into the several states of the United States and the District of Columbia, and that each of said respondent cigar manufacturers is a member of the respondent Cigar Manufacturers' Association of Tampa, Florida.

PAR. 3. That in the said city of Tampa, and in its vicinity, there are and have been for many years past, cigar manufacturers, not members of the respondent Cigar Manufacturers' Association, who manufacture cigars and sell them to purchasers throughout the United States and who cause the cigars so sold by them to be shipped through and into the several States of the United States and the District of Columbia, in active competition in interstate commerce, in the sale of cigars with the respondent Cigar manufacturers.

PAR. 4. That by long established custom, cigars are packed for sale in boxes suitable for the protection of the cigars and the preservation of their moisture and flavor, so that a supply of boxes is essential to the sale of cigars in interstate commerce. That the respondent cigar box manufacturers were capable of producing, and prior to the month of March, 1920, or thereabouts, did produce a sufficient quantity of cigar boxes to supply the requirements of the respondent cigar makers and their competitors in that district; that the cigar makers of Tampa and vicinity are limited to the production of respondent cigar box makers for a supply of boxes; the cost of procuring boxes elsewhere being in effect prohibitive.

PAR. 5. That the respondent cigar manufacturers, the respondent association and the respondent cigar box manufacturers, some time

in the month of March, 1920, combined, confederated, and agreed to restrain competition in the sale of cigars in interstate commerce and to create a monopoly of the supply of an essential element in the sale of cigars in interstate commerce and as a means of accomplishing the object of such combination, on or about the 16th day of March, 1920, the respondent association and the respondent cigar box manufacturers entered into an agreement, a copy of which is attached hereto, marked "Exhibit A" [1] and made a part of this complaint, the intent and effect of which was that the respondent association controls the whole of the supply of cigar boxes upon which the manufacturers of cigars in Tampa and vicinity are dependent, for the remainder of the year 1920, with an option for the continuance of this control for the year 1921; that the respondent association employs its control of the supply of cigar boxes to deny to and withhold from nonmember and competing cigar makers, their necessary supply of boxes.

PAR. 6. That the effect of the acts of the respondents hereinbefore charged, has been and is to prevent manufacturers of cigars in and around Tampa, Florida, other than those named as respondents herein, from securing a supply of boxes adequate to their needs and thus to compel cigar manufacturers not members of the respondent association, to reduce their output and sales of cigars in interstate commerce as aforesaid; and such acts of respondents have a dangerous tendency unduly to hinder competition in the sale of cigars in interstate commerce and to create monopoly directly affecting interstate commerce.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the respondents hereinafter named, have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and that a proceeding by it in that respect would be to the interest of the public, and stating its charges in that respect,

And the respondents having entered their appearances by their attorneys-at-law, Messrs. McKay and Withers, for the respondent, Cigar Manufacturers; Messrs. Whitaker, Himes and Whitaker for the Tampa Box Company, and Weidman, Fisher and Company;

[1] See contract reproduced on pp. 13 and 14.

and H. C. Gordon, Esq. for D. N. Holway and Company; and respondents having duly filed their answers admitting certain allegations of said complaint and denying others and setting up certain new matter in defense, and hearings having been held before an examiner of the Commission, and the Commission having offered evidence in support of the charges of said complaint, and said respondents having offered evidence in their defense, and the parties to this proceeding having rested, and attorneys for the respective parties having fully argued the issues in this proceeding, and having presented said issues herein to the Commission for final consideration and determination,

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. (*a*) The respondent, the Cigar Manufacturers' Association of Tampa, Florida, is a voluntary unincorporated Association, hereinafter referred to as the Cigar Manufacturers' Association, the membership of which is limited to individuals, partnerships and corporations engaged in the manufacture of cigars at Tampa, Florida and its vicinity. The President of said Association is Jose Escalante. Its Treasurer is Enrique Pendas; and A. A. Martinez is its Secretary;

(*b*) The membership of said Cigar Manufacturers' Association consists of the following persons, firms and corporations:

Solis Alvarez
Francis Arango and Company
Albana Cigar Company
M. Alvarez and Company
A. Amo and Company
Arguelles, Lopez and Bro.
Ramon Alvarez and Company
Berriman Bros.
F. Benjamin and Company
Big Four Cigar Company
M. Bustillo and Company
Cuesta Rey and Company
Corral Wodiska and Company
Maximo Cueto
F. Capitano and Company
Mulero Cerra Company
Dulin and Company
Diaz Raphael and Company
Demmi Cigar Company
Felipe DeSoto and Company
Andrea Diaz and Company
Rafael Espina and Company
Every Day Cigar Company
Jose Escalante and Company
Fernandez Bros. and Company
Sebrinos Ferandes and Company
Garcia and Vega
Perfecto Garcia and Bros.
F. Garcia and Bros. Inc.
Guerra, Diaz and Company
Maximo Grahn and Son
Henriquez Cigar Company
Hygiene Cigar Company
Havatampa Cigar Company
Havana-American Cigar Company
Thomas Leon and Company
LaVista Cigar Company
Jose M. Lopez

Lopez, Alvarez and Company
F. Lozano, Son and Company
Celestino Lopez
J. M. Martinez and Company
Jose Maseda and Company
Morgan Cigar Company
Saint Minitol Cigar Company
Marsicano Cigar Company
Newman Cigar Company
Y. F. O'Halloran and Son
Preferred Havana Tobacco Company
A. M. Perez
Marcelino Perez and Company
S. Perez and Bro.
Pent and Wright
Pride Cigar Company
Salvador Rice and Company
Salvador Rodriguez and Company
E. Regensburg and Sons
J. W. Roberts and Son
Wm. J. Seidenberg and Company
El Sidelo Cigar Company
L. Sanchez and Company
M. Stachelberg and Company
A. Santaella and Company
South Florida Cigar Company
San Luis Cigar Company
San Martin and Leon Company
Sanchez and Haya Company
Salvador Sanchez and Company
Tampa Best Cigar Company
Tampa-Cuba Cigar Company
Tampa Token Cigar Company
Celestine Vega and Company
M. Valle and Company
Wolff Bros. Cigar Company
Jose Lovera Company

Each of said members is engaged in the manufacture of cigars and their sale and shipment in interstate commerce, in competition with other manufacturers of cigars at Tampa, Florida and elsewhere in the United States.

PAR. 2. Respondent Cigar Manufacturers' Association was organized in January, 1920. Its charter members and those afterwards admitted to membership, bound and pledged themselves to strict compliance with and obedience to the articles of association and the by-laws of the Association and to all lawful resolutions adopted by the Association or any of its officers, boards or committees within the terms or reasonable intent of the articles of association or the by-laws. Individual membership was required to be evidenced by the signature and seal of the individual; each of the partners was required to sign and affix his seal on behalf of a partnership member and the execution of the articles by a corporation was required to be made by the signatures of the executive officers pursuant to authorization by resolution of its Board of Directors and under its corporate seal duly attested.

PAR. 3. Each member of respondent, Cigar Manufacturers' Association, was obliged to file a bond with respondent association with sureties in an amount not less than $500.00 nor more than $10,000.00, which bond was conditioned that said member will comply with the articles of association, the by-laws, rules, resolutions and acts of the association, and pay all dues and assessments, on penalty of forfeiting the amount named in said bond. The executive authority of said respondent, Cigar Manufacturers' Association, was vested in a President, a vice President, a Treasurer, a Secretary and a Board of Direc-

tors, and the duties of said several officers were prescribed and defined by said articles of association, and its by-laws.

PAR. 4. Said respondent, Cigar Manufacturers' Association, adopted the following declaration of policies in said articles:

ARTICLE VI.

SECTION 1. This Association adopts the following declaration of its policies, and all members pledge to each other their mutual cooperation and unreserved support and protection in enforcing and keeping the same inviolate:

(1) All persons are entitled to seek and have legitimate employment without discrimination, whether they belong to any labor union or association or not, and no discrimination shall be made for or against any person in the factory of any member of this Association because of membership or nonmembership in any labor union or association.

(2) No labor union or association shall be permitted to transact any of its business, directly or through any of its representatives, on the factory premises of any member of this Association.

(3) The right of each member to deal directly with his, their or its own employees is reserved, and no member shall deal with any person or persons, except such member's own employees, with respect to any dispute between such member and his, their or its employees, except in matters submitted to arbitration, or in such manner as may be prescribed by the by-laws or the acts and resolutions of the Association or the Board of Directors.

(4) Arbitration is recognized as the most equitable method of settling disputes between employer and employee, and the members bind themselves to use every effort to settle all disputes with their employees, that cannot be honorably adjusted between themselves directly, through means of arbitration.

(5) No member shall deal with any permanent committee or the employees of such member, but in all negotiations between any member and his, their or its employees shall deal only with special committees elected by the employees in each instance.

(6) The members mutually pledge to each other all their resources and moral support for the protection of each other in their persons and property, and for the protection of their employees against violence, intimidation or other unlawful aggression from any source.

(7) Each member shall adopt all reasonable means to maintain proper sanitary and working conditions in the factory premises, and keep the environments of the employees healthful and pleasant.

(8) Each member will honorably keep and perform all lawful agreements as to wages and working conditions entered into directly or through this Association with the employees of the factories.

(9) In order that no advantage may be taken of any member whose business may be temporarily interrupted by any strike or other labor distrubance, the members severally agree that they will not attempt to increase their own business to the detriment of such member, while such strike or disturbance exists, and to that end will not increase the working forces in any of their factories, as they existed at the time of the beginning of such strike or disturbance, until such strike or disturbance is terminated or settled, or until permission to do so, after full investigation, is given by the Association at a meeting duly held.

(10) No reader shall be permitted to read anything in the factory of any member that tends to create sedition or disloyalty to the Government, or that is contrary to the interests of the manufacturers, or insulting or reflecting upon the character of the

members of this Association or any of the employees of their factories, or that may be in conflict with reasonable rules adopted by this Association governing reading in the factories.

PAR. 5. The by-laws adopted by said respondent, Cigar Manufacturers' Association, contain the following, among other provisions:

ARTICLE II.

SECTION 7. Each member of the Association shall submit to the Directors any new size of cigars not in the existing "Cartabon" that such member proposes to manufacture, and the Board of Directors shall appraise such new size, so as to make the scale of wages to be paid therefor conform as nearly as practicable to existing agreements between the members of the Association and their employees with respect to sizes and prices, and such new sizes shall be presented to the Board of Directors before being submitted to the "Nivelation" committee.

Said by-laws also provide:

(1) For the trial, fining and expulsion of members.

(2) For the notification of the secretary and treasurer of respondent association by its members of all strikes and disturbances amongst the workmen in any of the factories of said members.

(3) That the Board of Directors shall attempt to settle such labor troubles and failing in such attempt shall call a meeting of said respondent association and submit the matter to such meeting.

(4) That committees of Directors, or members other than Directors, shall be appointed whose duties it shall be to seek to adjust difficulties of members with their employes.

(5) That under certain contingencies, members of said respondent association may cooperate with or support a factory of a member outside Tampa, Florida, affected by a strike or a labor disturbance.

PAR. 6. (*a*) The total production of cigars of all classes in the United States Internal Revenue District of which Tampa, Florida, is the center, comprising three contiguous counties, for the year 1919, was 417,995,788 on which a revenue tax was paid of $3,359,108.61. In 1920 the total production of cigars of all classes in said district was but 227,291,093 and the revenue tax thereon amounted to $1,958,512.12. Of the 417,995,788 cigars manufactured in Tampa, Florida, and the neighborhood thereof, in 1919, respondent members of Cigar Manufacturers' Association in this district manufactured about 395,000,000 or about 94 5/10 per cent. Figures for 1920 were not available at the time of taking the testimony in this case.

(*b*) Following its organization in January 1920 with thirty members, by March of that year the membership rose to between fifty and fifty-five. By the middle of April the number of members increased to sixty-five or sixty-six and stood at seventy-seven when the testimony was taken on the complaint. The number of manufacturers not members of the association was at all times greater than the number of members but the total production and capacity

of members was at all times greater than the production and capacity of non-members.

PAR. 7. Cigars are marketed in boxes of wood, in tin containers and in paper packages, but the metal and paper packages are not used to any considerable extent. The wooden box is the standard method of packing for market, and an adequate and continuous supply of wooden boxes, is absolutely essential to the manufacture and sale of cigars. There were but three manufacturers of cigar boxes operating in Tampa, Florida prior to June or July, 1920 who made all the cigar boxes produced in that city or its immediate vicinity and upon whose product all the manufacturers of cigars in and around Tampa were then practically dependent. They are the respondents Tampa Box Company, a Florida corporation; D. N. Holway, J. W. Young and J. Van Roe, copartners, trading together under the name of D. N. Holway and Company; and George F. Weidman, F. D. Fisher and J. A. B. Anderson, copartners, trading under the name of Weidman, Fisher and Company. Each of these respondents is engaged in interstate commerce in the sale and shipment of cigar boxes in and to other states of the United States than the state of Florida. And prior to March 16, 1920 each of said cigar box manufacturers was in competition with the others and with other manufacturers of cigar boxes elsewhere in the United States.

PAR. 8. For some years prior to September, 1920, there was a cigar box factory in Key West, Florida, and there were cigar box factories in Baltimore, New York, and other cities at a distance from Tampa, Florida, but the extra cost of securing boxes from such outside factories, including the cost of freight or express charges and the difficulties incident to dealing with cigar box manufacturers at a distance from Tampa, Florida, made it impracticable for Tampa cigar manufacturers, especially small manufacturers, to depend upon a supply of cigar boxes from such sources. Subsequent to June 1920 two cigar box manufactories of small capacities were in operation in Tampa, Florida, and one small factory in Brunswick, Georgia, but the boxes made by these factories were not considered by the cigar manufacturers in Tampa and in the neighborhood thereof as desirable as the boxes made by the three respondent box manufacturers. That tin cans or boxes have been used to a limited extent in which to pack cigars for shipment and sale in interstate commerce by cigar manufacturers in Tampa, Florida, and the neighborhood thereof, when especially ordered for certain dealers, but they have not been generally looked upon with favor by the trade, nor generally used unless especially ordered. No tin cans or tin boxes were made in Tampa for that purpose in the year 1919 and but few in the year 1920.

PAR. 9. (*a*) To provide boxes for the 417,995,788 cigars manufactured in Tampa, Florida, and the neighborhood thereof in 1919 required about 8,340,000 boxes, on an estimated average of 50 cigars to the box. The output of respondent cigar box manufacturers in 1919 amounted in the aggregate to 9,349,955 cigar boxes and there was a surplus in excess of the needs of the cigar manufacturers in Tampa, Florida, and the neighborhood thereof, of about 1,000,000 cigar boxes manufactured by respondent cigar box manufacturers in 1919. This does not take into account a few million cigars made in Tampa and the neighborhood thereof which were packed in tin boxes or cans.

(*b*) Demand for cigar boxes by cigar manufacturers in Tampa, Florida and the neighborhood thereof, however, was not uniform and at times, more especially in the weeks preceding the Christmas holidays in 1919 there was a delay of several weeks in the filling of orders for cigar boxes given respondent cigar box manufacturers by cigar manufacturers in Tampa and the neighborhood thereof.

(*c*) Normally it required respondent cigar box manufacturers one to two weeks to fill an order for cigar boxes, but at times in 1919 there was a delay of from three to six weeks or in exceptional cases eight weeks in the filling of such orders. Such delay applied more especially to special orders of special sizes for holiday trade. This in addition to shortage of labor and to strikes and in face of exceptional demand, caused orders for holiday goods to remain unfilled until after the holidays and resulted in their cancellation in some cases. At the same time, cigar manufacturers in Tampa and the neighborhood thereof, had at all times in 1919 and the first three months of 1920 more orders than they could fill with the labor then available to them.

PAR. 10. The difficulties with labor which were common to all lines of industry commencing toward the end of 1918 and continuing in 1919, affected the cigar making industry in Tampa. Some of the manufacturers operated their establishments on an "open shop" basis, employing non-union workmen or not restricting their employees to union members. Other manufacturers did or were willing to operate on a closed shop basis employing only union members. Efforts were being made to unionize the industry which efforts were resisted by certain manufacturers, some of whom organized the respondent Cigar Manufacturers' Association. All of those subsequently becoming members subscribed to the policy of the open shop. These differences of policy among the manufacturers themselves and between the manufacturers and their employees, resulted in strikes and disturbance of industrial conditions. Competition in

the manufacture and sale of cigars in interstate commerce was resolved principally into two groups, the respondent Cigar Manufacturers' Association and the respondents members of said association and certain non-member manufacturers standing for the open shop and other non-member manufacturers standing for the closed shop. Members of both groups were then practically dependent upon the three respondent cigar box manufacturers for their supply of cigar boxes which were essential to the business.

PAR. 11. (*a*) The year 1919 was a time of extraordinary activities in cigar trade in Tampa and the neighborhood thereof—an activity probably never before surpassed. Orders for cigars sent the manufacturers of said territory were far in excess of those usually received and far in excess of the ability of said manufacturers to fill. Especially was this the case in the latter half of 1919 and just before the Christmas holidays.

(*b*) While there was a shortage of labor in the cigar manufacturing industry in Tampa and the neighborhood thereof, and there were several local strikes among cigar manufacturers in Tampa and the neighborhood thereof, and in the year 1919 there was some delay in getting cigar boxes, it was one of the most productive, if not the most productive year experienced by cigar manufacturers in Tampa, and the neighborhood thereof, and it does not appear that the cigar business suffered in Tampa in any way in 1919 to any greater extent than in previous years.

PAR. 12. Sometime prior to March 16, 1920 the respondents or some of them conceived the purpose of controlling the labor situation and forcing manufacturers to refuse to adopt the closed shop policy or to abandon it if previously adopted, by concentrating in respondent Cigar Manufacturers' Association the monoply of sale and distribution of all cigar boxes then capable of being produced in Tampa and vicinity and having obtained such monoply the respondent Cigar Manufacturers' Association should cut off the supply of boxes and so cripple the business of any competitor who refused to adopt and abide by the Association's open shop policy. Accordingly, there was a meeting held in the Elks Club house at Tampa, Florida, on March 16, 1920 which was attended by the officers and Directors of the respondent Cigar Manufacturers' Association and by the officers or partners of each of the three respondent cigar box manufacturers, or the sufficient representative thereof, at which meeting it was agreed that the respondent Cigar Manufacturers' Association should control the disposition of all the cigar boxes manufactured in Tampa, or vicinity, at a basing price then and there fixed for all boxes produced and sold by the box manufacturers either at the direction of

respondent association to its members, or by its consent, to non-members. This basing price was fixed at 16 cents per box which was an increase from the previously existing price of 13½ cents per box. This agreement was evidenced by the execution of three written instruments by and between the respondent Cigar Manufacturers' Association and each of the respondent cigar box manufactures, each of whom knew and intended at the time of the execution of said agreement, that each several agreement was collateral to the execution of a similar agreement by the other cigar box manufacturers and formed a part of a complete arrangement by which complete control of all cigar boxes produced in Tampa became vested in respondent Cigar Manufacturers' Association and the price of all cigar boxes produced in Tampa was increased and stabilized at a uniform level during the period covered by said agreements.

PAR. 13. Each of the three agreements is in the following form except as to the name and style and address of the cigar box manufacturer.

"THIS AGREEMENT made and entered into this 16th day of March, A. D., 1920, by and between the CIGAR MANUFACTURERS' ASSOCIATION of Tampa, Florida, a voluntary association the membership of which is composed of manufacturers of cigars at Tampa, Florida, and immediate vicinity, party of the first part, and TAMPA BOX COMPANY, a corporation, of Tampa, Florida party of the second part.

"WHEREAS the various members of the party of the first part require in the conduct of their business large quantities of cigar boxes, manufactured according to special abels and designs, and the party of the second part is engaged in business in the city of Tampa as a manufacturer of such cigar boxes, and—

"WHEREAS the available supply of cigar boxes manufactured at Tampa and vicinity is barely sufficient to supply the requirements of the members of the party of the first part and it desires to make such agreement as will insure its members securing for the period herein provided for an adequate supply of such boxes at reasonable prices,

"NOW, THEREFORE, in consideration of the premises, as well as the sum of One ($1.00) Dollar by the said parties mutually paid to each other, the said parties do hereby agree:

"FIRST. The party of the first part will furnish orders for cigar boxes to the party of the second part to the full capacity of the plant of the party of the second part, and the party of the second part will make, sell and deliver to the party of the first part cigar boxes manufactured by the party of the second part, in accordance with such orders, up to the full capacity of its plant, in the City of Tampa, Florida, beginning with the date hereof and to the thirty-first day of December A. D., 1920.

"SECOND. The party of the first part will appoint a purchasing agent and will receive from the various members of the party of the first part orders for cigar boxes as the party of the second part may require from time to time during said period, in order to keep their cigar box factory operating at full capacity and said orders will be promptly transmitted by said purchasing agent to the party of the second part, and by the said party of the second part filled with all reasonable dispatch.

"THIRD. Bills for boxes so sold and delivered will be transmitted direct by the party of the second part to the members whose orders are filled and the same will be charged by the party of the second part upon its books to such members. The party

of the second part may require payment in advance, or security, before filling any order for any member as to whose financial ability the second party is in doubt.

"FOURTH. The prices charged by the party of the second part for cigar boxes so manufactured, sold and delivered shall be the current prices in effect for similar merchandise in the City of Tampa as evidenced by the price list issued by the party of the second part dated March 15th, 1920; provided that in the event of an increase to the party of the second part of the cost of labor and materials in producing said merchandise, said prices may be increased by the party of the second part to an amount not greater than such increased cost of production.

"FIFTH. That party of the second part will operate its said plant and manufacture cigar boxes on orders given through the purchasing agent of the party of the first part as aforesaid, continuously during the aforesaid period up to the full capacity of the plant of the party of the second part; provided that in case of destruction of or damage to the plant of the party of the second part, by fire or other casualty, or inability to secure raw materials, after diligent effort, or strikes or labor disturbances, or other causes beyond the control of the party of the second part, interfering with the production of boxes, the said party of the second part shall be excused from the performance of this contract to the extent only justly attributable to such unavoidable circumstances.

"SIXTH. The party of the second part shall be entitled to fulfill any existing contracts heretofore entered into by it for future delivery of boxes, but otherwise shall be bound to sell and deliver to the party of the first part, and the party of the first part shall be bound to furnish box orders sufficient to keep the said plant of the party of the second part in full operation and to receive of and from the party of the second part, whether specially needed by the several members of the party of the first part or not, the entire number of boxes manufactured by the party of the second part as herein provided during the period aforesaid, and at the expiration of said period the party of the first part shall have the option, by giving notice in writing of its intention so to do not less than fifteen days before the expiration of said period, to extend this contract and all of its obligations for the term of one year.

"It being the true intent and meaning of this contract that the party of the first part has bought of and from the party of the second part, and the party of the second part has sold and will deliver to party of the first part all cigar boxes manufactured by party of the second part at its plant in the City of Tampa, Florida, between the date hereof and the 31st day of December, A. D., 1920.

"IN WITNESS WHEREOF the party of the first part has caused these presents to be executed in its name by its President and attested by its Secretary, and the party of the second part has also caused these presents to be executed by its President and attested and its corporate seal affixed by its Secretary, on the day and year first above written.

THE CIGAR MANUFACTURERS' ASSOCIATION OF TAMPA, FLORIDA,

By .....

Attest:

.....
Secretary.

TAMPA BOX COMPANY,

By .....

Attest:

.....
Secretary.

PAR. 14. Said agreements between respondent Cigar Manufacturers' Association, and respondent cigar box manufacturers were renewed prior to December 31, 1921 by letters from officers of respondent Cigar Manufacturers' Association to respondent cigar box manufacturers, and by letters accepting said renewals.

PAR. 15. (*a*) Before the making of said written agreements, respondent cigar box manufacturers were in competition with one another in interstate commerce, but after said agreements, said respondent box manufacturers sold their products at the uniform price fixed in said agreements and respondent Cigar Manufacturers' Association selected or approved the customers of each respondent box manufacturer, and all real competition between the box manufacturers ceased.

(*b*) Prior to the making of said agreements, for the year 1919, respondent cigar box manufacturers had outputs as follows:

1. Respondent D. N. Holway and Company	975,208
2. Respondent Tampa Box Company	4,818,606
3. Respondent Weidman, Fisher and Company	3,553,141
Total	9,346,955

(*c*) After said agreements were signed and from about March 16, 1920 to April 10, 1921 the outputs of said respondent cigar box manufacturers were as follows:

1. Respondent D. N. Holway and Company	738,277
2. Respondent Tampa Box Company	3,789,680
3. Respondent Weidman, Fisher and Company	2,802,226
Total	7,330,183

being a falling off for the period above last mentioned as compared with the calendar year of 1919 of 2,016,772 boxes, or about 21 4/10 per cent.

(*d*) The output of respondents cigar box manufacturers for the year 1919 was approximately the capacity of their plants and such capacities had not changed materially in 1920.

PAR. 16. The respondent cigar box manufacturers curtailed their production of boxes as above indicated for the period subsequent to the date of such agreement of March 16, 1920 and did not operate their plants at full capacity. It does not appear that the curtailment was due to any of the provisos in paragraph 5 of said agreement as hereinabove noted. Said respondent Cigar Manufacturers' Association did not furnish cigar box orders sufficient to keep the plants of respondent box manufacturers in full operation, nor did respondent cigar box manufacturers receive from the cigar manufacturers, whether members of respondent Cigar Manufacturers' Association

or not, orders for the entire number of boxes manufactured by respondent cigar box manufacturers during the period after the date of said agreements. Subsequent to the date of said agreements, respondent cigar box manufacturers did not rely upon the furnishing of orders by respondent Cigar Manufacturers' Association as provided for in said agreements but at their own expense continued to solicit orders as formerly, both within and without Tampa, Florida, and the neighborhood thereof. But the solicitation and acceptance of such orders and sales in pursuance thereof were always subject to the approval of respondent Cigar Manufacturers' Association. The refusal of respondent Cigar Manufacturers' Association to approve sales to nonmembers, tended to a reduction of accepted orders and sales of boxes by respondent box manufacturers. But no complaint or claim for remuneration on that account was made by respondent cigar box manufacturers and renewals of the agreements were accepted by them without protest.

PAR. 17. Orders for cigar boxes have come to respondent cigar box manufacturers direct from cigar manufacturers since the signing of said agreements of March 16, 1920, as they had come before the making of said agreements; cigar boxes were shipped from the factories of cigar box manufacturers to cigar manufacturers direct since the making of said agreements as they had been shipped before the making of said agreements; cigar boxes sold by repondent cigar box manufacturers to cigar manufacturers have been paid by said cigar manufacturers directly to respondent cigar box manufacturers since the making of said agreements of March 16, 1920 as they had been paid for before the making of such agreements. But respondent box manufacturers, since the making of such agreements of March 16, 1920 have permitted respondent Cigar Manufacturers' Association through its secretary, to designate to what cigar manufacturers respondent cigar box manufacturers should sell their cigar boxes and to what cigar manufacturers respondent cigar box manufacturers should refuse to sell their cigar boxes.

PAR. 18. Said respondent Cigar Manufacturers' Association as such is not now and never has been engaged in the manufacture of cigars; it is not now using and never has used cigar boxes nor dealt in them otherwise than to control their distribution. It has no cigars to pack nor to market, and never has had any cigars to pack nor to market in Tampa or elsewhere. It has not now and never has had a warehouse for the receiving, storing or handling of cigar boxes. It has never received nor stored, handled nor shipped any cigar boxes from said respondent cigar box manufacturers, nor has

it had any connection with the purchase, sale or distribution of cigar boxes by said respondent cigar box manufacturers, except through its secretary to inspect orders coming to the plants of said respondent box manufacturers and to determine those cigar manufacturers whose orders for cigar boxes should be filled by respondent cigar box manufacturers, and those whose orders should be refused. In addition, at times, said secretary of respondent Cigar Manufacturers' Association, has indicated to said respondent cigar box manufacturers cigar manufacturers from which they should solicit orders for cigar boxes and cigar manufacturers from which they should not solicit orders.

PAR. 19. Respondent Cigar Manufacturers' Association having acquired through the cooperation of respondent cigar box manufacturers, control of the sale and distribution of all the cigar boxes manufactured in Tampa, was in a position to assure to its members a competitive advantage over non-members in the conduct of their business so long as said members conformed to the open shop policy of respondent Cigar Manufacturers' Association. And the respondent Cigar Manufacturers' Association was likewise in position to place at a serious competitive disadvantage all manufacturers of cigars at Tampa, competitors of its members, who declined to conform to the open shop policy, by cutting off their supply of cigar boxes from the manufacturers in that city. This position of advantage to respondent association and its members was known to respondent cigar box manufacturers when they executed their several agreements hereinbefore set out and was a result intended by each of them.

PAR. 20. Respondent Cigar Manufacturers' Association employs and has employed its control of such supply of cigar boxes to deny to and withhold their necessary supply of boxes from non-members who are competing cigar manufacturers and who refuse to conduct their business in the manner prescribed and directed by said respondent Cigar Manufacturers' Association and the members thereof. In accordance with their agreements respondent cigar box manufacturers after the signing of said agreement refused to cigar manufacturers not members of respondent Cigar Manufacturers' Association, the supply of cigar boxes needed in the business of said cigar manufacturers and informed them that to secure such a supply they must join respondent Cigar Manufacturers' Association, or must see A. A. Martinez, secretary of said respondent Cigar Manufacturers' Association, and sold cigar boxes only to such purchasers as were approved by respondent association.

PAR. 21. (*a*) Several cigar manufacturers in Tampa, Florida, and the vicinity thereof, were forced to join respondent Cigar Manufac-

turers' Association in order to secure a supply of boxes necessary in the conduct of their businesses. Jose Garcia, a cigar manufacturer in Tampa, Florida, engaged in selling and shipping cigars among the several states of the United States, was told by the secretary of the Cigar Manufacturers' Association, after having been refused boxes from respondent Tampa Box Company, that before he could obtain any boxes he would have to join said Cigar Manufacturers' Association, that Jose Garcia did join such Cigar Manufacturers' Association, and was furnished boxes from the Tampa Box Company, but he refused to "lockout" or close his shop after the strike in April, thereby violating one of the Cigar Manufacturers' Association's rules and was expelled from said Association and thereafter was refused boxes from respondent cigar box manufacturers and respondent Cigar Manufacturers' Association. Garcia and Brothers; Lopez, Alverez and Company; W. M. Lamb; Otto Reiner; S. Bruno and Company; and D. Minutel also joined the association because it was necessary to do so to obtain a supply of boxes. Their supply was cut off by the respondents, but upon becoming members of the Association, their supply was restored.

(*b*) Some manufacturers whose supply of boxes was cut off by respondents were compelled to close their plants for varying periods. Such were A. C. Jones, cigar manufacturer at Lakeland, Florida; Jose Garcia, Tampa; Jose Hilgers, Tampa; Armando Gonzalez, Tampa; Manuel Rodriguez, Tampa; Tierra de Lago Cigar Company. They declined to join the respondent Association and as non-members were deprived of their box supply.

PAR. 22. On or about April 14, 1920, a strike of employees occurred in some of the plants of respondent cigar manufacturers, affecting about 25 of the members of respondent Cigar Manufacturers' Association. A week later practically all other members of respondent Cigar Manufacturers' Association locked out their employees engaged directly in manufacturing cigars, except some few who were engaged in packing for shipment the cigars theretofore manufactured. Thereafter and while non-member manufacturers in Tampa and vicinity were deprived of the supply of boxes which they needed in the conduct of their business, respondent cigar-box manufacturers and respondent Cigar Manufacturers' Association were soliciting business from cigar manufacturers outside Tampa, Florida, and the neighborhood thereof, and were selling and shipping cigar boxes to cigar manufacturers located in the various states of the United States and in the District of Columbia, so that in the year 1920, subsequent to the signing of said agreement dated March 16, 1920, respondent cigar box manufacturers sold and shipped to cigar manufacturers

outside of Tampa, Florida, and the neighborhood thereof, a substantial percentage of the cigar boxes manufactured by respondent cigar box manufacturers in Tampa during that period—amounting probably to 40 or 50 per cent of their output. During the months immediately following said agreement dated March 16, 1920, the proportion of the output of respondent cigar box manufacturers sold and shipped to manufacturers outside of Tampa and the neighborhood thereof, was much greater than in any previous period. Some of the outside cigar manufacturers so supplied conducted portions of their shops as "closed shops" or with union working men, being the selecting and packing departments of such outside manufacturers.

PAR. 23. Subsequent to said strike and "lockout," respondent Cigar Manufacturers' Association directly and indirectly solicited for membership competing cigar manufacturers in Tampa and the neighborhood thereof, who had conducted "closed shops" or employed union workmen, as a condition precedent to getting the needed supply of boxes from respondent cigar box manufacturers. A few competing cigar manufacturers in Tampa and the neighborhood thereof, who conducted "open shops" or employed non-union workmen were supplied with cigar boxes by respondent cigar box manufacturers with the approval of respondent Cigar Manufacturers' Association. One Vol Antuono, who was not a member of the respondent Cigar Manufacturers' Association, and who was one of the largest cigar manufacturers in Tampa, Florida, and who conducted an "open shop" or employed non-union workmen, was supplied with cigar boxes by respondent cigar box manufacturers with the approval of respondent Cigar Manufacturers' Association. Gonzales and Sanches, a large cigar manufacturer in Jacksonville, Florida, who was not a member of respondent Cigar Manufacturers Association, conducted "open shops" or employed non-union workmen, and was supplied with cigar boxes by respondent cigar box manufacturers with the approval of respondent Cigar Manufacturers' Association. These exceptions were made in favor of a few strong concerns which conducted their operations on the "open shop" basis but for some reason did not desire membership in the respondent association. The manufacturers working on the "closed shop" basis were in the main, small concerns, employing relatively few workmen and with limited resources.

PAR. 24. About the middle of July 1920, respondent members of Cigar Manufacturers' Association opened their factories and invited the former employees to return to work on the "open shop" basis. The strike was declared off in Tampa in the early part of the year 1921. Subsequent to the time that said factories were reopened,

respondent Cigar Manufacturers' Association refused to admit some competing cigar manufacturers of Tampa and the neighborhood thereof to membership. Such applicants were informed that respondent Cigar Manufacturers' Association would admit no additional members until the pending strike was settled, nor would respondent Cigar Manufacturers' Association nor respondent cigar box manufacturers supply such excluded cigar manufacturers with cigar boxes needed in their business.

PAR. 25. Subsequent to the signing of said agreement dated March 16, 1920, respondent Cigar Manufacturers' Association, through one of its directors, Mr. J. A. Jones, asked George W. Hardee, Manager of Gonzales and Sanches, a cigar manufacturing corporation in Jacksonville, Florida, affiliated with Cuesta, Rey and Company, one of the members of respondent Cigar Manufacturers' Association, to use his influence with the Brunswick Cigar Box Company, a cigar box manufacturer who had begun business in Brunswick, Georgia, in the summer of 1920, to have such box manufacturer refuse to sell cigar boxes to competing cigar manufacturers in Tampa and the neighborhood thereof known as "Buckeyes" (which means small manufacturers in the Tampa vernacular) and said manager George W. Hardee did so use his influence and secured assurance that such course of action would be pursued by said Brunswick Cigar Box Company, which did not enter into competition in the sale of cigar boxes in Tampa during the term covered by said agreements and their renewal.

PAR. 26. (*a*) Subsequent to the signing of said agreement dated March 16, 1920, respondent cigar box manufacturer, Weidman, Fisher and Company, refused further to supply cigar boxes needed in his business to a customer, one Max Smith, up to that time a cigar manufacturer of Tampa then employing about 45 workmen in the manufacture of cigars, unless Max Smith would become a member of respondent Cigar Manufacturers' Association. Said Max Smith was at that time selling his cigars to Thompson and Company, a large mail order house in Tampa, which company caused the cigars so made by Max Smith to be sent to purchasers residing in the various states of the United States. Said Max Smith became a member of respondent Cigar Manufacturers' Association and for about three months following March 16, 1920, secured an adequate supply of cigar boxes from respondent manufacturer, Weidman, Fisher and Company.

(*b*) Subsequently, respondent Weidman, Fisher and Company refused to supply said Max Smith with cigar boxes as theretofore and informed him that he could get no more boxes without the approval

of A. A. Martinez, secretary of respondent Cigar Manufacturers' Association, whom he was advised to see. Subsequently, said Max Smith was summoned before the officers or directors of respondent Cigar Manufacturers' Association, and thereafter was expelled from respondent Cigar Manufacturers' Association, and was then cut off from the supply of cigar boxes needed in his business and rendered unable to fulfill his contracts for the manufacture and delivery of cigars.

(*c*) Said Max Smith was expelled and his supply of cigar boxes cut off because he refused to comply with section 7, article 2 of the by-laws of respondent Cigar Manufacturers' Association, in substance requiring each member to permit a committee of the Cigar Manufacturers' Association to inspect his plant and to fix the price which he should pay his employees for the manufacture of cigars of various sizes.

PAR. 27. (*a*) Sometime after January 1, 1920 and prior to March 16, 1920, respondent members of respondent Cigar Manufacturers' Association and respondent cigar box manufacturers, combined confederated and agreed with one another to unduly hinder competition in the sale of cigars in interstate commerce and as a means to that end respondent Cigar Manufacturers' Association and respondent cigar box manufacturers entered into certain agreements in writing dated March 16, 1920, the intent and effect of which agreements was to give respondent Cigar Manufacturers' Association full and complete control of the supply of cigar boxes practically available to the competitors of respondent cigar manufacturers doing business in Tampa and the neighborhood thereof. Said control of said cigar box supply by respondent Cigar Manufacturers' Association was used by its officers and directors with the knowledge and consent of its members for the purpose of, and had the effect of, unduly hindering the sale of cigars in interstate commerce by making it difficult or impracticable for the competitors of members of respondent Cigar Manufacturers' Association to secure a supply of cigar boxes vitally necessary in the sale of cigars in interstate commerce and caused some of said competitors to curtail production of cigars, others to cease business for varying periods and still others to do business under a distinct handicap because of the extra expense and the difficulty and inconvenience of securing cigar boxes outside Tampa, Florida.

PAR. 28. That prior to the organization of respondent Cigar Manufacturers' Association, and its entering into said agreement dated March 16, 1920, respondent members of respondent Cigar Manufacturers' Association were in active competition in interstate commerce with one another, and were then and are now in active competition with other cigar manufacturers throughout the United States similarly engaged.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is ordered, That the Cigar Manufacturers' Association of Tampa, Florida, Jose Escalante, as President of said Association; Enrique Pendas, as Treasurer of said Association, and A. A. Martinez, as Secretary of said Association and each of its aforesaid officers as an individual, and the Members of said Cigar Manufacturers' Association of Tampa, Florida, namely:

Solis Alvarez
Francisco Arango & Co.
Avana Cigar Co.
M. Alvarez & Co.
A. Amo & Co.
Arguelles, Lopez & Bros.
Ramon Alvarez & Co.
Berriman Bros.
F. Benjamin & Co.
Big Four Cigar Co.
Andres Diaz & Co.
Rafael Espina & Co.
Every Day Cigar Co.
Jose Escalante & Co.
Fernandez Bros. & Co.
Sobrinos Fernandez & Co.
Garcia & Vega.
Perfecto Garcia & Bros.
F. Garcia & Bros. Inc.
Guerra, Diaz & Co.
Maximo Grahn & Son
Henriquez Cigar Co.
Hygiene Cigar Co.
Havatampa Cigar Co.
Havana-American Cigar Co.
Thomas Leon & Co.
Jose Lovera Co.
La Vista Cigar Co.
Jose M. Lopez.
Lopez, Alvarez & Co.
F. Lozano Son & Co.
Celestino Lopez
J. M. Martinez Co.
Jose Maseda & Co.
Morgan Cigar Co.
Saint Minitol Cigar Co.
Marsicano Cigar Co.
Newman Cigar Co.
M. Bustillo & Co.
Cuesta Rey & Co.
Corral Wodiska & Co.
Maximo Gueta
F. Capitano & Co.
Mulero Cerra Co.
Dulin & Co.
Diaz Raphael & Co.
Demmi Cigar Co.
Felipe DeSoto & Co.

Y. F. O'Halloran & Son
Preferred Havana Tobacco Co.
A. M. Perez
Marcelino Perez & Co.
S. Perez & Bro.
Pent & Wright
Pride Cigar Co.
Salvador Rico & Co.
Salvador Rodriguez & Co.
E. Regensburg & Sons.
J. W. Roberts & Son
Wm. J. Seidenberg & Co.
El Sidelo Cigar Co.
L. Sanchez & Co.
M. Stachelberg & Co.
A. Santaella & Co.
South Florida Cigar Co.
San Luis Cigar Co.
San Martin & Leon Co.
Sanchez & Haya Co.
Salvador, Sanchez & Co.
Tampa Best Cigar Co.
Tampa-Cuba Cigar Co.
Tampa Token Cigar Co.
Celestino Vega & Co.
M. Valle & Co.
Wolff Bros. Cigar Co.

and said respondent cigar box manufacturers, namely; the Tampa Box Company, a corporation, D. N. Holway, J. W. Young and J. Van Roe, copartners under the firm name and style of D. N. Holway & Company; George F. Weidman, T. D. Fisher and J. A. B. Anderson, under the firm name and style of Weidman, Fisher & Co., forever cease and desist—

(1) From entering into any agreement or understanding whereby control of the entire production of cigar boxes manufactured by respondents Tampa Box Co., Weidman, Fisher & Co. and D. N. Holway & Co., is exclusively vested in respondent Cigar Manufacturers Association of Tampa, Florida, or its members, and nonmember cigar manufacturers of cigars are hindered and obstructed in procuring cigar boxes, and

(2) From entering into any agreement or understanding whereby cigar manufacturers who are not members of respondent Association are hindered or obstructed in or prevented from purchasing cigar boxes from the manufacturers thereof upon the same terms and conditions as members of respondent Association, and

(3) From continuing in force and effect three certain agreements by and between respondent Association and respondent cigar box manufacturers, each dated March 16, 1920, or any extensions or renewals thereof.

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

FEDERAL TRADE COMMISSION

v.

ALFRED KLESNER, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF SHADE SHOP, HOOPER & KLESNER.

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

Docket 696—June 23, 1922.

SYLLABUS.

Where an individual engaged in the manufacture and sale of window shades under the style of "The Shade Shop," carried on his business under said name, thus advertising it, and displaying the same on his letterheads, billheads, windows of his business places, and delivery wagons, so that said business had come to be well known to the trade and purchasing public, and the trade name "Shade Shop" had come to mean and signify to the purchasing public the business owned and operated by him; and thereafter a competitor, for the purpose of injuring him in his said business, and securing the same,

(*a*) Placed upon the windows of its establishment, theretofore jointly occupied by itself and by said individual, the sign "Shade Shop," using the same size, style and color of lettering and the same place theretofore used by said individual for his sign "The Shade Shop";

(*b*) Used the words "Shade Shop" upon its letterheads and billheads;

(*c*) Advertised and listed its business in the telephone directory as "Shade Shop, Hooper & Klesner";

(*d*) Placed upon its delivery trucks the words "Shade Shop, Hooper & Klesner"; and

(*e*) Deceived and misled customers of said individual who entered its establishment into believing that its store was that of said individual;

With the result that there was confusion in the trade and customers of said individual were confused and deceived into purchasing of said competitor in the mistaken belief that they were dealing with him:

Held, That such simulation of trade name, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled: "An Act to create a Federal Trade Commission, to define its powers and duties, and for other pur-

poses," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, is a resident of the City of Washington, District of Columbia, with his office and principal place of business located at the southeast corner of 12th & H Streets, N. W., in said City, engaged in the business of selling wall paper and window shades throughout the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That W. Stokes Sammons is a resident of the City of Washington, District of Columbia, engaged since the year 1907 in the business of manufacturing and selling window shades throughout said District of Columbia under the trade name and style of The Shade Shop which he adopted in 1907 and under which he has continually carried on and conducted, and is now carrying on and conducting his said business. That during such period he has owned and operated stores for the manufacture and sale of window shades under the name of The Shade Shop at the following locations in said City of Washington, to wit:

1907–1909	1222 H Street NW.
1909–1910	813 14th Street NW.
1910–1912	724 11th Street NW.
1912–1914	819 15th Street NW.
1914–1915	Corner of 12th & H Streets NW.
1915–date	733 12th Street NW.

and during all of such period has by advertisements placed in newspapers of general circulation throughout the District of Columbia and by letterheads, billheads, and in city and telephone directories and by signs prominently displayed upon his windows and various places of business and by other means, held himself out to the trade and general public as The Shade Shop and as such has become, and is, well known and established to dealers and purchasers of window shades and the general public in and throughout said District of Columbia.

PAR. 3. That in May, 1914, the respondent, Alfred Klesner, then in partnership with one Harry Hooper, trading as Hooper & Klesner, and engaged in the business of painters, paperhangers, and decorators, leased store room located at the southeast corner of 12th and H Streets NW., in the City of Washington, District of Columbia, renting one-half of said store to the said W. Stokes Sammons, who occupied and used the same for the manufacture and sale of

window shades, neither the said respondent nor the said Hooper being then or theretofore engaged in selling window shades and the said Sammons utilized one of the two show windows to said store to display window shades, having his trade name THE SHADE SHOP prominently displayed thereon; that thereafter, to wit, in November, 1915, said Sammons moved his business to a store room located two doors south on 12th Street, to wit, No. 733 12th Street NW., in said City of Washington, where he has ever since and is now carrying on and conducting his business under the trade name of The Shade Shop.

PAR. 4. That the respondent, Alfred Klesner, at the time of such removal as aforesaid, refused to permit the said Sammons to remove his sign "The Shade Shop" from the show window and premises at 12th & H Streets NW., in said City of Washington and thereafter erased and removed the word "The" from said signs and proceeded to engage in the business of manufacturing and selling window shades and ever since has manufactured and sold and is now selling and offering to sell window shades to the general public under the trade name and style of Shade Shop, Hooper & Klesner, at and in that portion of the said store room formerly occupied by the said Sammons, trading as "The Shade Shop" and the respondent, Klesner, having dissolved his partnership with the said Hooper in the year 1919 has ever since carried on and conducted his business as aforesaid and ever since November, 1915, has left the sign "Shade Shop" upon the said premises at the corner of 12th & H Streets NW.; has carried the sign Shade Shop on the side window of an auto truck owned and operated by him; has caused and permitted the telephone directory for the City of Washington to list his business as Shade Shop, Hooper & Klesner, and by other means has advertised and held his business out to the trade and general public as Shade Shop. That the effect of such simulation and appropriation of name has been, and is, among others—

(*a*) to confuse the trade and general public and to cause customers and prospective customers of the said Sammons to trade and deal with the respondent in the belief that they were trading and dealing with the said Sammons.

(*b*) to mislead and deceive the trade and general public into the erroneous belief that The Shade Shop owned and operated by the said Sammons, at 733-12th Street, N. W., in the City of Washington is identical with and the same as that of Shade Shop, owned and operated by the respondent, at the southeast corner of said 12th & H Streets, N. W.

PAR. 5. That within the four years last past representatives and employees of apartment houses and hotels in the city of Washington, District of Columbia, who have been instructed by their employers to go to The Shade Shop, meaning thereby the store conducted by the said Sammons and purchase window shades, have been confused by the sign Shade Shop upon the respondent's store and upon inquiring of respondent's clerks if their employers purchased window shades at this store have been told and led to believe by such clerks that they did, when in truth and in fact, such employers dealt with the said Sammons; that such statements were false and misleading and were calculated and designed to and did cause such representatives of apartments and hotels to purchase window shades from the respondent, thereby diverting such sales from the said Sammons.

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, Alfred Klesner, trading under the name and style of Shade Shop, Hooper & Klesner, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said Act. The respondent, Alfred Klesner, trading as Hooper & Klesner, entered his appearance by his attorney, Clarence R. Ahalt, and having filed his answer herein, hearings were had and evidence was thereupon introduced in support of his answer before an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Alfred Klesner, doing business under the trade name and style of "Shade Shop—Hooper & Klesner," is a resident of the City of Washington, District of Columbia, with his office and principal place of business located at No. 929 H Street, NW., in said City of Washington, engaged in the business of selling wall paper and window shades and doing painting and decorating work throughout the District of Columbia, in direct competition with other persons, firms and corporations similarly engaged.

PAR. 2. That W. Stokes Sammons is a resident of the City of Washington, District of Columbia, and engaged exclusively, since 1901, in the business of manufacturing and selling window shades throughout the said District of Columbia and in near-by towns in States adjoining said District, under the trade name and style of "The Shade Shop," which trade name was adopted and used by him in the year 1901, since which time he has continuously carried on and conducted his said business under said trade name, and is now so carrying on and conducting his said business, and is now, and has been during all of this period the sole and only person, firm or corporation in the District of Columbia dealing in window shades under the trade name of The Shade Shop.

PAR. 3. That during the period above mentioned, the said Sammons operated stores for the manufacture and sale of window shades under the said trade name of "The Shade Shop," at the following locations in said City of Washington, District of Columbia, to wit:

1901–1902	910 E Street, NW
1903	1649 K Street, NW
1904	1403 New York Ave., NW
1905–1907	813—14th St., NW
1907–1909	2222 H Street, NW
1909–1910	813—14th St., NW
1910–1912	724—11th St., NW
1912–1914	819—15th St., NW
1914–1915	S. E. Cor. 12th & H Sts., NW
1915–1920	733—12th St., NW
1920–1921	820—13th St., NW

PAR. 4. That during all of said period, since the year 1901 to the present time, the said W. Stokes Sammons, in conducting his said business, has held himself out to the trade and to the public generally as "The Shade Shop," by advertisements placed in the leading newspapers published and circulated in the District of Columbia, in the Evening Star, the Washington Post, Knights of Columbus Bulletin, Trade Unionist, in the telephone directory of the said District, and by his letterheads, billheads, and by means of signs prominently displayed on the windows of his several places of business, and on his delivery wagons; and his business as a manufacturer and dealer in window shades under such trade name has become established and is well known to dealers in and purchasers of window shades, and to the general public in and throughout the District of Columbia, and in towns of the State of Maryland and Virginia adjacent thereto, and the trade name, "The Shade Shop," through these twenty-one years of usage has come to mean and

does mean and signify to the window shade buying public, the shade business owned and operated by the said W. Stokes Sammons.

PAR. 5. That during the month of May, 1914, the respondent, Alfred Klesner, together with his then partner, one Harry Hooper, leased a certain store room and premises at the southeast corner of 12th and H streets, NW, in the City of Washington, D. C.; and thereafter, to wit: on the 14th day of May, 1914, the said Hooper and the said Klesner entered into a written lease with said W. Stokes Sammons, by the terms and conditions of which they sublet one-half of the store room and one-half of the cellar upon said premises to W. Stokes Sammons, trading as "The Shade Shop," for a period of two years, at the monthly rental of $41.66; that under and by the terms and provisions of this lease, the said Sammons was to have the right to carry on and conduct his said business in and upon the said premises and to place his signs upon the windows of the store room; and the said Sammons did, thereafter, establish his shade business in one-half of the store room, and placed his sign, "The Shade Shop," upon the windows of the store room facing both 12th and H Streets. And it was further agreed by and between the respondent and his then partner, Hooper, and the said Sammons, that all of the shade business which might come to this store room at the southeast corner of 12th and H Streets, was to belong to the said Sammons; that at this time, respondent, Alfred Klesner, was not and never had been engaged in the business of manufacturing or dealing in window shades, other than receiving occasional orders given to his employees engaged in wall papering and decorating work, which orders were turned over to the said W. Stokes Sammons, or some other shade dealer who filled the orders and gave the respondent his commission, or, as he termed it, his "rake-off."

PAR. 6. That under the aforesaid arrangement the respondent, Alfred Klesner, and his then partner, Harry Hooper, continued to carry on their business of decorating and paper hanging in one-half of the said store room, and W. Stokes Sammons continued to carry on his shade business under the trade name of "The Shade Shop" in the other half of the premises until November, 1915, when the business of the said Sammons had increased until his annual gross sales amounted to over $60,000 and he deemed it necessary and advisable to have a store room of his own; whereupon he notified the respondent, Alfred Klesner, that he had leased the store room on the premises at 733 12th Street, NW., in the City of Washington, D, C., and that he would, in the near future, remove his business to said premises; thereafter, to wit, on the morning of the last Sunday in November, 1915, the said Sammons, in company with one of his employees, went to the said store room at the southeast corner of

12th and H Streets, NW., for the purpose of removing his goods and chattels to his new location. That Sammons had paid to the respondent his rent for the month of November, 1915, which was due and owing under the terms and provisions of the aforesaid lease, and in so entering upon the premises on the morning in question Sammons was not in any way a trespasser. The respondent, Alfred Klesner, was in the store room at the time and made no objection whatsoever to Sammons or his employee removing the goods and chattels of Sammons, until they started to remove from the windows of the store room the sign "The Shade Shop"; whereupon the respondent, Alfred Klesner, walked to the front of the store, drew a deadly weapon, to-wit, a revolver, upon Sammons and his employee and ordered them to cease removing the signs from the store windows; whereupon Sammons withdrew from the premises and called a policeman, who placed the respondent, Klesner, under arrest and took him to the police station, after which Sammons and his employee continued to remove and efface his signs from the windows of the store room, and removed all his goods and chattels to his new store room, where he continued to conduct and operate his business under the trade name "The Shade Shop." That the respondent, Alfred Klesner, did not at this time make, nor had he at any time prior thereto made, any claim or demand of any kind or character whatsoever upon the said Sammons for and on account of any alleged failure on the part of the said Sammons to continue to occupy this store room at the corner of 12th and H Streets, as a subtenant, and to pay the monthly rental as provided in the said lease for the remainder of the term thereof.

PAR. 7. That respondent, Alfred Klesner, incensed and angered at Sammons because of his arrest and the circumstances connected with the removal of Sammons' sign as aforesaid, has refused to speak to Sammons since said trouble in the store room above referred to, and has during all this period continued this attitude of hatred and malice towards Sammons, so that immediately after Sammons had removed his business, as aforesaid, respondent, Klesner, conferred with his then partner, Harry Hooper, and it was decided that they would immediately enter upon the business of dealing in window shades, and that they would go after and get the window shade business and trade which had been built up on this corner and in this store room by the said W. Stokes Sammons, trading under the name of "The Shade Shop"; and in pursuance of this plan and policy and with the further purpose of injuring the said W. Stokes Sammons, the respondent and his said partner placed upon the two windows of their store room the sign "Shade Shop," using the same

size, style and color of lettering, and in the same place as that of the sign "The Shade Shop" used theretofore by the said Sammons; and in furtherance of this plan they also placed upon their letterheads and billheads the words "Shade Shop," and caused the Chesapeake & Potomac Telephone Company, operating in the said District of Columbia, to have them listed in its telephone directory under the name and style of "Shade Shop, Hooper & Klesner," and respondent has carried and is now carrying an advertisement in said telephone directory in which he advertises and holds himself out to the trade and the general public as "Shade Shop, Hooper & Klesner," and respondent is now suffering and permitting said telephone company to list his business in its telephone directories under the trade name "Shade Shop"; and respondent also placed upon his delivery trucks the sign, "Shade Shop, Hooper & Klesner." That the said Sammons continued to operate and conduct his business at 733 12th Street until the year 1920, when he removed to his present location at 820 13th Street NW., in the City of Washington, D. C., and the respondent, Alfred Klesner, continued to operate his business at the said southeast corner of 12th and H Streets until some time in the early part of the year 1921, and there has been considerable confusion in the trade, and customers who have known or heard of "The Shade Shop," as conducted and carried on by the said Sammons, and who desired to purchase window shades therefrom, have been confused and deceived by the sign "Shade Shop," used as aforesaid by the respondent, and have gone to the store room of the respondent and there purchased window shades of him in the mistaken belief that they were dealing with the said W. Stokes Sammons; and that on certain occasions, when customers had entered respondent's store and made specific inquiries as to whether this was the store room operated by the said Sammons, they were deceived by the employees of the respondent and were led to believe that it was the store room and the location and place of business of the said W. Stokes Sammons, when, in truth and in fact, the said Sammons was operating and conducting his business under the name of "The Shade Shop," at 723 12th Street NW., as aforesaid. That the use of the term "Shade Shop" by the respondent in the listing and advertising sections of the telephone directory has caused and is causing similar confusion to the window shade purchasing public throughout the District of Columbia, and the respondent, Alfred Klesner, is now carrying such paid advertisement in the said telephone directory, and suffering and permitting the said telephone company to list his business under the trade name of "Shade Shop" out of spite to said Sammons, with the purpose and intent to injure his said competitor in his window shade business.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleadings and the testimony and evidence received by an examiner duly appointed by the Commission, and the arguments of counsel for the respondent and 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," which said report is hereby referred to and made a part hereof; *Now, therefore*

It is ordered, That the respondent, Alfred Klesner, his servants, agents and employees 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 is further ordered, That the respondent, Alfred Klesner, within thirty days from the date of service of this order upon him file with the Commission a report, setting forth in detail the manner and form in which he has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION
v.
THE HENKEL-CLAUSS COMPANY.

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

Docket 802—June 23, 1922.

SYLLABUS.

Where razors of high quality had long been made in Sheffield, England, and the word "Sheffield" when applied to cutlery had come to mean to the trade and purchasing public cutlery of good quality there made; and thereafter a corporation engaged in the manufacture and sale of razors at Fremont, Ohio, with a capacity to mislead and deceive the purchasing public,

(*a*) Sold razors of domestic manufacture stamped "Sheffield" without any other marks to show the true place or origin;

(*b*) Sold razors, for which it charged from $4 to $5 per dozen, packed in individual containers bearing the legend, "Price $3.00 Special Quality, Fully Warranted," the fact being that said razors were neither of special quality nor fully warranted, and that said marked price was a fictitious and misleading price greatly in excess of the usual retail price of such razors:

Held, That such misbranding, and such misrepresentation of price, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Henkel-Clauss Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

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

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

PAR. 3. That respondent, in the course of its business as described in Paragraph 2 hereof, sells to jobbers and retailers at prices ranging from $4.00 to $5.00 per dozen, razors which are defective or otherwise unsuitable for the market, packed singly in cases, which said cases bear labels on which are printed a false and fictitious proposed resale price, to-wit, $3.00, and the words "Special Quality, Fully Warranted," which said words also are false; that said false and fictitious price, and said false words are calculated to and do mislead and deceive the purchasing public into the belief that a high-grade razor is contained in said case, notwithstanding said razors are sold to the public at a much lower price than $3.00.

PAR. 4. That respondent further, in the course of its said business, manufactures and sells razors which are defective or otherwise unsuitable for the market, upon which is imprinted the word "Sheffield," without any marks to show the true place of origin of said razors; that razors of high quality have been manufactured in large quantities in Sheffield, England, for a long period of time, and the word "Sheffield," when used in connection with cutlery, has come to be understood by the trade and the purchasing public as indicating that such cutlery was made in Sheffield, England, and is of good quality; that the use by the respondent of the word "Sheffield," as aforesaid, on razors of inferior quality made in the United States by respondent, which razors are defective and unsuitable for the market, is calculated to, and does, mislead and deceive the purchasing public, and is so used by respondent to enable the dealers selling such razors at retail to pass off an inferior grade of razors as and for razors of good quality made in Sheffield, England.

PAR. 5. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, The Henkel-Clauss Company, charging it with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent, The Henkel-Clauss Company, having entered its appearance by its attorneys, Culbert & Culbert, and filed its answer herein, denying certain allegations of the complaint and admitting others, and having made and filed herein a stipulation as to the

facts wherein it is agreed that the Commission may take the statement of facts contained in such stipulation, as the relevant, material facts of this proceeding, and proceed further upon the complaint, answer and stipulation, to make its report, stating its findings as to the facts and its conclusion, and enter its order disposing of the proceeding; the right to file briefs or make oral argument being waived,

Thereupon this proceeding came on for final hearing, and the Commission, having considered the complaint, the answer thereto and the stipulation as to the facts, and being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Henkel-Clauss Company, is a corporation organized under the laws of the State of Ohio, with its principal place of business at Fremont, in said State; that respondent was originally incorporated in 1906 as the Henkel Company, and in 1919, by amendment of its charter, its name was changed to The Henkel-Clauss Company.

PAR. 2. That the respondent at all times since its organization has been engaged in the business of manufacturing and selling shears, manicure sets, razors, and other articles, causing same to be transported to the purchasers thereof, from the State of Ohio, through and into other States of the United States and to foreign countries, in due course of commerce among the several States and foreign nations.

PAR. 3. That on or about May 1, 1919, respondent purchased and took over all of the assets and property of the Clauss Shears Company, a corporation with principal place of business at Fremont, Ohio, which corporation had theretofore been manufacturing and selling cutlery of various kinds, including razors; that among the property so purchased by respondent and thereafter resold by it, was a small quantity of razors upon which were imprinted the words "Sheffield" without any other marks to show the true place of origin of same, and which razors respondent assumed and believed had been manufactured in Sheffield, England, and imported by said Clauss Shears Company, but which razors were of domestic manufacture.

PAR. 4. That razors of high quality have been manufactured in Sheffield, England, in large quantities for a long period of time and the word "Sheffield," when used in connection with cutlery, has come to be understood by the trade and purchasing public in the United States, as indicating that such cutlery was made in Sheffield, England, and is of good quality, and the sale of cutlery

made in America upon which the word "Sheffield" is imprinted has the capacity or tendency to mislead and deceive the purchasing public.

PAR. 5. That further among the property purchased from the Clauss Shears Company, as set forth in Paragraph 3 hereof, were razors of various grades and patterns and razor blades upon which respondent thereafter fitted handles; that some of said razors, when so purchased, were packed singly in cases upon which were printed "Price, $3.00. Special Quality, Fully Warranted," and the remainder of such razors were packed by respondent in cases which were also acquired from said Clauss Shears Company, upon which cases were also printed "Price $3.00, Special Quality, Fully Warranted"; that such razors were in odd lots, some being of good quality and others seconds or defective and unsuitable for the general trade; that such razors were not listed for sale by respondent in its catalog, but were closed out in job lots at special prices ranging from $4.00 to $5.00 per dozen, some of which razors were sold and transported to dealers in New York, N. Y.; that such razors, packed as aforesaid, were all disposed of by respondent about one year prior to the issuance of the complaint herein, and since said time no sales under similar circumstances have been made by respondent.

PAR. 6. That the razors sold by respondent, as set out in Paragraph 5 hereof, were not of special quality and were not fully warranted, and the price noted on the containers thereof was fictitious and misleading and greatly in excess of the fair market value of such razors in the regular course of retail trade, and the printed matter on the containers of such razors had the capacity or tendency to mislead and deceive the purchasing public as to the quality or value of such razors.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce among the States and with foreign nations, and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts, and the Commission having made its findings as to the facts, with its conclusion, that

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

Now, therefore, it is ordered, That the respondent, The Henkel-Clauss Company, its officers, directors, agents, representatives, servants and employees, cease and desist, from directly or indirectly—

Selling or offering for sale, razors or other cutlery upon which is etched or otherwise imprinted the word "Sheffield," as a brand name, label, trade-mark or trade name, or as a part thereof, unless the blades or cutting part of such cutlery or the steel from which same is made, be manufactured in Sheffield, England.

Selling or offering for sale in interstate or foreign commerce, razors bearing upon the containers in which same are packed, fictitious and misleading price marks greatly in excess of the prices at which such razors sell in the usual course of retail trade.

Selling or offering for sale in interstate and foreign commerce, razors of inferior quality, seconds, or razors for any reason unsuitable for the general trade, packed in containers upon which are printed the words "Special Quality. Fully Warranted," or words of like import.

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

FEDERAL TRADE COMMISSION

v.

S. E. J. COX ET AL.

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

Docket 402—June 24, 1922.

SYLLABUS.

Where concerns organized for the purpose of dealing in oil and oil stocks, and where two individuals, promoters, organizers, stockholders and officers of said concerns, in advertising for sale their stocks, separately and in conjunction with one another,

(*a*) Falsely represented that one of said concerns had producing wells in the best part of the shallow territory of a well known oil producing section, that said wells adjoined some of the oldest and best producers of said section, and that it had leases in the midst of said section's most prolific deep well gusher district;

(*b*) Falsely represented that some of said concerns owned or had the use of an instrument, device, or formula by means of which they could locate and had located oil beneath the surface of the earth;

(*c*) Falsely represented that one of said concerns had brought in a 30,000 barrel gusher on a certain lease, the fact being that said gusher was brought in by another company in which none of them had any interest and that said concern had no interest in the particular portion of the aforesaid lease on which said gusher was developed;

(*d*) Falsely represented that 10 per cent of the production from the rich producing properties of said concern would be placed in a special fund to pay purchasers of the stock $2 for every $1 invested, displaying in connection with such advertisement pictures of a lake of oil described as the production of the aforesaid gusher from "Lucky Cox's" property;

(*e*) Falsely represented that said concern had obtained a lease in a certain well known oil field;

(*f*) Falsely represented in a monthly magazine called "Truth," which they published without disclosing their connection therewith, that successful producing properties of several companies operating in the Burkburnett and Ranger oil fields were being organized into a large company under one head, for the purpose of economy and efficiency, and that the new company, one of the aforesaid concerns, had sufficient producing property at Burkburnett to enable it to pay a dividend of 2 per cent per month on all stock issued at the time of organization;

(*g*) Falsely represented that the aforesaid producing property was situated in the heart of the Burkburnett field, and that oil therefrom was flowing into the said concern's tank in sufficient volume to pay easily 4 per cent a month, although only 2 per cent would be paid until more production was secured;

(*h*) Widely advertised the payment of dividends by said concern, the fact being that the moneys so paid were paid out of funds not properly avail-

able therefor and that said concern had no income properly applicable to dividend purposes;

(*i*) Falsely represented that said concern's operations included the purchase of a refinery with a capacity of 2,500 barrels per day, to be increased to 6,000 barrels as soon as said refinery was taken over, the fact being that the capacity of the same was only 1,500 barrels when in good repair, and that its condition was such during the time owned by said concern that its output was limited to 750 or 800 barrels per day;

With the effect of misleading and deceiving the public and of injuring competitors in the sale of other securities:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that S. E. J. Cox, whose given name is to the Commission unknown, Prudential Oil & Refining Company, Prudential Trust & Securities Company, General Oil Company, (Mrs.) N. E. Cox, whose given name is to the Commission unknown, and Napoleon Hill, hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereto would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent S. E. J. Cox is a resident of the State of Texas with his principal office and place of business in the City of Houston, in said State; that the said S. E. J. Cox for several years last past has been engaged and is now engaged in the promotion of the respondent companies, the Prudential Oil & Refining Company, the Prudential Trust & Securities Company and the General Oil Company, and various other associations and organizations; that the said respondent claims and has claimed that the purposes of promoting the said respondent companies was and is that of creating organizations for the development and promotion of oil wells on oil leases located generally in the Mid-Continental and Gulf Oil Fields; that the respondent companies, Prudential Oil & Refining Company and the General Oil Company are promotions organized and being organized for the purpose of developing oil wells in said fields; that the respondent the Prudential Trust & Securities Company is a corporation organized for the pur-

pose of holding and selling stock and shares of these said oil companies and other organizations and associations.

That the respondent, the Prudential Oil & Refining Company, is a common law corporation or association organized in the year 1917 in the City of Chicago, in the State of Illinois, with a capital stock of $3,000,000, having a par value of $1 per share; that the capital stock of the said company was later increased to $10,000,000, having a par value of $1 per share; that at the time of its organization the principal office and place of business of the company was in the City of Chicago, in the State of Illinois, and that about January, 1918, the principal office and place of business was transferred to the City of Houston, in the State of Texas, in which City the respondent now has its principal office and place of business; that the president of the respondent, the Prudential Oil & Refining Company, is S. E. J. Cox.

That the respondent, the Prudential Trust & Securities Company, was organized in the State of Delaware, in 1916, under the name Prudential Securities Company and that subsequently the corporate title was changed to Prudential Trust & Securities Company; that it is now existing under and by virtue of the laws of the State of Delaware; that its present principal office and place of business is in the City of Houston in the State of Texas; that the respondent S. E. J. Cox is the president of the same; that the activities of said respondent are largely confined to promoting new organizations and associations.

That the General Oil Company, formerly known as the Texas Ranger Oil Company, is a pre-organization association with headquarters in the City of Houston, in the State of Texas; that the same is being promoted by respondent S. E. J. Cox and his associates partly through the respondent, the Prudential Trust & Securities Company, which company is selling the stock thereof; that the capitalization of the said respondent, General Oil Company, is to be $750,000 divided into shares of the par value of $10 each; that the officers of the said company are to be respondent S. E. J. Cox, president, G. Aven and L. B. House, whose given names are to the Commission unknown; that G. Aven and L. B. House are employees of respondent S. E. J. Cox; that the headquarters of the pre-organization association are in the City of Houston, in the State of Texas.

That the present address of each of the said respondents is 212 Scanlan Building, Houston, Tex.

That the respondent, N. E. Cox, is the wife of the respondent S. E. J. Cox; that she has been associated with S. E. J Cox in the promotions and undertakings above described; that her residence is in the

City of Houston, State of Texas; that respondent, Napoleon Hill, has been in the employ of the respondent S. E. J. Cox and the respondent companies and associations at a salary of $5,000 per year as advertising agent for said respondents; that the said respondent professes to be an expert psychologist and has a school of applied psychology and advertising in the City of Chicago, and also publishes there a magazine called "Hill's Golden Rule."

PAR. 2. That respondents S. E. J. Cox, N. E. Cox, Napoleon Hill and the Prudential Trust & Securities Company for themselves and in behalf of the respondent oil companies and other companies and associations in the conduct of the business of promoting the respondent oil companies and the various other unnamed companies and associations and in advertising for sale and selling stock of the same, and in inducing and procuring subscriptions for stock of said companies and of other companies promoted by these respondents, and in selling such stock have procured such subscriptions to stock and purchasers for stock from various persons, firms corporations and copartnerships in various States of the United States; that numerous letters and circulars and much advertising matter have been distributed through the mails by and on behalf of said respondents in various States of the United States; that many such stocks and subscriptions for such stock have been sold to various persons, firms, corporations and copartnerships in various States of the United States and that the same have been transported from the City of Chicago, in the State of Illinois, and from the City of Houston, in the State of Texas, and from various other places to the purchasers thereof, located in other States than in the States from which they were sent; that in the conduct of their said business as aforesaid the respondents, S. E. J. Cox, N. E. Cox, Napoleon Hill and Prudential Trust & Securities Company have carried on a constant current of trade and commerce between various states of the United States in competition with numerous other persons, firms, corporations and copartnerships engaged in the sale and distribution of various stocks and securities.

PAR. 3. That the respondent, S. E. J. Cox for himself and on behalf of the respondent oil companies, the Prudential Oil & Refining Company and the General Oil Company and on behalf of the Prudential Trust & Securities Company, and while acting as president and agent of such respondents and in the line of his duties as such president and agent, and the respondent, the Prudential Oil & Refining Company and Prudential Trust & Securities Company and the General Oil Company through their president and agent S. E. J. Cox, and the respondents N. E. Cox and Napoleon Hill for themselves

and in conjunction with and on behalf of their principals as aforesaid, all and each with the effect of stifling and suppressing competition and injuring competitors engaged in the sale and distribution of stock subscriptions and stocks and securities and other interests, and with the effect of deceiving and defrauding the public and particularly that portion of the public who bought or contracted for stock subscriptions or stocks and securities in the respondent oil companies and other companies and associations as aforesaid, and with the effect of causing such purchasers and contractors of purchase to buy such stock subscriptions and stocks and securities, and with the effect of preventing such purchasers and contractors of purchase from purchasing stock subscriptions and stocks and securities from competing associations and companies to the injury of both the purchasers of such stocks and securities and contractors of purchase of the same, and also the competitors of respondents, have engaged in the following trade practices, false advertising, and the circulation of false information and advertising and false representations all as hereinafter more particularly set forth, to-wit:

(*a*) The respondents S. E. J. Cox, N. E. Cox, Prudential Trust & Securities Company, and Napoleon Hill, each by himself and in cooperation and conjunction with each other, did on November 22, 1917, organize and promote and are now promoting the Prudential Oil & Refining Company, respondent herein; did since the year 1916, promote and are now promoting, the Prudential Securities Company later named the Prudential Trust & Securities Company, respondent herein; are now and for several months have been organizing and promoting the Texas-Ranger Oil Company, now known as the General Oil Company, respondent herein; and did at various other times organize and promote, and are now promoting, various other corporations.

(*b*) Respondents S. E. J. Cox, N. E. Cox, Napoleon Hill, and the Prudential Trust & Securities Company through its president and agent S. E. J. Cox and other agents, each and all have been during many months last past, and are advertising for sale and selling stocks and securities and subscriptions for stock in the Prudential Oil & Refining Company and the General Oil Company, respondents, and other associations and companies; that in the conduct of such business the respondents, and each of them, with the intent, purpose and effect of deceiving and misleading the public, as aforesaid, have made, published, advertised and circulated false, misleading and unfair reports and statements concerning the plan of organization, assets, resources, business, progress, good-will, financial standing and responsibility of the respondent oil com-

panies, and the respondents S. E. J. Cox and Prudential Trust & Securities Company and the various other unnamed companies and associations as aforesaid, and have suppressed and concealed from the public facts relating to and affecting the plans of organization of the various companies, the financial standing and condition of the said companies and S. E. J. Cox and the said respondents continue so to do.

(*c*) Respondents S. E. J. Cox, N. E. Cox and Napoleon Hill, each by himself and in cooperation and conjunction with each other, did secure the publication and circulation of a certain editorial entitled "An interesting man and his wife who have made $1,000,000 for other people," which editorial was published and circulated in and through the April, 1919, number of the magazine known as "Hill's Golden Rule," the same being edited and published by Napoleon Hill, 149 West Ohio Street, Chicago; that the said article contains numerous false and misleading statements known by the respondents at the time of their publication and circulation to be false and misleading, and published and circulated by the said respondents for the purpose of furthering the plans and purposes of the respondents as particularly set forth in Paragraph 3 above.

(*d*) Respondent S. E. J. Cox for himself and on behalf of the respondents of whom he is president and agent, falsely informed numerous persons inquiring with respect to stock of the Prudential Oil & Refining Company that the same had been withdrawn from the market; that in so doing he used such language in the replies made to such inquiries as would naturally lead such inquirers and as did, as a matter of fact, lead such inquirers to believe that the said stock of the Prudential Oil & Refining Company had been withdrawn from the market because of its value, when he knew at the time that he made such answers that the stock was withdrawn from the market because of the warning of the Capital Issues Committee against further exploitation; that he made such representation for the purpose of deceiving and misleading the inquirers as to value of the stock of the said company and the value of the stock and stock subscriptions in the various promotions of the said S. E. J. Cox and that such inquirers were so deceived and misled; that along with the information so given he recommended and urged such inquirers that they invest their capital in the stock of the Texas-Ranger Oil Company now known as the General Oil Company, respondent, and that such inquirers, relying on the misrepresentations made, did invest capital which they would not otherwise have invested in the stock of the Texas-Ranger Oil Company, now known as the General Oil Company.

(*e*) Respondents S. E. J. Cox, N. E. Cox, and Napoleon Hill, each by himself and in cooperation and conjunction with each other for themselves and on behalf of the respondent companies of which S. E. J. Cox is the president and for which he was agent, published and circulated from the City of Houston, Texas, within the two years last past a magazine called "Truth"; that in publishing and circulating such magazine he wholly failed and neglected to disclose the fact that he was publisher and that he did circulate the same; that it was sent by them and each of them to numerous prospective purchasers of stocks and stock subscriptions of the respondent companies; that in the said magazine they and each of them greatly exaggerated fortunes to be made out of oil stocks and operations and inserted in the said magazine a double center page advertisement of oil stocks, particularly of the Texas-Ranger Oil Company, now known as the General Oil Company, respondent, and also a full page advertisement of the Prudential Trust & Securities Company; they and each of them also published and distributed in the same manner and on behalf of the same parties a pamphlet entitled "One Million Dollars" and also had inserted in the Houston Chronicle, a newspaper published in the City of Houston, a page advertisement entitled "Get the great profits from the north central Texas oil fields without risking the loss of a single dollar—a successful producing company" and also published and distributed a circular dated March 4, 1919, entitled "Frenzied Fairy Finance," wherein they and each of them falsely and erroneously represented the profits being made and to be made from oil wells and leases and other similar investments through the property owned by the Prudential Oil & Refining Company to be far in excess of profits actually made or to be reasonably expected from such properties, and wherein they and each of them greatly exaggerated the economic advantages of owning stock in said company, and therein also they and each of them represented to prospective purchasers of stocks and stock subscriptions that the same were guaranteed by a so-called "production bond"; that they and each of them greatly misrepresented the economic value of the said production bond and misinformed said prospective purchasers as to the value of such bond and as to the efforts being made to have the Federal Government pass a law making similar bonds a requirement in connection with the sale and distribution of stocks and securities in interstate commerce.

(*f*) Respondent S. E. J. Cox for himself and on behalf of the respondents of whom he is president and agent and particularly on behalf of the General Oil Company, published and circulated numerous advertisements in which he falsely and fraudulently repre-

sented and guaranteed that the respondent company, the General Oil Company, would pay to purchasers of stock subscriptions in said company 2 per cent dividends monthly on said stock from the time of its issuance and that said dividends would be paid from the earnings on oil production by said respondent company; that the said respondent S. E. J. Cox also falsely and fraudulently represented to the public that he was holding in trust checks amounting to more than $1,025 to be used for the payment of scholarships for worthy and needy boys and returned soldiers and that the said checks represented dividends received by himself from the earnings of the respondent, the General Oil Company.

(*g*) That the respondent S. E. J. Cox for himself and on behalf of the respondents for whom he was president and agent, and particularly on behalf of the respondent, Prudential Trust & Securities Company, falsely and fraudulently represented that the said Prudential Trust & Securities Company had in the year 1918 paid a stock dividend of 200 per cent, and that from then on the said company would be able and would pay out of its earnings a dividend of 5 per cent per month on the capital stock of said company with the prospect that said dividends would increase shortly to 10 or 20 per cent per month.

(*h*) That all of the said false and fraudulent representations and assertions made by the respondents as set forth in Paragraph 3, Sections (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), and (*g*), and each of them, were made with the knowledge of their falsity and their tendency to mislead and defraud the public, and were made for the purpose of misleading and defrauding the public into buying stock and stock subscriptions of the respondent companies and other promotions conducted by said respondents, and that as a result of such false and fraudulent representations numerous persons, firms, corporations and copartnerships have bought such stocks and stock subscriptions as aforesaid.

(*i*) That the respondents, each and all of them, each on behalf of himself and for the companies for whom he was agent, made numerous other false and fraudulent representations and circulated many false and erroneous advertisements through various magazines and the mails generally and through their personal efforts and the efforts of their agents and committed numerous other acts well knowing their falsity and tendency to deceive and mislead the public, all with the purpose and intention of misleading and deceiving the public and causing them to purchase stocks and stock subscriptions through respondents S. E. J. Cox and the Prudential Trust & Securities Company, for and on behalf of themselves and the companies

and prospective companies for whom they were agents; that numerous persons relying upon such false and fraudulent representation, did buy such stocks and stock subscriptions to the injury of themselves and respondents' competitors as set forth in the premises.

PAR. 4. That all of the acts hereinabove set forth and complained of were done by the respondents within the four years last past.

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, S. E. J. Cox, N. E. Cox, Prudential Oil and Refining Company, Prudential Securities Company, and General Oil Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. Respondent, Napoleon Hill, was served neither with the complaint nor any processes or notices because he could not be found.

The above named respondents, with the exception of Napoleon Hill, having entered their appearance by their attorneys and filed answer therein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint, and on behalf of the said respondents before George McCorkle, an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing and counsel having submitted briefs and the Commission having duly considered the record and being now fully advised in the premises, and being of the opinion that the methods of competition in question are prohibited by said Act, makes this its report, stating its findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, S. E. J. Cox and N. E. Cox, are husband and wife, and are now, and for several years last past, have been residents of Houston, Tex.

PAR. 2. That the respondent, Prudential Securities Company, called in the complaint Prudential Trust & Securities Company, is a corporation organized in the year 1916 by the respondent, S. E. J. Cox, in association with others, under the laws of the State of Delaware, and had its principal office and place of business in Chicago, Ill., until July or August, 1917, when same was removed to Houston, Tex. Soon after the organization of the Prudential Securities Company, respondent, S. E. J. Cox, became its President and directed and

controlled its business up to the month of February, 1920, when it ceased to do business. The business of said respondent consisted of the promotion of various enterprises and the sale of stocks and securities, including its own stock, and more particularly stocks of the companies hereinafter mentioned, which companies were organized and promoted by the said respondent, S. E. J. Cox. During the months of March, April and May of 1918, the Prudential Securities Company carried on its business under the name of the Prudential Trust & Securities Company, but thereafter resumed its legitimate corporate name. In February, 1920, it ceased to do business and was succeeded by the S. E. J. Cox Company, which assumed its assets and liabilities, and exchanged for its stock shares in the S. E. J. Cox Company, which was a common law trust, and conducted and still conducts the same kind of business as its predecessor, the Prudential Securities Company. The S. E. J. Cox Company has been throughout its existence and now is controlled and operated by the respondent, S. E. J. Cox.

PAR. 3. That the respondent, Prudential Oil & Refining Company, was organized as a common law trust in 1917 by the respondents, S. E. J. Cox, N. E. Cox and the Prudential Securities Company, with a capitalization of 3,000,000 shares of the par value of $1 each, which was later increased to 10,000,000 shares. Respondents, S. E. J. Cox and N. E. Cox and the Prudential Securities Company, at first advertised and promoted the said Prudential Oil & Refining Company from Chicago, Ill., but later during the latter part of 1917 or early in 1918 removed its place of business also to Houston, Tex.

Stock in the Prudential Oil & Refining Company was advertised and sold by respondents, S. E. J. Cox and N. E. Cox, chiefly through the medium of the Prudential Securities Company, until May, 1919, when it ceased to operate, though no steps were taken to dissolve the company.

PAR. 4. The General Oil Company was organized by respondents, S. E. J. Cox and N. E. Cox, individually and through the Prudential Securities Company and on August 27, 1919, it was incorporated under the laws of the State of Texas with a capitalization of 100,000 shares of the par value of $10 per share. During the months of April and May, preceding its organization, it was promoted and advertised as the Ranger Texas Oil Company.

The General Oil Company, above mentioned, ceased active business about February, 1920, and in November, 1920, its assets, liabilities, and also its name were assumed by another association organized under a declaration of trust bearing the name of the General Oil Company and having a capitalization of 2,000,000 shares of par value of $10 each.

On or about October 19, 1920, the last named General Oil Company, Trust Association, respondent herein, passed through legal processes into the hands of the receiver appointed by the District Court of the Eightieth Judicial District of the State of Texas, in and for the County of Harris.

PAR. 5. In August or September, 1918, the Bankers Texas Oil Company was organized and promoted by respondents, S. E. J. Cox, N. E. Cox, and the Prudential Securities Company. The Bankers Texas Oil Company purchased from the Prudential Oil & Refining Company certain of its leases in the State of Texas and equipment for operating thereon and in payment therefor issued and delivered to the Prudential Oil & Refining Company 1,000,000 shares of the capital stock of the Bankers Texas Oil Company. This transaction was supervised and directed by respondent, S. E. J. Cox. The Bankers Texas Oil Company in December, 1918, was absorbed by the respondent, Prudential Oil & Refining Company and stock of the latter was exchanged for shares in the former.

PAR. 6. That the stock of the three respondents, Prudential Securities Company, Prudential Oil & Refining Company, and the General Oil Company, and the stock of the Bankers Texas Oil Company was sold by the respondents, S. E. J. Cox and N. E. Cox, and the Prudential Securities Company, who in connection with the sale of said stock and as a means of effecting the sale of said stock, circulated and distributed throughout the United States large quantities of advertising matter consisting of magazines, circulars, newspapers, pamphlets, and other forms of printed matter. Certificates of the stock sold were transmitted by the respondent from Houston, in the State of Texas, where the said respondents had their principal place of business to purchasers thereof located in the various other States of the United States.

PAR. 7. The respondents, S. E. J. Cox and N. E. Cox, separately and in conjunction with each other, and as officers of the respondents, Prudential Securities Company and Prudential Oil & Refining Company, each of which was directed and controlled by them, sold or caused to be sold the stock of the Prudential Oil & Refining Company, by falsely representing to purchasers and prospective purchasers, by circulars and other advertising matter, distributed and circulated by said respondents as found in paragraph 6 herein, that the Prudential Oil & Refining Company had producing wells in the best of Humble's shallow territory, and leases in the midst of Humble's most prolific deep-well gusher district, and that its producing wells were adjoined by some of the oldest and best producers of Humble, which had been brought in 14 years theretofore.

That at the time these representations were made the Humble oil field in the State of Texas was well known on account of extensive production of oil, and the Prudential Oil & Refining Company neither owned any producing well in Humble nor did any of its holdings or leases adjoin producing wells brought in at Humble 14 years or any other time theretofore, and it had no lease in the midst, either of Humble's gusher district or proven oil area.

PAR. 8. That in the year 1918 the respondents, S. E. J. Cox, N. E. Cox, and the Prudential Securities Company, sold or caused to be sold in the manner and by the means found in paragraph 6 herein, the said stock of the Bankers Texas Oil Company acquired by the Prudential Oil & Refining Company as found in paragraph 5 herein, as well as the stock of the Prudential Oil & Refining Company and in connection with the sale of said stocks, among other statements, falsely represented that the Prudential Securities Company, respondent herein, owned, and that the Prudential Oil & Refining Company. respondent herein, and the Bankers Texas Oil Company, had the use of an instrument, device or formula by means of which they could locate and had located oil beneath the surface of the earth; whereas, in truth and in fact there is no instrument, device or formula of any character or description by which said result can be accomplished other than the processes ordinarily employed in Texas and elsewhere.

PAR. 9. In the year 1918 and 1919 the respondents, S. E. J. Cox and N. E. Cox and the Prudential Securities Company, in the manner and by the means described in paragraph 6, and in connection with the sale of the stock of the Prudential Oil & Refining Company, circulated the false representation that it had brought in a 30,000-barrel gusher on its Noel Lease in Louisiana, whereas, in truth and fact the so-called gusher on the Noel Lease was brought in by the Planters Oil Company of Louisiana, in which company none of the respondents had any interest whatever, and the Prudential Oil & Refining Company never had any lease on or interest in the particular portion of the said Noel Lease on which the said gusher was developed.

PAR. 10. The respondents, S. E. J. Cox, N. E. Cox and the Prudential Securities Company, in selling and attempting to sell stock of the Prudential Oil & Refining Company in the manner and by the means found in paragraph 6 herein, circulated pictures of a lake of oil described as the production of said gusher from "Lucky Cox's" property, and falsely represented that 10 per cent of the production from the rich producing properties of the Prudential Oil & Refining Company would be placed in a special fund to pay purchasers of its stock $2 for every $1 invested therein. In truth

and in fact the Prudential Oil & Refining Company owned neither the gusher nor the oil therefrom or any of it, and had only an option to purchase, which was never exercised or consummated on certain land developed by it in the locality of the said gusher, and no production from any source out of which to provide said fund.

PAR. 11. Similarly, said respondent, S. E. J. Cox, N. E. Cox and the Prudential Securities Company, in their effort to sell stock of respondent, Prudential Oil & Refining Company, circulated throughout the United States in April and May, 1919, the false statement that said respondent, Prudential Oil & Refining Company, had obtained a lease in the well known West Columbia fields in Texas, when in truth and fact such lease was located southwest of the West Columbia field and at least 3 miles therefrom.

PAR. 12. The above and foregoing representations as set out in Paragraphs 7, 8, 9, 10 and 11 herein, were false, and had the capacity to mislead and deceive, and the natural and probable tendency and effect of them and of each of them, was to mislead and deceive the public, more particularly the portion thereof who purchased stock in the Prudential Oil & Refining Company, consisting approximately of 3,000 persons residing in the various States and Territories of the United States.

PAR. 13. The respondents, S. E. J. Cox and N. E. Cox and the Prudential Securities Company, caused to be published and circulated throughout the United States during the months of April, May, June, August and September, 1919, a monthly publication called "Truth," without disclosing the connection therewith of said respondents or any of them, in which magazine the public was informed that they were about to organize a company, which for a short time was described as the Ranger Texas Company and afterwards called as found in Paragraph 4, the General Oil Company. As an inducement to influence prospective purchasers of stock to invest in said company, the General Oil Company, it was falsely represented by said respondents in the said issues of this magazine that successful producing properties of several companies operating in the large Burkburnett and Ranger Texas Oil fields of North Texas were being organized into a large company, under one head, for the purpose of economy and efficiency. The respondents, S. E. J. Cox, N. E. Cox, and the Prudential Securities Company, further falsely represented, in connection with the sale of said stock that the company, to wit: Ranger-Texas, later called the General Oil Company, then had property at Burkburnett producing enough oil to enable it to pay a dividend of 2 per cent a month on all stock issued at the time of organization. They also

falsely advertised in May, 1919, that said producing property was situated in the heart of the Burkburnett field and oil therefrom was flowing into its banks in sufficient volume to pay easily 4 per cent per month, but that only 2 per cent would be paid until more production was secured.

That in truth and in fact, respondent, General Oil Company, owned one-half interest only in the producing lease at Burkburnett, called the Bryan and Couch Lease, the purchase price of which, only partially paid in cash by respondents was $25,000, which half interest was sold in November, 1919, for $12,000. The General Oil Company derived from its interest in this lease between April, 1919, when it was first acquired, and November, 1919, when it was sold as aforesaid, a sum not exceeding $2,285.

That there were issued and outstanding in June, 1919, 6,358 shares of the General Oil Company and on August 31, 1919, four days after its organization was completed, which was on, to-wit, August 27, 1919, there were outstanding 22,351 shares.

During the greater portion of the period named, to-wit, April to November, 1919, the General Oil Company was acquiring properties and leases in West Texas and elsewhere and engaged in extensive operations including the purchase of large supplies of machinery and other equipment, requiring the use of large sums of money, and that when said representation was made by said respondents, S. E. J. Cox, N. E. Cox and the Prudential Securities Company, as to the sufficiency of oil then being produced by said company, to warrant a dividend of 2 per cent on all stock issued, at the time of its organization, the returns of the General Oil Company, from its only production, were insufficient for its current, operating expenses, and in no wise available for any dividend.

PAR. 14. The respondents, S. E. J. Cox and the Prudential Securities Company under his direction, caused the General Oil Company to distribute among its shareholders during the months following, the sums of money hereinafter set opposite to them, which they and each of them falsely represented as dividends, to-wit:

August, 1919	$6,309.45	November, 1919	$11,061.90
September, 1919	7,563.76	December, 1919	22,033.45
October, 1919	12,604.95		

That for the purpose of influencing prospective investors to purchase stock of the General Oil Company the said respondents, S. E. J. Cox, N. E. Cox, and the Prudential Securities Company widely advertised throughout the United States in the manner, and by the means hereinbefore found in paragraph 6, the fact that said pretended dividends would be paid, and had actually been paid.

That in truth and in fact, the General Oil Company at the time the so-called dividends were declared or distributed, owned no producing property except the said one-half interest in the said Bryan & Couch lease, and from it received a sum not in excess of $2,285; and neither then nor at any time theretofore, earned or had any income properly applicable to dividend purposes. The money with which these so-called dividends were paid was acquired by loans from the Prudential Securities Company, controlled and directed as aforesaid by respondent, S. E. J. Cox and also from the sale of certain holdings of the General Oil Company under his supervision and direction for $50,000. The sum of money so obtained, to-wit, $50,000 together with the returns from oil production, to-wit: $2,285, apart from the uses to which alone it could have been properly applied, was insufficient to pay the so-called dividends or any part of said dividends.

PAR. 15. Respondents, S. E. J. Cox, N. E. Cox, the Prudential Securities Company and the General Oil Company, in their campaign to sell the stock of the respondent, the General Oil Company, falsely represented in news letters and circulars distributed throughout the United States that its operations included the purchase of a refinery at Wichita Falls, Tex., with a capacity of 2,500 barrels per day, which would be increased to 6,000 barrels as soon as the refinery was taken over, and in August, 1919, they represented to the public that the deal for this refinery had been finally closed. In truth and in fact, however, it had a capacity of only 1,500 barrels per day when in good repair, and during all of the time it was owned and operated by the General Oil Company, its condition was such that it was impossible to handle more than 750 or 800 barrels per day.

PAR. 16. That the above and foregoing representations and statements as set out in Paragraphs 13, 14 and 15 herein, were false and had the capacity to mislead and deceive, and the natural, probable tendency and effect of them, and of each of them, was to mislead and deceive the public, more particularly the portion thereof who purchased stock in the General Oil Company, consisting approximately of 8,000 persons residing in the various States and Territories of the United States.

PAR. 17. In the years 1917, 1918 and 1919 when respondents, S. E. J. Cox and N. E. Cox, through the Prudential Securities Company and otherwise, were soliciting purchasers for, and selling stock in the Prudential Securities Company, the Bankers Texas Oil Company, the Prudential Oil & Refining Company and the General Oil Company, they and each of them were engaged in direct competition with numerous persons, copartnerships, associations and cor-

porations in Texas and in different parts of the United States, selling or attempting to sell in interstate commerce, the stock or other securities of corporations and associations engaged in the production of oil, or the exploration and development of prospective oil producing territory.

CONCLUSION.

That the practices of the respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondents, S. E. J. Cox and N. E. Cox, as officers, shareholders or agents of respondents, Prudential Oil & Refining Company, Prudential Trust and Securities Company and General Oil Company, and as officers, shareholders or agents of any other corporation, association or partnership, and respondents, S. E. J. Cox and N. E. Cox, and the said respondents Prudential Oil & Refining Company, Prudential Securities Company and General Oil Company, their officers, agents and trustees, do cease and desist from directly or indirectly—

1. Publishing, circulating or distributing, or causing to be published, circulated or distributed, any magazine, newspaper, pamphlet, circular, letter, advertisement or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any statement or representation to the effect that said respondents or any of them are able to locate or procure the location or discovery of oil beneath the surface of the earth by means of any instrument, device or formula.

2. Publishing, circulating, or distributing, or causing to be published, circulated or distributed, any magazine, newspaper, pamphlet,

circular, letter, advertisement or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statements or representations to the effect that the property or operation of any corporation, association or partnership is in proven oil territory, or any other false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress or prospect of any corporation, association or partnership; and

It is further ordered, That said respondents, S. E. J. Cox and N. E. Cox, shall within 60 days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

GERALD D. GROSNER, TRADING UNDER THE NAME AND STYLE OF GROSNER'S.

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

Docket 758—June 27, 1922.

SYLLABUS.

Where an individual engaged in the sale at retail of clothing and men's furnishings, including underwear labeled, advertised and branded by the manufacturer as "natural wool," "natural Australian wool," and "Fine Natural Australian worsted," notwithstanding the fact that the same contained a very substantial proportion of cotton; understanding and believing such to be the fact, and with the effect of misleading and deceiving the purchasing public as to the quality or composition thereof,

(*a*) Advertised the same as "Natural Wool"; and

(*b*) Sold said underwear so labeled, advertised and branded, without any other word or words descriptive of the material of which it was composed:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Gerald D. Grosner, trading under the name and style of Grosner's, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent owns and operates a retail clothing and gentlemen's furnishing store in the City of Washington, District of Columbia, under the name and style of Grosner's, and sells clothing and men's furnishings at retail in the District of Columbia, and in the conduct of such business is in competition with other individuals, copartnerships and corporations similarly engaged.

PAR. 2. That respondent, in the conduct of his business as described in Paragraph One hereof, sells underwear, which he knows is made of cotton and wool in approximately equal proportions, labeled, advertised and branded "Natural Wool" and "Natural Australian Wool" and "Fine Natural Australian Worsted"; that none of the above referred to labels, advertisements or brands contain any other word or words descriptive of the materials of which such underwear is manufactured; that the general purchasing public understands and believes that underwear labeled, advertised and branded "Natural Australian Wool," or "Fine Natural Australian Worsted" is made entirely of wool from Australia, which is believed by the public to be a very high grade of wool, and that underwear labeled, advertised or branded "Natural Wool" is made entirely of wool; that therefore each and all such labels, advertisements and brands are false and misleading and are calculated to, and actually do, mislead and deceive the purchasing public as to the quality of such underwear.

PAR. 3. That respondent, in the course of his business as described in Paragraph One hereof and for the purpose of bringing certain underwear offered for sale and sold by him to the attention of the purchasing public, caused an advertisement of said underwear to be inserted in the Washington Times of January 27, 1921, a daily newspaper having a general circulation in the District of Columbia; that said advertisement represented and described said underwear as "Natural Wool," whereas, in truth and in fact, respondent knew that said underwear was made of cotton and wool in approximately equal proportions; that the general purchasing public understands and believes that underwear described or represented as "Natural Wool" is made entirely of wool; and that therefore the representation and description of said underwear contained in said advertisement are false and misleading and are calculated to, and actually do, deceive and mislead the public as to the quality of said underwear.

PAR. 4. That by reason of the facts recited, respondent is using unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The respondent having appeared in person and having filed his answer, and having agreed with the Counsel for the Commission on an agreed statement of facts and stipulated that such statement should be taken as the facts in this proceeding, and in lieu of evi-

dence, and both parties having waived all rights to the introduction of other evidence, and stipulated further that the Federal Trade Commission should proceed forthwith upon said statement of facts to make and enter a report stating its findings as to the facts and its conclusion therefrom, and issue an order disposing of this proceeding, the Commission, having duly considered the evidence as agreed upon 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 owns and operates a retail clothing and gentlemen's furnishing store in the City of Washington, District of Columbia, under the name and style of Grosner's and sells clothing and men's furnishings at retail in the District of Columbia and in the conduct of such business is in competition with other individuals, copartnerships and corporations similarly engaged.

PAR. 2. The respondent in the conduct of his business as described in Paragraph One, has for more than two years prior to April 18, 1921, sold underwear as labeled, advertised and branded by the manufacturer, viz. "Natural Wool," "Natural Australian Wool" and "Fine Natural Australian Worsted," without any other word or words descriptive of the material of which it was composed; at the time he understood and believed such underwear to be composed of cotton and wool in approximately the proportions of one-third cotton and two-thirds wool, and it actually contained approximately 40 per cent of cotton.

PAR. 3. A substantial part of the purchasing public understands and believes that underwear labeled, advertised and branded "Natural Australian Wool" or "Fine Natural Australian Worsted" is made entirely of wool from Australia of a high grade, and that underwear labeled, advertised and branded "Natural Wool" is made entirely of "wool"; therefore each and all such labels, advertisements and brands were false and misleading, and were calculated to, and did, deceive and mislead the purchasing public as to the quality of such underwear.

PAR. 4. The Federal Trade Commission sent out to the public a questionnaire to ascertain the public's understanding of the terms, among others, "Natural Wool," "Natural Worsted" and "Australian Wool" as applied to underwear. Said questionnaire was mailed during October and November, 1920, to residents of Philadelphia, Washington, New York City, Boston, Chicago, Detroit and Buffalo, whose names were selected at random from the telephone directory of those cities except that in New York City about 25 per

cent of the names were supplied by the New York office of the Commission. An analysis of the 168 responses received as to the meaning of the several labels submitted appears in the following table:

City.	Natural wool.		Natural worsted.		Australian wool.	
	All wool.	Mixed.	All wool.	Mixed.	Wool.	Mixed.
New York	68	8	52	21	70	5
Washington	12	2	10	4	10	2
Philadelphia	20	2	10	10	19	2
Boston	13	1	5	8	12	2
Chicago	4	0	2	2	3	0
Detroit	15	3	9	9	14	4
Buffalo	22	0	9	11	18	0
Total	154	16	97	65	146	15

PAR. 5. The respondent in the course of his business as described in Paragraph One hereof and for the purpose of bringing said underwear offered for sale and sold by him to the attention of the purchasing public, caused an advertisement of said underwear to be inserted in the Washington Times of January 27, 1920, a daily newspaper having a general circulation in the District of Columbia; said advertisement represented and described said underwear as "Natural Wool" whereas in truth and in fact respondent believed that said underwear was composed of cotton and wool in approximately the proportions of one-third cotton and two-thirds wool and said underwear actually contained approximately 50 per cent of cotton; a substantial part of the purchasing public understands and believes that underwear described and represented as "Natural Wool" is made entirely of wool; the representation and description of said underwear contained in said advertisement was false and misleading and tended to, and did, deceive and mislead the public as to the composition and quality of said underwear.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

respondent, the agreed statement of facts, stipulated by the respondent and the Commission in lieu of evidence, the report as to the facts and conclusion of the trial examiner and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an Act of 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, Gerald D. Grosner, trading under the name and style of Grosner's, his agents, servants and employees cease and desist from advertising or selling or offering to sell underwear that is composed in part of cotton, as, or under labels containing the words "wool" or "worsted," either alone or in combination with any other word or words, unless accompanied by a word or words clearly indicating the presence of cotton, (e. g. "Natural Wool, Wool and Cotton"); or by word or words otherwise clearly indicating that such underwear is not made wholly of wool (e. g. "part wool").

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

FEDERAL TRADE COMMISSION

v.

WRIGHT AND GOWAN COMPANY, INC.

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

Docket 847—June 27, 1922.

SYLLABUS.

Where a corporation engaged in the sale to coastwise vessels and to ocean-going vessels under foreign registry, the business of which it solicited, of ship chandlery supplies required by them in order to operate as instrumentalities of interstate and foreign commerce, which supplies it secured from different states and delivered to said vessels in the original packages; paid to the captains, stewards and engineers of such vessels, without the knowledge or consent of their employers or principals, and without other consideration therefor, cash commissions usually amounting to from 2 to 5 per cent of the invoices as an inducement for them to purchase of it, or as a reward for so purchasing; with the effect of increasing the price of its products over and above their fair market value, of increasing the cost to the public of the service rendered by the employers, and of compelling competitors to adopt the same method in order to retain their business:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Wright-Gowan Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent is a corporation, organized and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business in the City of Brunswick, in said State, at which place respondent is engaged in a general ship-chandlery business, in the course of which it sells deck, engine and subsistence supplies and other articles to and for consumption upon vessels which reach and touch at said city of Brunswick while engaged in the transportation of passengers and freight from various ports in the United States and in foreign countries to other ports in the United States and in foreign countries; that in the con-

duct of its said business, respondent is in competition with other persons, partnerships and corporations engaged in similar ship chandlery business.

PAR. 2. That respondent, in the course of its aforesaid business, has for more than one year last past given, and still gives, to officers and employees of aforesaid vessels, without the knowledge or consent of the employers or principals of said officers and employees, and without the knowledge or consent of the owners or charterers of said vessels, cash commissions and gratuities, to induce such officers and employees to purchase from respondent deck, engine and subsistence supplies, and other articles for consumption upon the vessels operated by them for and on behalf of their said principals and the owners and charterers of said vessels; that respondent similarly gives cash commissions and gratuities to such officers and employees as a reward for having purchased such supplies and other articles, and respondent gives all said commissions and gratuities upon the sole consideration of such purchases; that respondent spends large sums of money for aforesaid commissions and gratuities, which said sums aggregate about five per centum of the volume of such sales; that said sums are added to respondent's cost of doing business and respondent adds to the selling price of the commodities so sold by it, an amount approximately equal to the amount so expended in such commissions and gratuities, which amount is in addition to the fair market value of said commodities and is paid by the purchasers of said commodities and eventually by the public; that the aforesaid practices of respondent have tended to induce and have induced, and still tend to and do induce the hereinbefore mentioned competitors of respondent to give commissions and gratuities to officers and employees of vessels in like manner as given by respondent, and for the same purpose and with the same effect, in order to protect their trade, and to prevent respondent from winning over and obtaining the same.

PAR. 3. That the above alleged acts and things done by respondent, constitute an unfair method of competition in interstate commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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, Wright-Gowen Company, Incorporated, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

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

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Wright and Gowan Company, Incorporated, inadvertently styled in the complaint Wright-Gowan Company, Incorporated, is a corporation organized under the laws of the State of Georgia in December, 1909, with an authorized capital stock of $76,000. Its principal place of business and executive offices are located in Brunswick, Ga.

PAR. 2. The respondent, Wright and Gowan Company, Incorporated, is now and has for more than two years last past been engaged in the selling of ship chandlery, including steward, deck and engine room supplies for consumption and use upon vessels which reach the port of Brunswick, Ga., while engaged in the transportation of passengers and cargoes between ports in the various States of the United States and in commerce between ports of the United States and ports in foreign countries, and such business has been and is being conducted by respondent in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. The respondent, in the course of its business, purchased steward, deck and engine room supplies for the maintenance of the crew and the use and repair of such vessels in the States of Maine, Massachusetts, Connecticut, New York, Indiana and Florida, and said supplies were transported in interstate commerce in and through other States of the United States to the State of Georgia, for the purpose of selling and delivering same to vessels doing a coastwise and interstate commerce business and later were delivered by the said respondent in original packages on the deck of said vessels for the maintenance of said crews and the use or repair of said vessels.

PAR. 4. The respondent, in the course of its business as described in paragraph 2 hereof, has solicited the business of and has sold and

delivered to vessels engaged in coastwise trade plying between the ports of Brunswick, Ga., and ports in other States of the United States and has also solicited the business of and has sold and delivered to vessels under foreign registry, including British, Norwegian, Spanish, Italian and Danish, while said vessels were engaged in commerce, ship chandlery, including steward, deck and engine room supplies necessary for the maintenance of the officers and crews of such vessels and for the use or repair of such vessels while in port and upon the high seas, all of which supplies so furnished were necessary and essential in order that said vessels could continue to operate as instrumentalities of commerce.

PAR. 5. The respondent, in the course of its business as heretofore described, has given to captains, stewards and engineers of vessels engaged in commerce, and without the knowledge or consent of their employers or principals and without other consideration therefor, cash commissions in sums of money as gratuities to induce such officers to purchase ship chandlery from respondent for the maintenance of said crews and for the use or repair of said vessels operated by them for their principals or owners thereof, and for the account of such principals or owners of such vessels, and as an inducement or reward for the purchase of such ship chandlery or supplies, particularly gave to captains, stewards and engineers of vessels for their personal use and without other consideration therefor, the following sums of money as commissions on invoice sales covering such ship chandlery or supplies purchased on the following dates:

Date.	Name of vessel.	Officer to whom given.	Gratuity paid.	Per cent of invoice.
1919.				
Sept. 6	Steamship Naperlan	Captain	$120.00	5
	do	Steward	40.00	2
11	Steamship Kisnop	Captain	63.00	5
22	Steamship Ashbee	do	95.00	4
	do	Steward	15.00	2
Oct. 9	Steamship Western Front	Captain	54.00	5
15	Steamship Lake Pepin	Steward	25.00	2
21	Steamship Novian	do	40.00	2
	do	Captain	100.00	5
Nov. 10	Steamship Lake Fife	Steward	28.00	2
12	Steamship Nortonian	do	25.00	2
	do	Captain	65.00	5
15	Tug Belans	do	10.00	5
21	Steamship Alexandrian	Steward	27.00	2
	do	Captain	67.00	5
Dec. 31	Steamship Western Front	Engineer	20.00	Special.
	do	Steward	20.00	Special.
	do	Captain	175.00	8
1920.				
Jan. 13	Steamship Nortonian	Steward	33.25	2
	do	Captain	80.00	5
15	Schooner Helen Swanzy	do	50.00	4
17	Schooner J. L. Ralston	do	16.00	5
24	Steamship Lake Michigan	Steward	50.00	Special.
	do	Captain	40.00	Special.
31	Steamship Wb Kah	Steward	10.00	Special.

Date.	Name of vessel.	Officer to whom given.	Gratuity paid.	Per cent of invoice.
1920.				
Feb. 4	Steamship Naperian	Steward	$27.50	2
	do	Captain	70.00	5
11	Bark Ariel	do	105.00	5
Mar. 23	Steamship Nessian	Steward	34.00	2
	do	Captain	88.00	5
26	Steamship Calispell	do	24.00	5
31	Schooner Carrie A. Bucknam	do	26.50	2
Apr. 10	Steamship Blackmoor	do	27.00	5
13	Steamship Banicaa	Steward	18.00	4
	do	do (?)	1.00	(?) 5
22	Schooner Mount Whitney	Captain	34.00	4
26	Bark Calcutta	Steward	55.00	2
	do	Captain	83.00	3
May 29	Steamship Naperian	Steward	50.00	2
	do	Captain	135.00	5
31	Steamship Ashtabula	do	85.00	4
June 5	Schooner Sherewog	do	32.00	4
17	Schooner Outiz	do	18.50	5
22	Barge Northern No. 30	do	5.75	3
24	Schooner Outiz, to Artau for interpreting		7.40	2
July 6	Tug Barrenfork	Captain	6.50	5
14	Tug Vonezdorf	do	46.50	5
16	Steamship Lake Finn	Steward	7.50	2
23	Steamship Wihaha	do	5.50	2
24	Steamship Delaware	Captain	107.50	5
Aug. 3	Steamship Boxbutte	Steward	60.00	1½
	do	Captain	200.00	Special.
12	Steamship McClintic (tug)	do	60.00	5
26	Tug Pylos	do	11.00	5
Sept. 3	Steamship Tona	do	36.30	5
4	Steamship Buchanan	do	10.00	Special.
	Barge Smith & Terry No. 1	do	4.00	5
8	Steamship Delaware	do	85.00	5
13	Steamship Maruba	do	4.00	5
21	Bark Dione	do	40.00	Special.
	do	Steward	10.00	Special.
22	Steamship Furlough	do	3.50	2
	Barkentine F. A. Duggan	Captain	40.00	3
27	Tug A. J. Stone	do	3.30	5
	Steamship Scottish American	do	20.00	Special.
28	Tug A. J. Stone	Steward	2.00	Special.
Oct. 7	Steamship Lake Glebe	Captain	3.50	5
	Tug Pylos	do	1.50	Special.
	Schooner R. L. Hull	do	57.00	5
8	Steamship Maruba	do	9.00	5
	Tug Pylos	do	2.50	5
9	Steamship Point Loma	Steward	20.00	1½
	do	Captain	65.00	5
16	Steamship Scottish American	do	43.00	5
	do	Engineer	8.00	2
	Steamship Western Ally	Steward	10.00	Special.
18	Steamship Lenape	Captain	37.50	5
	do	Steward	15.00	2
	Schooner Freeman	Captain	10.00	5
19	do	Steward	3.00	Special.
	Steamship Lenape	Captain	3.25	5
	Barge Northern No. 32	do	10.00	5
	Steamship Lake Germania	do	60.00	5
	do	Steward	20.00	2
21	Steamship Western Ally	Captain	132.00	5
22	Steamship Aragon	do	19.50	5
23	Steamship Albanian	do	100.00	5
	do	Steward	40.00	2
25	Schooner Haupauge	Captain	40.00	5
29	Schooner Davery	do	6.50	5
Nov. 6	Schooner C. M. Page	do	30.00	5
6	Steamship War Pundit	do	95.00	5
	do	Steward	37.50	2
9	Steamship Kokomo	Captain	36.00	5
	Bark Killena	do	18.50	5
9	Steamship Bledsoe	Steward	47.50	2
10	do	Captain	65.00	1½
	Steamship Scottish-American	do	40.00	5
17	Schooner B. A. Van Brunt	do	18.00	5
24	Schooner Chas. D. Stamford	do	15.00	5
19	Tug Richmond	do	12.50	5
24	Steamship Ronda	do	9.50	5
29	Schooner P. M. Brooks	do	40.00	5
	Schooner Dorothy	do	45.00	5

Date.	Name of vessel.	Officer to whom given.	Gratuity paid.	Per cent of invoice.
1920.				
Dec. 2	Steamship Chattanooga	Steward	$11.50	2
	do	Captain	21.00	3
4	Schooner Maud M. Maury	do	12.50	4
	Barge Northern No. 29	do	10.00	4
	Steamship British Fern	do	25.00	5
	do	Steward	10.00	2
6	Steamship Lake Cochecon	do	20.00	2
8	Steamship Nessian	do	17.50	2
	do	Captain	45.00	5
11	Motor ship Erris	do	52.50	4
	do	Steward	10.00	1½
15	Schooner Kielberg	Captain	7.50	3
	Schooner Scotia Maiden	do	10.00	
23	Schooner M. P. Pattison	do	13.00	5
28	Steamship Scottish-American	do	22.65	5
31	Steamship Scottish Bard	do	33.00	5
	Schooner C. C. Mengle	do	21.00	4
	(C. B. Gowen, manager.)			
1921.				
Jan. 8	Schooner Florence Howard	do	5.00	5
	Tug Barrenfork	do	5.00	5
10	Schooner Haupange	do	17.50	5
12	Steamship Cherry Leaf	do	32.50	5
13	Schooner Olga	do	24.00	5
15	Schooner Willemoes	do	43.50	5
	Steamship Scottish-American	do	54.50	5
20	Barkentine Emanuel	do	19.25	5
	Schooner Sally Wren	do	12.00	3
	Bark Lorenz	do	22.50	5
21	Schooner J. E. Drake	do	7.00	5
24	Bark Svenmen	do	17.00	5
28	Steamship Oraman	Captain and steward	12.25	7
	Bark Holthe	Captain	22.50	5
	Bark Saga	do	20.00	5
Feb. 4	Steamship Scottish American	do	33.00	5
7	Schooner C. M. Page	do	17.00	5
10	Steamship Mount Shasta	do	47.50	5
11	do	do	5.00	5
14	Steamship Pearldon	do	2.00	Special.
15	Bark Bertha	do	27.00	5
	Schooner Mount Whitney	do	63.00	5
15	do	Steward	15.00	2
16	Steamship Scottish Bard	Captain	27.00	5
21	Schooner Commack	do	17.50	5
23	Schooner Mary G. Maynard	do	7.50	5
26	Steamship Scottish-American	do	37.00	5
Mar. 1	Bark Arsis	do	85.00	5
17	Steamship Nevissian	do	45.00	5
21	Schooner Horace A. Stone	do	7.50	5
Apr. 4	S. W. Hathaway	do	9.00	5
30	Schooner J. E. Bachman	do	12.00	5
May 2	Schooner Edna Hoyt	do	8.00	5
5	Schooner Virginia Dare	do	4.50	Special.
9	Schooner Stevens	do	3.00	5
June 23	Steamship Ashtabula	do	95.00	5
27	Schooner M. V. Hall	do	7.50	5
30	Bark Oakhurst	do	23.00	5
July 1	Schooner Virginia Dare	do	5.00	5

Said sums of money given as commissions or gratuities by said respondent to captains, stewards, and engineers of vessels is added by respondent to its cost of doing business and said respondent adds to the selling price of the ship chandlery or supplies so sold by it, an amount sufficient to cover the amounts so expended, which is in addition to the fair market value of such ship chandlery or supplies, and which additional amount becomes a charge against the owner or operator of said vessel and ultimately against the public.

PAR. 6. The giving of cash commissions or gratuities by respondent compels competitors of the respondent who do not desire to engage in such practices to give commissions or gratuities of substantially like amounts to the officers or employees of said vessels for the purpose of protecting their trade and as a means of preventing respondent from obtaining the business enjoyed by such competitors.

CONCLUSION.

The practices of said respondent, as set forth in the foregoing findings as to the facts, are unfair methods of competition in commerce and constitute a violation of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Wright and Gowen Company, Incorporated, Brunswick, Ga., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly giving to agents, captains, masters, stewards, engineers, or other employees of vessels engaged in commerce, cash or other gratuities without the knowledge or consent of their employers, as inducements to influence their employers to purchase and as gratuities for purchasing for said employers, ship chandlery supplies necessary or essential in the operation of said vessels as instrumentalities of commerce.

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

FEDERAL TRADE COMMISSION
v.
THE SALT PRODUCERS ASSOCIATION ET AL.

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

Docket 781—June 28, 1922.

SYLLABUS.

Where members of an unincorporated association of dealers in, and producers of, salt, with a combined output approximating one-half of the entire output of salt manufactured and sold in the United States, pursuant to a general understanding among the membership, extended the usual jobber's discount only to regular wholesale grocers as listed in certain trade directories, notwithstanding the fact that there were numerous bona fide wholesale dealers in salt who made no claim to being wholesale grocers and who consequently were not listed in such trade directories; with the result that many of such dealers were thereafter unable to purchase with the usual jobber's discount:

Held, That such practices, under the circumstances set forth, constituted an unfair method of competition in violation of Section 5 of the act of Congress approved September 26, 1914, and also an unlawful discrimination in price, in violation of the provisions of Section 2 of the act of Congress approved October 15, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that The Salt Producers' Association, Michigan Salt Association, Michigan Salt Works, International Salt Company of New York, Worcester Salt Company, The Colonial Salt Company, Morton Salt Company, Ohio Salt Company, Mulkey Salt Company, Inland-Delray Salt Company, Diamond Crystal Salt Company, Stearnes Salt & Lumber Company, The Buckley & Douglas Lumber Company, Cutler Magner Company, Union Salt Company, Carey Salt Company, Barton Salt Company, Anthony Salt Company and D. B. Doremus, hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate commerce, as hereinafter more particularly set forth, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and that said respondents have been and are discriminating in price while engaged in interstate commerce, between the purchasers of its commodities, as hereinafter more par-

ticularly set forth, in violation of the provisions of Section 2 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint stating its charges on information and belief, as follows:

PARAGRAPH 1. That the respondent, The Salt Producers' Association, is a voluntary organization formed in the year 1914, with a membership composed of persons, partnerships and corporations engaged in the production and sale of salt; that 18 out of the 35 salt producers of the United States are members of said respondent Association; that the said members of said respondent Association produce and sell annually approximately 2,000,000 tons of salt out of the approximate total of 2,350,000 tons produced and sold annually in the United States, or nearly 90 per cent of the total production of salt in the United States; that respondent D. B. Doremus is the secretary of said respondent Association and is in active charge of its affairs; that the members of said respondent Association are the following named respondents, to wit:

Michigan Salt Association, Saginaw, Mich.;
Michigan Salt Works, Marine City, Mich;
International Salt Company of New York, Scranton, Pa.;
Worcester Salt Company, 71 Murray Street, New York City;
The Colonial Salt Company, Akron, Ohio;
Morton Salt Company, 717 Railway Exchange Building, Chicago, Ill.;
Ohio Salt Company, Wadsworth, Ohio;
Mulkey Salt Company, Dix and River Rouge, Detroit, Mich.;
Inland-Delray Salt Company, 418 Murphy Building, Detroit, Mich.;
Diamond Crystal Salt Company, St. Clair, Mich.;
Stearnes Salt & Lumber Company, Ludington, Mich.;
The Buckley & Douglas Lumber Company, Manistee, Mich.;
Cutler Magner Company, Duluth, Minn.;
Barton Salt Company, Hutchinson, Kans.;
Union Salt Company, Addison, Lake Shore & Michigan Southern Railway, Cleveland, Ohio;
Carey Salt Company, Hutchinson, Kans.;
Anthony Salt Company, Anthony, Kans.

PAR. 2. That in the course of the business conducted by the said respondent members of said respondent, The Salt Producers' Association, as aforesaid, they transport their said product from the States in which the same is produced, to the purchasers thereof in other States and in the Territories of the United States and in the

District of Columbia, and in foreign countries, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That for more than seven years last past, the respondent, Morton Salt Company, has been and now is the largest salt producer in the United States; that said respondent has, during said period, issued and now issues, from time to time, its quotations covering the prices fixed by it for the sale of its salt, which quotations have been and are, as issued, sent to all of the other members of said respondent Association, who thereupon immediately adopt and publish, in substantial conformity therewith, their own quotations covering the prices fixed by them for their salt; that because of the practice of all the respondent salt producers in fixing and maintaining prices in substantial conformity with the prices contained in said respondent's quotations, as aforesaid, which practice is hereinafter referred to for convenience as the "salt producers' price practice," purchasers of salt have been during all of said period and now are unable to secure said product from any respondent manufacturer thereof at prices substantially different from those contained in the said quotations issued from time to time by said respondent, Morton Salt Company, as aforesaid.

PAR. 4. That in order to effectually control the retail market price on the salt produced by the said respondent members of said respondent, The Salt Producers Association, and to consequently strengthen the policy of said respondent members to maintain uniform prices for their product through the said salt producers' price practice, the said respondent Association, in October, 1914, shortly after its organization, held a meeting of its said respondent members and at said meeting the said respondent members conspired, confederated and agreed together and among themselves to discontinue what they had been doing for 20 years or more, namely, selling their said product without discrimination in price between the different purchasers thereof, such purchasers including wholesale dealers in salt exclusively, and wholesale dealers in salt in conjunction with other commodities; that said respondent members thereupon conspired, confederated and agreed together and among themselves to discontinue granting the discount, amounting to from 7 per cent to 15 per cent of the selling price of the various grades of salt, to all those to whom they had theretofore granted such discount, except in the case of such customers as were listed and designated as wholesale grocers in a directory known as "The Red Book," published at Columbus, Ohio, by one O. C. Ingalls; that in the month of January, 1917, said respondent members, at an Association meeting, further conspired, confederated and agreed together to grant such discount only to those listed and designated as wholesale grocers in

a directory published by the Thomas Publishing Co. of New York City; that neither of said directories contained or contains a complete list of all of the wholesale groceries in the various localities of the United States supplied by said respondents with their said product.

PAR. 5. That pursuant to the said conspiracy of October, 1914, said respondent members thereafter refused to allow a large number of their former customers the discounts which they had been theretofore allowed when purchasing said product, but made such customers and all other wholesale dealers whose names were not contained in said Red Book, pay, and they did pay, the full list price therefor, without any discount therefrom, and said respondent members allowed such discount to those persons, partnerships and corporations listed in said Red Book up to the month of January, 1917; that said respondent members were, after said agreement was put into effect in October, 1914, able to and did, through its customers listed in said Red Book, uniformly maintain their own dictated prices at which their product was resold to the public by their said customers; that pursuant to the said conspiracy of January, 1917, the said respondent members continued to refuse and still refuse to allow a large number of their former customers the discount which had theretofore been allowed them, and have since said time refused and still refuse to allow such discount to any persons, partnerships or corporations, including wholesale grocers and other wholesale dealers in salt except those listed and designated as wholesale grocers in said directory published by the said Thomas Publishing Co.; that said respondent members compel all of their customers, including wholesale grocers and other wholesale dealers in salt and other commodities, not listed in said last named directory, to pay, and they do pay, the full list price for said product without any discount therefrom, while respondents' customers listed in said last named directory, as aforesaid, are granted and receive the said discount from the full list price of said product; that said respondent members have been and now are enabled, through the restricted number of their customers in whose favor they have been and now are discriminating as aforesaid, to uniformly maintain their own dictated prices at which their product has been and is resold to the retail trade by their said customers listed in said last named directory.

PAR. 6. That the said discriminations in price made by said respondents, as hereinabove stated, between the various purchasers

of their said product, in the course of their interstate business as aforesaid, were not and are not made on account of any differences whatever in the grade, quality or quantity of the product so sold, nor were nor are such discriminations in price such as make only due allowance, or any allowance whatever for difference in the cost of selling or transportation of such product, nor were or are such discriminations in price made in good faith in the same or different communities to meet competition.

PAR. 7. That the effects, among others of said unfair and unlawful discriminations in price made by said respondents, as the result of said conspiracy, between the different purchasers of their said products as aforesaid, in the conduct of their said interstate business, are:

(1) To give to those wholesale grocers listed in said Thomas Publishing Co.'s directory which are granted said discount, an unfair and unlawful advantage over all other wholesale grocers and wholesale dealers in salt who are refused the said discount. The result may be to substantially lessen competition and tend to create a monopoly for those listed in said directory, in the business of selling salt at wholesale in interstate commerce, as aforesaid.

(2) To enable said respondent members of said respondent, The Salt Producers' Association, to effectually maintain among themselves uniform selling prices for their said product. The result necessarily may be to substantially lessen competition among those engaged in the business of producing salt and selling the same in interstate commerce in the various localities of the United States.

PAR. 12. That by reason of the facts hereinabove stated, the respondents (1) have been and are using an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and (2) have been and are discriminating in price between the different purchasers of their products, in violation of the provisions of Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and an Act of Congress approved October 15, 1914, entitled, "An Act

To supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents above named, charging such respondents and each of them with the use of unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act of September 26, 1914, and further charging that said respondents and each of them had been and were discriminating in price between different purchasers of salt produced or sold by them, in violation of said Act of October 15, 1914.

Each of the respondents entered appearance and filed answer herein, admitting that certain of the matters and things alleged in said complaint are true in manner and form as therein set forth, and denying certain other allegations contained therein, and the complaint herein having been dismissed as to the respondent, The Buckley & Douglas Lumber Company,[1] the other respondents made and entered into and filed herein a stipulation as to the facts, in which it is agreed that the statement of facts contained in such stipulation contains the relevant, material facts of this proceeding, and may be taken as such by the Federal Trade Commission in lieu of testimony, and that said Commission may proceed forthwith on such stipulation to make its findings and such order as it may deem proper to enter herein, without the introduction of testimony, oral argument or the filing of briefs:

And thereupon the proceeding came on for final hearing and the Commission, having considered the complaint herein, the answers thereto and the stipulation as to the facts, and being fully advised in the premises, makes this its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Salt Producers Association, is a voluntary association formed in the year 1914, with a membership composed of producers and dealers in salt, which producing members, since the year 1914, have produced about one-half of the entire output of salt manufactured and sold in the United States; that the respondent, D. B. Doremus, is the secretary of said respondent, The Salt Producers Association, and is in active charge of its business and affairs.

PAR. 2. That the respondents, Diamond Crystal Salt Co., Michigan Salt Works, Mulkey Salt Co., and Stearnes Salt & Lumber Co., are corporations, each organized under the laws of the State of Michi-

[1] By order entered of even date, no reasons assigned.

gan; that the respondents, Anthony Salt Co., Barton Salt Co. and Carey Salt Co., are corporations, each organized under the laws of the State of Kansas; that the respondents, The Colonial Salt Co., Ohio Salt Co. and Union Salt Co., are corporations, each organized under the laws of the State of Ohio; that the respondents, Worcester Salt Co. and International Salt Co. of New York, are corporations, each organized under the laws of the State of New York; that the respondent, Morton Salt Co., is a corporation organized under the laws of the State of Illinois; that the Inland-Delray Salt Co., is a corporation organized under the laws of the State of Utah; that the respondent, Michigan Salt Association, is a partnership composed of Clarence M. Ireton and Arthur A. White, with principal place of business at Saginaw, Mich.

PAR. 3. That each of the respondents named and described in Paragraph 2 hereof is a member of the respondent, The Salt Producers Association, named and described in Paragraph 1 hereof, and each of said respondents manufactures and sells salt or sells salt manufactured by others, and causes salt manufactured or sold by it to be transported to the purchasers thereof from the State where produced, through and into other States of the United States, and in some instances, into foreign countries, in due course of commerce among the States of the United States and with foreign countries, and each of said respondents carries on its respective business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 4. That shortly after the organization of the respondent, The Salt Producers Association, it was the general understanding among its members that thereafter the members of the Association would allow the usual jobber's discount on salt sold by each of them only to regular wholesale grocers, and that the directory known as the Red Book, published at Columbus, Ohio, by one O. C. Ingalls, furnishing the most reliable list of wholesale grocers, should be adopted as the official list of the Association.

That theretofore said members, for more than 20 years, had individually been allowing such jobber's discount to wholesale dealers in salt exclusively and to wholesale dealers in salt in conjunction with commodities other than groceries, and there were numerous bona fide wholesale dealers who sold salt, but who made no claim to being wholesale grocers and as a consequence their names were not listed in said Red Book or in any other directory as wholesale grocers; as a result of said understanding by said Association members, many

dealers were thereafter unable to purchase salt from such members with the usual jobber's discount.

That thereafter at a meeting of the Association held on January 11, 1917, the following action was taken by the Association: Discussion disclosed that the Red Book as a guide to wholesale grocers was not very dependable, and motion by Mr. Storm that Thomas's Guide of Wholesale Grocers be adopted as official for the Association was seconded by Mr. King and carried.

PAR. 5. That at least since January 1, 1919, the members of the Association have not confined the usual jobber's discount on salt sold by each of them, in all instances to wholesale grocers and dealers whose names were listed in Thomas's Directory, but have allowed such jobber's discount to many wholesale grocers and dealers who were, in the opinion of each individual member, entitled to be classified as a wholesale dealer.

PAR. 6. That the respondent, International Salt Company, has never granted discounts only to those listed and designated as wholesale grocers, in the Red Book or Thomas's Guide of Wholesale Grocers, and it has never used either of said directories in making any of its sales.

CONCLUSION.

That the practices of the respondents and each of them, under the conditions and circumstances set out in the foregoing findings as to the facts, constituted an unfair method of competition in commerce in violation of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and further constituted a discrimination in price between different purchasers of salt produced or sold by respondents, in violation of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO 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 a stipulation as to the facts wherein and whereby it was agreed by each and all of said respondents, except The Buckley & Douglas Lumber Company, the complaint being dismissed as to such respondent, that said stipulation as to facts should be taken by the Commission in lieu of testimony herein and that the Commission might forthwith proceed upon such stipulation, to enter its report

and findings as to the facts and its order disposing of this proceeding, and the Commission on the date hereof having made and filed its report, containing its findings as to the facts and its conclusion that respondents have violated Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that respondents have violated Section 2 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof;

Now, therefore, it is ordered, That the respondents The Salt Producers Association, Michigan Salt Association, Michigan Salt Works, International Salt Company of New York, Worcester Salt Company, The Colonial Salt Company, Morton Salt Company, Ohio Salt Company, Mulkey Salt Company, Inland-Delray Salt Company, Diamond Crystal Salt Company, Stearnes Salt & Lumber Company, Cutler Magner Company, Union Salt Company, Carey Salt Company, Barton Salt Company, Anthony Salt Company and D. B. Doremus, and each and all of said respondents, and their respective officers, directors, committees, agents, employees, and all persons acting under or through them or in their behalf, forever cease and desist from directly or indirectly:

1. Entering or attempting to enter into any agreement or understanding together or with one another that any list of jobbers, wholesalers or other dealers in salt, shall determine the persons, partnerships, corporations or associations which the respondents or any of them shall or shall not recognize for the purpose of allowing or withholding jobbers' or wholesalers' prices and terms, or shall or shall not sell at jobbers' or wholesalers' prices and terms.

2. Entering or attempting to enter into any agreement or understanding together or with one another, to limit or restrict the number of persons, partnerships, corporations or associations to whom the respondents or any of them shall sell at jobbers' or wholesalers' prices and terms or recognize for the purpose of allowing jobbers' or wholesalers' prices and terms.

3. Entering or attempting to enter into any agreement or understanding not to sell salt at wholesalers' or jobbers' prices to any person, partnership, corporation or association which is not classified or listed as a wholesaler or jobber by the "Thomas Publishing Company," of New York City, or by any other agency, publisher, or person.

4. Nothing herein contained shall apply to transactions wholly in intrastate commerce, nor shall this order be construed to enjoin or restrain any respondent herein from discriminating in price between different purchasers of salt on account of differences in the grade, quality or quantity of said commodity, or making due allowance for difference in the cost of selling or transportation, or making any price for salt to meet or to compete with prices previously made by any other respondent, or any other competitor, or from selecting one's own customers in bona fide transactions and not in restraint of trade, or in any respect to enjoin or restrain fair, free and open competition.

FEDERAL TRADE COMMISSION
v.
RUSSELL GRADER MANUFACTURING COMPANY.

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

Docket 430—June 30, 1922.

SYLLABUS.

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

(*a*) Paid, through a commission contract, to concerns, of which public officials charged with the duty of purchasing, or recommending the purchase, of such products for the governing bodies served by them, were members, commissions for the sale of its products; and

(*b*) Retained such public officials, when engaged in their respective communities in the sale of machinery or in some kindred line of business, for the sale of its products;

With the result that it was thereby enabled, through the services of such officials, to sell its products to the governing bodies of which they were members, and that the cost of its products to its customers was increased, and with a tendency to cause its competitors to do likewise in order to retain their business:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Russell Grader Manufacturing Co., hereinafter referred to as respondent, is now and for more than a year last past has been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Russell Grader Manufacturing Co., a corporation organized and existing and doing business under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at the city of Minneapolis, in the State of Minnesota, is now and for more than one year last past has been engaged in manufacturing and selling road machinery and similar

products throughout the various States and Territories of the United States, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in competition with other persons, firms, copartnerships and corporations manufacturing and selling like products in interstate commerce.

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

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

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Russell Grader Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of Minnesota, with its principal office and place of business in Minneapolis, in said State, and is now and for several years last past has been engaged in manufacturing, selling and distributing road machinery and similar products, in interstate commerce, to counties, townships, municipalities and other political governmental subdivisions, in competition with others similarly engaged.

PAR. 2. That in the course of its business of manufacturing and selling road machinery and similar products in said commerce in and among the States and Territories of the United States, the respondent, Russell Grader Manufacturing Co., has, in many instances, paid a commission through a commission contract, for the sale of its products in the usual form, with firms or corporations of which a public official was then a member, and that thereby, in many instances, sales of its products through the service of such firm or corporation in cooperation with such official have been actually effected by respondent, for and on behalf of the particular county, township or municipality with which such member of said firm or corporation has been or then was officially connected, and that respondent has also, in many instances where a public official has been engaged in his community in the sale of machinery or some kindred line of business, retained such official for the sale of its products in such community; and thereby respondent has, in many instances, been enabled through the services of such official, to sell its product to the governing body of which he was then a member, and has paid the regular dealer's commission for such service.

PAR. 3. That the said public officials and the said public employees to whom or to whose relatives or friends the said cash payments were offered or paid by the respondent as aforesaid were such public

officials and such public employees whose duties, in behalf of the public in whose service they were, required them to purchase, or to recommend the purchase of, for their principals, the kind of goods, wares and merchandise mentioned in paragraph one hereof.

PAR. 4. That the practice of paying or offering to pay sums of money to such public officials and to such public employees or to their relatives or friends for the purposes aforesaid, affects all of the said respondent's competitors and tends to cause them to do likewise for the same purpose and for the same effect as a means of protecting their trade and preventing the respondent from obtaining the business enjoyed by them.

PAR. 5. That as a result of the payment of such sums of money as aforesaid the respondent adds to its cost of doing business the amount of money paid by it as stated in these findings, and the cost of its goods, wares and merchandise to its customers is its cost of doing business plus its profits.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence and printed briefs of counsel, and the Commission being of the opinion that the methods of competition in question are prohibited by the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and having made its report in which it stated its findings as to the facts, with its conclusions that the respondent has violated the provisions of said Act.

It is therefore ordered, That the respondent, Russell Grader Manufacturing Co., its officers, directors, agents, representatives and employees, cease and desist from directly or indirectly paying, offering or promising to pay any money or thing of value, to any officer or employee of counties and other political subdivisions of

the States of the United States, to induce or influence such officers and employees to purchase road machinery or other articles sold by respondent Russell Grader Manufacturing Co., for the political subdivisions represented by them or with which they are connected.

It is further ordered, That respondent Russell Grader Manufacturing Co., shall within thirty (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 it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

AUSTIN-WESTERN ROAD MACHINERY COMPANY.

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

Docket 434—June 30, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of road machinery and kindred products, paid and offered to pay, to public officials and employees charged with the duty of purchasing, or recommending the purchase, of such products for the governing bodies served by them, and to their relatives and friends, sums of money as an inducement for said officials and employees to purchase or contract to purchase of it and to refrain from dealing with its competitors; with the result that the cost of its products to its customers was thereby increased, and with a tendency to cause its competitors to do likewise in order to retain their business:

Held, That such payments and offers to pay, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Austin-Western Road Machinery Company, hereinafter referred to as respondent, is now and for more than a year last past has been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, The Austin-Western Road Machinery Company, a corporation organized and existing and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the City of Chicago, in the State of Illinois, is now and for more than one year last past has been engaged in manufacturing and selling road machinery and kindred products throughout the various States and Territories of the United States, and that at all times hereinafter

mentioned, the respondent has carried on and conducted such business in competition with other persons, firms, copartnerships and corporations manufacturing and selling like products in interstate commerce.

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, the Austin-Western Road Machinery

Co., charging it with unfair methods of competition in commerce in violation of the provisions of said Act.

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

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

FINDINGS AS TO THE FACTS.

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

PAR. 2. That the respondent, The Austin-Western Road Machinery Co., in the course of its business as described in paragraph 1 hereof, continuously, and for more than two years immediately preceding the issuance of the complaint herein, has been paying, and offering to pay, to public officials, to public employees, and to the relatives and friends of the same, cash payments of money as an inducement to persuade and to cause the said officials and the said employees to purchase, or to contract to purchase for their principals, goods, wares and merchandise from the respondent, and to refrain from dealing or contracting to deal with competitors of the respondent selling the same or similar goods, wares and merchandise.

PAR. 3. That the said public officials and the said public employees to whom, or to whose relatives or friends, the said cash payments were offered or paid by the respondent as aforesaid were such public officials and such public employees whose duties, in behalf of the public in whose service they were, required them to purchase, or to recommend the purchase of, for their principals, the kind of goods, wares and marchandise mentioned in paragraph 1 hereof.

PAR. 4. That the practice of paying or of offering to pay sums of money, to such public officials and to such public employees, or to their relatives or friends, for the purposes aforesaid, affects all of the said respondent's competitors and tends to cause them to do likewise for the same purpose and for the same effect as a means of protecting their trade and preventing the respondent from obtaining the business enjoyed by them.

PAR. 5. That as a result of the payment of such sums of money as aforesaid, the respondent adds to its cost of doing business the amount of money paid by it as stated in these findings, and the cost of its goods, wares, and merchandise to its customers is its cost of doing business plus its profits.

CONCLUSIONS.

That practices of respondent as set forth in the above findings of fact are unfair methods of competition in interstate commerce and in violation of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is, therefore, ordered, That the respondent, Austin-Western Road Machinery Co., its officers, directors, agents, representatives and employees, cease and desist from directly or indirectly paying, offering, or promising to pay, any money or thing of value to any officer or employee of counties, townships, municipalities, and other political subdivisions of the States of the United States, or to their friends or relatives, or to others, to induce or influence such officers and employees to purchase the goods, wares and merchandise sold by the respondent, Austin-Western Road Machinery Co., for the political subdivision represented by them or with which they are connected.

It is further ordered, That Austin-Western Road Machinery Co. shall, within thirty (30) days, after the service upon it of a copy

of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist as hereinbefore set forth.

The Commission also made similar findings and orders as of June 30, 1922, in the cases of The Galion Iron Works & Manufacturing Co. (of Galion, Ohio, Dock. 436), The Good Roads Machinery Co., (of Kennett Square, Pa., Dock. 439), and Acme Road Machinery Co. (of Frankfort, N. Y., Dock. 441), in which the facts involved appear to have been identical, or substantially identical, with those in the preceding case.

FEDERAL TRADE COMMISSION

v.

STOCKLAND ROAD MACHINERY COMPANY.

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

Docket 435—June 30, 1922.

SYLLABUS.

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

(*a*) Paid, through a commission contract, to public officials charged with the duty of purchasing, or recommending the purchase, of such products for the governing bodies served by them, commissions for the sale of its products;

(*b*) Similarly paid commissions to concerns of which such public officials were members; and

(*c*) Retained such public officials, when engaged in their respective communities in the sale of machinery or in some kindred line of business, for the sale of its products;

With the result that it was thereby enabled, through the services of such officials, to sell its products to the governing bodies of which they were members, and that the cost of its products to its customers was increased, and with a tendency to cause its competitors to do likewise in order to retain their business:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Stockland Road Machinery Co., hereinafter referred to as respondent, is now and for more than a year last past has been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Stockland Road Machinery Co., a corporation organized and existing and doing business under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at the city of Minne-

apolis, in the State of Minnesota, is now and for more than one year last past has been engaged in manufacturing and selling road machinery and kindred products throughout the various States and Territories of the United States, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in competition with other persons, firms, copartnerships and corporations manufacturing and selling like products, in interstate commerce.

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

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

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

REPORT, 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, Stockland Road Machinery Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

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

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent Stockland Road Machinery Co. is a corporation organized, existing and doing business under and by virtue of the laws of Minnesota, with its principal office and place of business in Minneapolis, in said State, and is now and for several years last past has been engaged in manufacturing and selling road machinery and similar products among or between the various States and Territories of the United States in competition with other persons, copartnerships, and corporations engaged in manufacturing and selling like products in interstate commerce.

PAR. 2. That in the course of its business of manufacturing and selling road machinery and similar products in said commerce in and among the States and Territories of the United States, the respondent, Stockland Road Machinery Co., in several instances paid a commission directly to public officials, and in many instances indirectly, through a commission contract, for the sale of its products, in the usual form, with firms or corporations of which a public official was then a member, and that thereby, in many instances, sales of its products through the service of such firm or corporation in cooperation with such official have been actually effected by respondent, for and on behalf of the particular county, township or municipality with which such member of said firm or corporation has been or then was officially connected; and that respondent has also, in many instances where a public official has been engaged in his community in the sale of machinery or some kindred line of business, retained

such official for the sale of its product in such community; and thereby respondent has, in many instances, been enabled through the services of such official, to sell its products to the governing body of which he was then a member, and has paid the regular dealer's commission for such service.

PAR. 3. That the said public officials and the said public employees to whom or to whose relatives or friends the said cash payments were offered or paid by the respondent as aforesaid were such public officials and such public employees whose duties, in behalf of the public in whose service they were, required them to purchase, or to recommend the purchase of, for their principals, the kind of goods, wares and merchandise mentioned in paragraph 1 hereof.

PAR. 4. That the practice of paying or offering to pay sums of money to such public officials and to such public employees or to their relatives or friends for the purposes aforesaid, affects all of the said respondent's competitors and tends to cause them to do likewise for the same purpose and for the same effect as a means of protecting their trade and preventing the respondent from obtaining the business enjoyed by them.

PAR. 5. That as a result of the payment of such sums of money as aforesaid the respondent adds to its cost of doing business the amount of money paid by it as stated in these findings, and the cost of its goods, wares and merchandise to its customers is its cost of doing business plus its profits.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence and printed briefs of counsel, and the Commission being of the opinion that the methods of competition in question are prohibited by the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and having made its report in which it stated its find-

ings as to the facts, with its conclusions that the respondent has violated the provisions of said Act.

It is therefore ordered, That the respondent, Stockland Road Machinery Co., its officers, directors, agents, representatives and employees, cease and desist from directly or indirectly paying, offering, or promising to pay any money or thing of value, to any officer or employee of counties and other political subdivisions of the States of the United States, to induce or influence such officers and employees to purchase road machinery or other articles sold by respondent Stockland Road Machinery Co., for the political subdivisions represented by them or with which they are connected.

It is further ordered, That respondent Stockland Road Machinery Co., shall within thirty (30) days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

LEE CANFIELD, P. E. CANFIELD, AND GEO. B. SHALER, PARTNERS, STYLING THEMSELVES THE BEST OIL CO., AND M. E. CORNELL.

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

Docket 712—June 30, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of oils under its trade names, marks, and brands of Mobiloil, Arctic, etc., and a pictured gargoyle, and in the sale of various grades of its oils under the designations Mobiloil "A", Mobiloil "BB", etc., at large expense advertised and sold its products (often referred to and called for by purchasers as "Mobile Oil" or mobile oil "A", etc.) under said trade names, marks and brands, so that its said products as so advertised and sold had come to be well and favorably known and it had acquired a valuable good will therein; and thereafter a competitor,

(*a*) Designated, advertised and sold its products as Mobile "A", Mobile "B", Arctic, etc.; and

(*b*) Placed said names and brands on all its containers; and

Where a traveling salesman and sales manager of said competitor, in soliciting the sale of said competitor's product,

(*a*) Characterized the same as "Mobile Oil" without advising prospective purchasers that said product was not that of said corporation;

(*b*) Stated when asked whether his oils were those of said corporation, that he had been its chief chemist for many years and that they were exactly the same; and

(*c*) Suggested to prospective purchasers that they buy his oils, empty the same into containers of said corporation in their possession, and offer them to customers as oils of said corporation:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Lee Canfield, P. E. Canfield and George B. Shaler, partners styling themselves the Best Oil Co., and M. E. Cornell, hereinafter referred to as the respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof

would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondents, Lee Canfield, P. E. Canfield and George B. Shaler, are partners, styling themselves the Best Oil Co., with principal place of business at Cedar Rapids, in the State of Iowa, and are now engaged in the business of compounding and selling automobile lubricating oils and greases, and like products, and cause such commodities to be transported to the purchasers thereof, from the State of Iowa through and into other States of the United States, and carry on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the respondents, Lee Canfield, P. E. Canfield, and George B. Shaler, partners styling themselves the Best Oil Co., in the course of their business, as described in Paragraph 1 hereof, employ as their agent and sales-manager the respondent M. E. Cornell, who at all the times herein referred to has acted in that capacity.

PAR. 3. That for a number of years there has been refined and sold by the Vacuum Oil Co., of Rochester, N. Y., an automobile lubricant which became well known to the trade as "Gargoyle Mobiloil" of various grades, or "Mobiloil A," "Mobiloil B," "Arctic," etc.; that the respondents Lee Canfield, P. E. Canfield, and George B. Shaler, partners styling themselves the Best Oil Co., in the course of their business as described in Paragraph 1 hereof, have compounded products made in imitation of the products of said Vacuum Oil Co. and have designated and labeled such products as "Mobile A," "Mobile B," "Mobile E," "Arctic," etc., in such manner as to cause confusion in the trade, and which labels were calculated to and did mislead the purchasing public to believe that respondents' products were the products of the Vacuum Oil Co.

PAR. 4. That the respondent, M. E. Cornell, prior to his employment by the other respondents herein, was in the employ of the Vacuum Oil Co., and in the course of such employment came into the possession of valuable trade secrets and other knowledge of and concerning the business and products of said Vacuum Oil Co., which enabled him to imitate the products and labels of that company as set out in Paragraph 3 hereof; and said respondent, M. E. Cornell, in the course of his employment by the other respondents herein, as aforesaid, has stated to purchasers and prospective purchasers of respondents' products, that such products were exactly the same as the products of the Vacuum Oil Co. as to viscosity, fire, flash and cold tests and were made from the same raw material,

and suggested to purchasers of respondents' products that they put same in the containers of the Vacuum Oil Co.'s products, in order that they might thereby pass same off as and for the products of said Vacuum Oil Co. at the prevailing prices of the Vacuum Co.'s products, which were materially higher than the prevailing prices for respondents' products made in imitation thereof; and said respondent further stated that as there was no difference between respondents' products and those of the Vacuum Oil Co. that customers would be just as well pleased with respondents' products as with those of the Vacuum Co., and respondents' products could be sold at greater profit than could those of the Vacuum Co.; that to other customers and prospective customers said respondent stated that the products sold by him, as aforesaid, were genuine "Mobile Oils" thereby causing such customers and prospective customers to believe that such products were those of the Vacuum Oil Co., and by thus creating the false and erroneous impression as to the origin of the products sold by him, was able to and did sell respondents' products as and for those of the Vacuum Oil Co.

PAR. 5. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled. "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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 Lee Canfield, P. E. Canfield and Geo. B. Shaler, charging them with unfair methods of competition in violation of the provisions of the said Act of Congress.

The respondents having entered their appearance by their attorneys, and filed their answers, and testimony having been submitted by the Commission and by the respondents before an Examiner of the Commission heretofore duly appointed, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. At the time of the commencement of this proceeding, the respondents, Lee Canfield, P. E. Canfield, and George B.

Shaler, all of Cedar Rapids, Iowa, were partners doing business under the firm name of Best Oil Co., and in 1918 they took over the business of a corporation of the same name which had existed since 1912. That corporation and the partnership which succeeded it were engaged in the manufacture and sale of lubricating oils and the principal office and place of business of the partnership as well as of the corporation which preceded it was located at Cedar Rapids in the State of Iowa. The other respondent, M. E. Cornell, is not a member of the partnership nor a stockholder in the corporation which formerly controlled the business and his connection with the respondent, The Best Oil Co., was that of a commission salesman and as such he entered the employment of this partnership in May, 1918. He had previously been employed for some years by the Vacuum Oil Co., a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 61 Broadway, New York City. This corporation is also engaged in the manufacture and sale of lubricating oils and has been engaged in such business for many years past.

PAR. 2. The respondent, Best Oil Co., as well as Vacuum Oil Co., have sold the lubricating oils manufactured by them respectively, and caused the same to be transported from their respective factories to and among the several States of the United States, in active competition with each other for many years past. Each employed traveling salesmen, advertised their products extensively, and established and maintained branch offices for the sale and distribution of their product in many States of the Union.

On the 1st day of June, 1921, the Best Oil Co., a partnership, was dissolved and as such discontinued business and was succeeded by Best Oil & Refining Co., a corporation incorporated under the laws of Iowa, with its headquarters at Cedar Rapids, Iowa, which corporation is owned, managed and controlled by the same parties who owned, managed and controlled said partnership, viz: Lee Canfield, P. E. Canfield and George B. Shaler.

PAR. 3. At the time that M. E. Cornell entered the employment of Best Oil Co., and, previous to that time for some years past, Best Oil Co., in addition to selling and transporting in interstate commerce the lubricating oils manufactured by it, also acted as sales agent or jobber for the product of the Vacuum Oil Co. and advertised and sold its lubricating oils in many sections of the country.

PAR. 4. The Vacuum Oil Co. has sold its oils under certain well known trade names and trade-marks for many years past and under these trade names and trade marks has expended large sums of

money in advertising its product so that its products are well known under brands, trade names and trade marks designating the different grades of oils manufactured and sold by it. Some of these brands have been registered in the United States patent office and have been certified by the Commissioner of Patents as registered trade-marks which the Vacuum Oil Co. is authorized to use in advertising and selling its lubricating oils. Among these certified registered trade-marks are the following: "MOBILOIL," "ARCTIC," "ZETA," "GARGOYLE." The said Vacuum Oil Co. also registered as its trade-mark, the picture of a mythical animal which it called "Gargoyle." These trade-marks, trade names and brands are stenciled on the casks, cans, barrels and other containers in which the Vacuum Oil Co. sells and markets its products. These trade-marks and trade names also appear in newspaper advertisements, posters, pamphlets, circulars, letterheads, and many other methods of advertising to familiarize the general public with the trade-marks, names and brands under which the Vacuum Oil Co. sells and markets its products.

PAR. 5. In addition to the trade-marks and brands set out and described in the preceding paragraph, the Vacuum Oil Co. designates certain grades of its lubricating oils by the use of certain letters of the alphabet or words, and advertises and sells its oils under the name of "Mobiloil," "A," "BB," "E," "C," "CC," and "ARCTIC."

PAR. 6. On account of the fact that the Vacuum Oil Co. has for a long time used and employed certain letters of the alphabet, as set out in the preceding paragraph, to designate the grade or quality of its lubricating oils, the general public as well as dealers in lubricating oils and persons operating garages and other places where lubricating oils are used or sold, have come to refer to "Mobiloil," the product of the Vacuum Oil Co., as though it were spelled "m-o-b-i-l-e-o-i-l," designating the grade or quality desired by letters of the alphabet, as set out in the preceding paragraph.

PAR. 7. In a great many instances garage men and dealers in lubricating oils in ordering the same by letter from the Vacuum Oil Co. refer to its "Mobiloil" as "Mobile Oil," and many owners of private automobiles, among them college professors, army officers, and other well educated and intelligent persons have, when they wished to buy "Mobiloil" manufactured by the Vacuum Oil Co., called for "Mobile Oil"—designating it by certain letters of the alphabet or by the word "arctic" or some other word or symbol employed by the Vacuum Oil Co. to designate the particular grade of its lubricating oils desired.

PAR. 8. When M. E. Cornell entered the employment of Best Oil Co. in 1918, he was familiar with the business of the Vacuum Oil Co. and acquainted with its brands, trade-marks, trade names and its different grades of lubricating oils. He was also familiar with the fact that the general public knew the product of the Vacuum Oil Co., sold under the name of "Mobiloil," as "Mobile Oil," and often referred to it as such and that the Vacuum Oil Co. had for many years used certain letters of the alphabet and the word "arctic" to describe and designate its different grades of lubricating oils. Said Cornell had obtained this knowledge as to the names, brands and grades of lubricating oils sold by the Vacuum Oil Co. while he was employed by the Vacuum Oil Co. as a traveling salesman. Said Cornell also knew that the product of the Vacuum Oil Co. was well known and widely popular throughout the country, and that this company enjoyed a very large trade and did an immense business, marketing its entire product under the names, brands and trade-marks set out in the preceding paragraphs.

PAR. 9. When the said M. E. Cornell entered the employment of Best Oil Co., in the early part of 1918, he was employed as sales manager; he also acted as a traveling salesman for said company. In a very short time after said Cornell began his connection with Best Oil Co., the names of the different grades of oil manufactured and sold by Best Oil Co. were changed and a list of trade names adopted to designate its different grades of oil which names very closely simulated the trade-marks, trade names and brands which had been in use for many years by the Vacuum Oil Co., and the Best Oil Co. immediately began to advertise and call the different grades of oil manufactured and sold by it as "mobile" "A," "B," "E," and "Arctic," stenciling and placing said names, brands and letters on the casks, barrels and containers in which said oil was sold and marketed and using said names and brands on all its advertising matter. The use of all the names and brands which had been formerly used by it to designate its different grades of lubricating oils was thereupon discontinued. The names and brands first used by said Best Oil Co. were entirely dissimilar to the names, brands and marks used by the Vacuum Oil Co.

PAR. 10. During the time that M. E. Cornell represented the Best Oil Co. as sales manager and as traveling salesman, he always approached dealers for the purpose of selling them the product manufactured by Best Oil Co., referring to it as "Mobile Oil," and did not refer to the fact that the oil offered by him was not manufactured by the Vacuum Oil Co. In many instances said Cornell was questioned directly as to whether the oils offered by him were those of the Vacuum Oil Co., and he stated that he had been the

Chief Chemist of the Vacuum Oil Co. for many years and that the products of the Best Oil Co. were exactly the same as that of the Vacuum Oil Co.; that they were manufactured from the same crudes, and that the physical tests, such as viscosity, fire, flash and cold test, etc., were identically the same as the Vacuum Oil Co.'s product.

PAR. 11. The said M. E. Cornell on other occasions admitted that the oils offered for sale by him were not those of the Vacuum Oil Co. but suggested to prospective purchasers that they buy their oils of the Best Oil Co., empty them into the containers which they had on hand, procured from the Vacuum Oil Co. and offer these oils to their customers as those of the Vacuum Oil Co., stating that, inasmuch as there was no difference in the oils, the customers would be just as well satisfied, and reminding them that he was offering the product of the Best Oil Co. to them cheaper than they could buy the product of the Vacuum Oil Co.

CONCLUSION.

Under the conditions and circumstances set out in the foregoing findings of facts, the acts, policies and practices of the respondents, each and all of them, constitute unfair methods of competition in interstate commerce, contrary to Section Five of the Federal Trade Commission Act, approved September 26, 1914.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleading and the testimony and evidence received by an examiner duly appointed by 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," which report is hereby referred to and made a part hereof.

Now, therefore, it is ordered, That the respondents, Lee Canfield, P. E. Canfield and George B. Shaler, of Cedar Rapids, Iowa, individually, and as copartners under the firm name of Best Oil Co., and M. E. Cornell of Cedar Rapids, Iowa, their agents, officers and servants, cease and desist from, directly or indirectly, (1) imitating the brands, symbols, trade names, trade-marks or other characters used by the Vacuum Oil Co. to designate the grades or brands of lubricating oils manufactured and sold by it; (2) from using the words "Mobile Oil" separately or in conjunction with the word "arctic" or in conjunction with any letter or letters of the alphabet

as a name to designate a grade of his or their product, or for any other purpose in connection with the manufacture and sale of lubricating oils; (3) from claiming or representing by any writing, printing, pictures or by oral statement that the oil produced and sold by him or them is the same as that produced and sold by the Vacuum Oil Co.; (4) from counseling or advising any person or any dealer to place the oils manufactured and produced by them in containers of the Vacuum Oil Co. for the purpose of leading the public into the belief that his or their product is in fact the product of the Vacuum Oil Co.; (5) from claiming or stating that M. E. Cornell was ever employed as a chemist by the Vacuum Oil Co.

FEDERAL TRADE COMMISSION

v.

C. D. HIGGINS, TRADING UNDER THE NAME AND STYLE OF C. D. HIGGINS MANUFACTURING COMPANY.

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

Docket 806—June 30, 1922.

SYLLABUS.

Where an individual engaged in the manufacture and sale of razor hones which he sold to barber supply houses and to barbers at $9 per dozen and $1.50 each, respectively,

(*a*) Sold said hones packed in cartons bearing the legend "(Original) Higgins hone, Price $3.00 * * *"; and

(*b*) Sold said hones branded on one side thereof "Original Higgins hone—Price $3.00";

The fact being that said marked price did not represent the contemplated retail price of said hones, but was a fictitious price used for the purpose of misleading purchasers at retail as to the value thereof and of permitting retail dealers to sell the same at a substantial profit at a lower figure, thereby deceiving the public into believing that it was obtaining for a lower price a hone worth at least the price marked:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that C. D. Higgins, trading under the name and style of C. D. Higgins Manufacturing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of Section 5 of an Act of Congress approved September 26, 1914, entitled: "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding in that respect would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, C. D. Higgins, conducts his business under the name of C. D. Higgins Manufacturing Co., in the City of Berkeley, Calif., where he is engaged in the manufacture of hones, which are used for sharpening razors and other cutlery, and selling such hones and causing them to be transported in commerce, to purchasers from the City of Berkeley, Calif., into

the several States of the United States, the District of Columbia and foreign countries, and in the conduct of such business the respondent is in competition with other persons, partnerships and corporations engaged in the sale of hones, in interstate and foreign commerce.

PAR. 2. That the respondent in the course of its business described in Paragraph 1 hereof, sells at wholesale hones manufactured by him, packed singly in cases upon which he conspicuously prints false, fictitious and misleading price marks, well knowing that the prices so marked on such cases are not the prices at which his customers, to whom he sells such hones, sell or expect to sell them, and well knowing that such prices do not represent the true value or the actual and usual retail prices of such hones, and well knowing that said false, fictitious and misleading price marks are used, and will be used, by his customers for the purpose of deceiving the public who purchase such hones and cause them to believe that they are obtaining, at a greatly reduced price, hones which ordinarily sell for a much higher price; that the respondent prints on the cases containing such hones "Price $3.00," when such hones costs the respondents only a few cents each to manufacture them; that he sells them at wholesale at $9 per dozen, or 75 cents each, and the persons to whom he sells such hones retail them at $1.50 each, and send them through the mails at $1.60 each; that the respondent well knows that the said hones are to be offered at retail, by his customers, at prices much less than those printed on the cases and that said price marks are to be used to mislead and deceive purchasers; that in selling hones so marked the respondent comes in direct competition with other manufacturers of hones who do not mark their hones with such false, fictitious and misleading prices, and the said respondent, while engaged in commerce, by the means aforesaid, aids, abets and assists retailers and other persons to whom he sells such hones to use unfair methods of competition against others similarly engaged, but who do not sell hones marked with such false, fictitious and misleading price marks.

PAR. 3. That by reason of the facts set out in the foregoing paragraphs of this complaint the respondent has been and is using unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, C. D. Higgins, trading under the name and style of C. D. Higgins Manufacturing Co., charging him with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered his appearance and filed his answer herein, and having stipulated and agreed in writing that an agreed statement of facts signed by the respondent and W. H. Fuller, Chief Counsel for the Federal Trade Commission, are the facts in this proceeding and may be taken and considered in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Federal Trade Commission may proceed further upon said statement of facts to make its report in this proceeding, stating its findings as to the facts and its conclusion, and entering its order disposing of this proceeding, and thereupon this proceeding came on for final hearing, the respondent and counsel for the Commission not desiring to file briefs or present oral arguments, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, C. D. Higgins conducts his business under the name "C. D. Higgins Manufacturing Company" at 2033 Dwight Way, Berkeley, Calif., and is engaged in manufacturing and selling razor hones, and causes the products sold by him to be transported to the purchasers thereof from the state of California through and into other states of the United States in interstate commerce, and carries on such business in direct and active competition with other persons, firms and corporations similarly engaged. The respondent began to operate this business in July, 1919, and has been conducting it continuously since that date.

PAR. 2. From July, 1919, until the date of the service of the Commission's complaint herein the razor hones manufactured by the respondent were packed in cartons each of which cartons was branded on the face thereof as follows:

(Original) Higgins Hone
Price $3.00
Manufactured by the
C. D. Higgins Manufacturing Company
1721 Alcatraz Avenue,
Berkeley, Cal.

and each hone manufactured by the respondent was branded on one side thereof as follows:

Original Higgins hone—Price $3.00.

PAR. 3. Sales of said razor hones have been made by the respondent to customers and purchasers in the states of California, Oregon, Washington, Arkansas, and many other states of the United States. Respondent's sales of hones have been made to barber supply houses at $9 per dozen, or 75 cents each, and to barbers at $1.50 each. Said hones were and are usually sold by said barber supply houses at prices substantially less than $3, the average price for each hone being $1.50.

PAR. 4. Since the service of the Commission's complaint in this proceeding, the respondent has obliterated from said hones and cartons the price mark "Price $3.00," and an effort has been made by the respondent to cause dealers to change said marks on the supply which said dealers had on hand at the time of the service of the Commission's complaint in this proceeding.

PAR. 5. The said price of $3.00 was printed upon said hones and cartons as a false, fictitious and misleading proposed retail price, and does not represent the price at which it was contemplated by the respondent or his customers that said hones would be sold to the ultimate purchasers, and such indicated price was placed upon said hones and containers for the purpose of creating in the minds of the purchasers at retail an erroneous impression as to the value of such hones.

PAR. 6. The said hones so marked with such false and misleading price come into direct competition in interstate commerce with hones which are not so marked. The respondent did not originate the practice herein described but followed a custom which has grown up in the razor-hone trade of marking hones with false and fictitious prices at the request of dealers in order that the misleading prices so marked upon said hones may be reduced or undercut by retail dealers and the hones still sold at a substantial profit and at a price materially less than that marked upon such hones and containers, thereby deceiving the public into believing that it is obtaining for a much less price a hone worth at least the price marked thereon.

PAR. 7. The respondent consented in writing to the entry of an order against him, commanding that he cease and desist from the practice of marking said razor hones, or the cartons containing the same, with any false, fictitious or misleading statement concerning the price or value of said razor hones.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described herein, 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 respondent and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, C. D. Higgins, trading under the name and style of C. D. Higgins Manufacturing Company, his agents, servants, representatives and employees, cease and desist from selling or offering for sale in interstate commerce razor hones upon which, or the cartons containing the same, is marked or imprinted any false, fictitious or misleading prices or representations as to the value of said hones.

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

FEDERAL TRADE COMMISSION

v.

JUVENILE SHOE COMPANY, INC.

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

Docket 752—July 1, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of infants', children's and misses' shoes under the style of Juvenile Shoe Corporation of America, (1) carried on a large business under said name and so advertised at large expense in publications of nation-wide circulation and in trade journals, and (2) in so advertising featured a reproduction of a trade-mark tag attached to all shoes sold by it through its authorized distributors, and sold its shoes under a trade-mark consisting of the words "Juvenile Shoe System," displayed upon the representation of a wax seal; and thereafter a competitor dealing in inferior grades of such shoes,

(*a*) Adopted the corporate name "Juvenile Shoe Co., Inc.," with the effect of confusing the trade and with a capacity and tendency to induce retail dealers to purchase its shoes as and for those of said corporation, and to induce and enable them so to sell the same to the purchasing public; and

(*b*) Packed its shoes in cartons with labels consisting of the picture of a child with the words "Juvenile" and "Shoe Co., Inc.," closely resembling in size, typographical arrangement, and general appearance said corporation's registered trade-mark and the tags attached by it to its shoes as above set forth; with a capacity and tendency to confuse the trade and to enable retail dealers to sell its shoes as and for those of said corporation to the purchasing public:

Held, That such simulation of corporate name, and such simulation of trade-mark, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Juvenile Shoe Company, Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of Section 5 of An Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation, organized and existing under the laws of the State of California, with principal place of business at the City of Los Angeles, in said State.

PAR. 2. That the respondent was organized on the 26th day of May, 1919, and thereafter engaged in the business of selling shoes, in interstate commerce, for children exclusively, to retail dealers in wholesale quantities, in the State of California and states adjacent thereto, and to the public in such states on mail orders, and causes the shoes sold by it to be transported to the purchasers thereof from the State of California, in and beyond said State, and carries on such business in direct, active competition with other persons, partnerships and corporations, similarly engaged.

PAR. 3. That on June 8, 1918, there was organized under the laws of the State of Missouri, the Juvenile Shoe Corporation of America, that the said corporation succeeded to the business of two other corporations which had theretofore been engaged in the business of manufacturing and selling shoes; that continuously since its incorporation said Juvenile Shoe Corporation has manufactured and sold shoes, for children exclusively, and in the various states of the United States and more particularly in California and states adjacent thereto, and has caused shoes sold by it to be transported to the purchasers thereof from the State of Missouri through and into the other said states of the United States and has carried on such business in direct, active competition with other persons, partnerships and corporations similarly engaged; that said Juvenile Shoe Corporation has built up an extensive business in the sale of its product in the State of California and states adjacent thereto, and the shoes manufactured and sold by it are of greater value and of superior quality and sell for higher prices than the shoes sold by respondent.

PAR. 4. That the corporate name of the respondent, the junior corporation, so nearly resembles the corporate name of the senior corporation, the Juvenile Shoe Corporation, described in Paragraph Three hereof, that the trade name or design of the respondent so nearly resembles the registered trade-mark of the Juvenile Shoe Corporation, in sight, sound and meaning, and that both the respondent and the Juvenile Shoe Corporation deal in and sell children's shoes exclusively, in competition in interstate commerce in California and States adjacent thereto are facts which are calculated to cause and have caused and are now causing confusion in the trade and have induced and are inducing purchasers of children's shoes to believe that the shoes offered for sale by the respondent are shoes manufactured and sold by the Juvenile Shoe Corporation.

PAR. 5. That since January 1, 1919, said Juvenile Shoe Corporation has continuously used a trade-mark registered by it on November 30, 1920, in the United States Patent Office, consisting of the words "Juvenile Shoe System Standard of the World," displayed upon the representation of a wax seal, and this seal was employed by the said corporation by means of a label placed upon the boxes in which shoes sold by it were packed, and by means of tags attached directly to such shoes, and such registered trade-mark and seal was also impressed by means of a die, upon the soles of shoes manufactured and so sold, in interstate commerce, by the said Juvenile Shoe Corporation.

PAR. 6. That respondent, since the adoption and use of the registered trade-mark by the Juvenile Shoe Corporation, as set out in Paragraph Five hereof, has put upon the boxes in which shoes sold by it are packed, a circular label consisting of the face of a smiling child, surrounded by the words "Juvenile Shoe Company, Inc.," which label so nearly resembles the said seal and registered trade-mark of Juvenile Shoe Corporation as to be likely to cause confusion in the trade and deceive purchasers by causing such purchasers to believe that shoes sold by respondent are shoes manufactured and sold by said Juvenile Shoe Corporation.

PAR. 7. That by reason of the facts recited the respondent, acting through its officers and members, and in their interest and behalf, is using an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the Juvenile Shoe Company, Inc., hereinafter referred to as 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 herein, evidence was thereupon introduced in support of the allegations of the complaint, and on behalf of the respondent before a member of the Federal Trade Commission. Thereupon this proceeding came on for final hearing, and the Commission having duly considered the complaint, the answer thereto and the evidence ad-

duced, and being fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized on May 26, 1919, under the laws of the State of California, with principal place of business at Los Angeles in said State, and since its organization has been engaged in the business of buying and selling shoes for infants, children, and misses; that respondent purchases shoes from manufacturers in the State of Pennsylvania and in other States of the United States and causes such shoes to be transported from such States through other States to Los Angeles, Calif., where such shoes are resold by respondent to the retail trade and, on a small scale, on mail orders, direct to the consumer, and respondent causes the shoes so resold by it to be transported to the purchasers thereof, from Los Angeles in the State of California in and beyond said State, and has carried on its said business in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the authorized capital stock of respondent was originally $25,000 which was increased to $35,000 by proceedings had on December 29, 1919, which stock was fully paid up; that thereafter on the 25th day of January 1921 proceedings were had authorizing the further increase of the capital stock of respondent from $35,000 to $100,000; that there has been a steady growth in the volume of business done by respondent since its organization.

PAR. 3. That on June 8, 1918, the Juvenile Shoe Corporation of America, a corporation, was organized under the laws of the State of Missouri, and succeeded to the business of two other corporations which had theretofore been engaged in the business of manufacturing and selling shoes in due course of commerce among the States; that its authorized capital stock is $1,000,000, $550,000 of which is paid up and issued; that it operates plants, in which shoes for infants, children, and misses are manufactured at Beloit, Wis., at Carthage, Mo., and Aurora, Mo.; that it employs at the three plants, on an average, 350 persons; that its factory output is about 2,000 pairs of shoes per day; that it markets its product in practically all of the States of the United States through 18 jobbers located in various jobbing centers; that 16 of such jobbers are designated as "Authorized Distributors"; that the 2 jobbers not designated as "Authorized Distributors" sell shoes so distributed in plain cartons and without trademark or distinguishing tag of the Juvenile Shoe Corporation

of America, thereon; its volume of sales aggregate $2,000,000 annually; from June 1, 1919 to December 31, 1920 it spent for advertising its product and business, the sum of $127,623.14; that such advertising was carried in publications of nation wide circulation including the Saturday Evening Post, Good Housekeeping, Vogue, Vanity Fair, and various trade journals; that in such advertisements there was featured a reproduction of a tag which is attached to one of each pair of shoes sold through its authorized distributors, rather than the various brand names of the shoes.

PAR. 4. That the Juvenile Shoe Corporation of America, on November 20, 1920, registered in the United States Patent Office, a trade-mark for shoes manufactured and sold by it, which trade-mark consists of the words "Juvenile Shoe System," displayed upon the representation of a wax seal, which trade-mark had been used conspicuously in its business since January 1, 1919; that a tag on one side of which was a reproduction of said trade-mark with the added words "Standard of the World" and on the other side a description of the quality of the shoes is attached to one of each of the pairs of shoes sold by said Juvenile Shoe Corporation of America through its authorized distributors, which shoes are packed in cartons one pair to each carton, on which cartons are printed a brand name, namely, "Kewpie Twins," "Playhouse," "Sportwalks" etc.; that a circular is also enclosed in such cartons which bears the name of the Juvenile Shoe Corporation of America in which circular, the offer is made to rebuild the shoes, upon the payment of $2.

PAR. 5. That the Williams-Marvin Co. with principal place of business at San Francisco, Calif., has been designated by the Juvenile Shoe Corporation of America, as its authorized distributor for the States bordering on the Pacific Coast and States adjacent thereto; that said Williams-Marvin Co. does not handle the product of the Juvenile Shoe Corporation of America, exclusively, but sells the product of various manufacturers of shoes for children, and in the year 1918 its volume of sales of the product of Juvenile Shoe Corporation of America, was $123,448, in 1919, $143,000, and in 1920, $137,500.

PAR. 6. That the respondent immediately after its organization packed shoes sold by it, in cartons upon which were printed a label consisting of a picture of a child surrounded by a band in the upper part of which band was the word "Juvenile" and in the lower part of the band the words "Shoe Co., Inc." but the use of this label by respondent was abandoned long prior to November, 1920, except that remnants of stock on hand after that date were disposed of in the

cartons so labeled, and thereafter new stock purchased and resold by respondent was marketed in plain cartons.

PAR 7. That the shoes manufactured by the Juvenile Shoe Corporation of America, differ in method of manufacture and constituent material from the shoes sold by respondent, and are of better grade and quality and should bring higher prices in the usual course of trade.

PAR. 8. That the label used by respondent as set out in paragraph 6 hereof, closely resembled in size, typographical arrangement, and general appearance, the registered trade-mark of the Juvenile Shoe Corporation of America, and the tag attached to shoes sold by it, as set out in paragraph 4 hereof; that the appearance of such label upon cartons containing shoes sold by respondent, had the capacity and tendency to cause confusion in the trade and enable retail dealers to sell to the public, the shoes sold to such retailers by respondent, as and for the shoes of the Juvenile Shoe Corporation of America.

PAR. 9. That the use of the word "Juvenile" as a part of the corporate name of the respondent has the capacity and tendency to cause and in many instances actually has caused confusion in the trade with the name of the Juvenile Shoe Corporation of America and to induce retail dealers of shoes to purchase shoes from the respondent in the mistaken belief that respondent and the Juvenile Shoe Corporation of America were one and the same establishment, or that the respondent was a branch or subsidiary of said Juvenile Shoe Corporation of America, and to sell the same to the purchasing public as such, and the word "Juvenile" in the corporate name of the respondent, has the capacity and tendency to enable retail dealers to pass off shoes purchased by them from respondent as and for the shoes of the Juvenile Shoe Corporation of America.

CONCLUSION.

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

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 Juvenile Shoe Company, Inc., the respondent herein, and the testi-

mony and evidence submitted, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Now, therefore, it is ordered, That the respondent, the Juvenile Shoe Company, Inc., its officers, directors, agents and employees, cease and desist:

(1) From using as a part of the corporate name of the respondent the word J-U-V-E-N-I-L-E, or any word or combination of words, likely to be confused with the name of the Juvenile Shoe Corporation of America.

(2) From using, or permitting to be used, in its or their behalf, the word J-U-V-E-N-I-L-E, on its marks, labels, tags, or other devices upon, or in connection with the sale of, shoes for infants, children and misses; and from directly or indirectly suggesting by the use of a word, mark, label or otherwise, that the goods of the respondent are the goods of the Juvenile Shoe Corporation of America.

And it is further ordered, That the respondent file with the Federal Trade Commission within ninety (90) days from the date of the service of this order upon it, its report in writing, stating the manner and form in which this order has been conformed to and attach to said report two copies of all circulars, stationery, advertisements, marks, labels, or other devices, distributed by it or displayed to the public in connection with the sale by it of shoes in commerce among the States of the United States, subsequent to the date of the service of this order.

FEDERAL TRADE COMMISSION

v.

WILLIAM E. HINCH.

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

Docket 818—July 3, 1922.

SYLLABUS.

Where an individual engaged in the manufacture and sale of roofing paints and in the sale of a general line of paints, stains, enamels, varnishes, and other commodities manufactured by others,

(*a*) Advertised a certain varnish offered by him as "GOVERNMENT SPAR VARNISH, Highest Grade; Outside Manufacture; Used in Finest Homes for inside and Outside Work; Actual Value $6. Will Sell While it Lasts, $1.00 a Quart; $1.75 One-half Gallon; $3 a Gallon," and an enamel as "Government White Ship Enamel," the fact being that the varnish and enamel so advertised were not made for the Government or in accordance with Government specifications, but were among the cheapest grades of varnishes and enamels manufactured;

(*b*) Falsely advertised a paint offered by him as "procured from the United States Government Plant at Nitro, West Virginia. This material was manufactured by George D. Wetherill according to Army Specifications W. D. 37. We are going to close this out at one-third the regular cost to manufacture;" and

(*c*) Advertised a paint offered by him as "Priming Fence Paint; $1.50 per gallon. First class paint for fences or rough work. Same grade of paint sold under name of house paint round the city at $2.50 and $3.00," the fact being that the paint so advertised and offered was not priming fence paint, nor sold as house paint in the city referred to at $2 and $3 per gallon;

With the capacity and tendency to deceive and mislead the purchasing public as to the value or utility of the commodities so advertised and with the effect in some instances of so doing and of thereby inducing the purchase thereof;

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that William E. Hinch, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent is engaged at Philadelphia, Pennsylvania, in the business of selling a general line of paints, stains, enamels, varnishes, etc., manufactured by others, and of manufacturing and selling roofing paints. Respondent causes a substantial portion of the paints and other commodities sold by him to be transported to the purchasers thereof from the State of Pennsylvania through and into other States of the United States, and carries on his business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent, in the course of his business as described in Paragraph 1 hereof, and as an inducement to prospective customers, causes advertisements to be inserted in newspapers of general circulation in the States of Pennsylvania, New Jersey, and Delaware, which advertisements describe certain varnish, offered for sale and sold by him, as "GOVERNMENT SPAR VARNISH, Highest Grade; outside manufactured; used in finest homes for inside and outside. Actual value of $6. Will sell while it lasts $1.00 Quart; $1.75 ½ gallon; $3.00 Gallon," and certain enamel, offered for sale and sold by him, as "GOVERNMENT WHITE SHIP ENAMEL." That respondent causes the containers for said varnish to be labeled and branded "GOVERNMENT SPAR VARNISH" and the containers for said enamel to be labeled and branded "GOVERNMENT WHITE SHIP ENAMEL," and represents to customers and prospective customers that the varnish and enamel were made for the Government of the United States, or according to some formula, specification, or requirement of the Government of the United States, whereas, in truth and in fact and as respondent well knows, the varnish so advertised, labeled, branded, and represented is not a high grade varnish but is one of the manufacturer's lowest grades of spar varnish and is not suited for inside work because it is a long-oil varnish, slow in drying and not hard wearing, costing respondent about $2.00 per gallon, and is not valued at or worth $6.00 per gallon; and neither the varnish nor enamel so advertised, labeled, branded and represented was procured from the Government of the United States or made for or according to any specification, formula, or requirement of the Government of the United States or any branch or department thereof. That the use of the word "Government" in connection with varnish and enamel, as aforesaid, is calculated to, and actually does, lead the public to believe that the Government of the United States has had some connection with the varnish and enamel so labeled, branded, represented, and advertised, and that,

therefore, the varnish and enamel are a high-grade varnish and enamel because they have complied with the requirements and tests of said Government. That said advertisements, labels, brands, and representations are false and misleading and are calculated to, and actually do, deceive and mislead purchasers as to the quality and value of said varnish and enamel.

That respondent advertises, as described above, a paint offered for sale and sold by him, as "PRIMING FENCE PAINT, $1.50 a gallon. First-class paint for fences or rough work, same grade of paint sold under name of house paint around the city at $2.50 and $3.00"; whereas, in truth and in fact and as respondent well knows, said paint is not a first-class priming paint and is not sold around the City of Philadelphia under the name of house paint at $2.50 and $3.00 per gallon. That, therefore, said advertisements are false and misleading and are calculated to, and actually do, mislead and deceive purchasers as to the quality of such paint.

That respondent further advertises, as described above, a paint, offered for sale and sold by him, and so labels and brands the containers for said paint and so represents it to customers and prospective customers as a "paint procured from the U. S. Government plant at Nitro, W. Va. This material was manufactured by George D. Wetherill, according to Army Specification W. D. 37. We are going to close this out at one-third original cost to manufacturer. 5 Gallon Cans, $1.00 Gallon, 1 Gallon Cans, $1.25 Gallon"; whereas, in truth and in fact and as is well known to respondent, said paint does not approximate the paint so specified, and the paint sold by the manufacturer named to the United States Government plant at Nitro, West Virginia, was sold by the manufacturer at $1.09½ per gallon, which price represented a reasonable profit to the manufacturer. That, therefore, such advertisements, labels, brands and representations are false and misleading and are calculated to, and actually do, deceive and mislead purchasers as to the quality and value of said paint.

PAR. 3. That the respondent, in the course of his business, as described in Paragraph 1 hereof, has made use of office stationery, billheads, invoices and stickers which he places upon the containers of commodities sold by him, which contain statements to the effect that the respondent is a manufacturer and jobber, whereas, in truth and in fact, respondent does not manufacture the commodities sold by him, except roofing paints which constitute only a small proportion of the volume of business done by him, and respondent is not a jobber or wholesaler of paints, varnishes, etc., but sells only at retail

to the ultimate consumer. That such statements are false and misleading and are calculated to, and actually do, deceive and mislead the public into the belief that when it buys from respondent it is purchasing at prices below those at which the ordinary retail dealer in paints, varnishes, enamels, etc. sells and to lead manufacturers of paints, varnishes, enamels, etc. to sell to respondent at lower prices than they sell to the ordinary retail dealer in the belief that respondent is a wholesaler and jobber of paints, varnishes, enamels, etc.

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, William E. Hinch, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Respondent, having entered his appearance and filed his answer herein admitting that certain of the methods and things alleged in said complaint are true in the manner and form therein set forth and having made, executed and filed an agreed statement of facts in which there is stipulated and agreed by the respondent, that the Federal Trade Commission shall take such agreed statement of facts as to the facts in this case and in lieu of testimony and proceed forthwith with such agreed statement of facts to make its findings and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, William E. Hinch, is engaged in Philadelphia, Pennsylvania, in the business of selling a general line of paints, stains, enamels, varnishes, and other commodities, manufactured by others, and manufacturing and selling roofing paints, and the respondent causes a portion of the paints, varnishes, enamels, and other commodities sold by him to be transported to the purchasers thereof from the State of Pennsylvania through and into the other States of the United States and carries on his business in direct and active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, William E. Hinch, in the course and conduct of his business, as described in paragraph 1 hereof,

caused certain advertisements to be inserted in the newspapers of general circulation in the States of Pennsylvania, New Jersey, and Delaware, as a means of bringing to the attention of the purchasing public the merchandise and commodities offered for sale and sold by him. That the respondent advertised certain varnishes and enamels so offered for sale and sold by him, which commodities were described in said advertisement as "GOVERNMENT SPAR VARNISH, Highest Grade; Outside Manufacture; Used in Finest Homes for Inside and Outside Work; Actual Value $6.00. Will Sell While it Lasts, $1.00 Quart; $1.75 a Half Gallon; $3.00 a Gallon"; which advertisement so published by respondent was false and untrue, as said varnishes were not made under any formula of the United States Government or any department thereof and were among the cheapest grades of varnishes and enamels manufactured. That the advertisement "Government Spar Varnish" and "Government White Ship Enamel" had the tendency and capacity to mislead and deceive the purchasing public by creating in the minds of the purchasing public a false and erroneous belief concerning the value, quality or utility of said commodity and in some instances induced the said purchasing public to purchase said commodities upon the mistaken belief that such commodities were made for the Government of the United States or some department thereof, or were manufactured under the formula, specifications or requirements of the Government of the United States, or some department thereof.

PAR. 3. That the word "Government" when applied to paints, varnishes or enamels is understood by the general public to mean varnish, enamel or paint obtained from the Government of the United States or manufactured especially for its use or made in accordance with some specification, formula or requirement of such Government of the United States, or that it had been approved by the said Government; that the general purchasing public believes varnish, enamel or paint with which the United States Government has been in any way connected is of an unusual high grade or quality because approved by such Government.

PAR. 4. That the respondent advertised, as described in Paragraph 2 above, a paint offered for sale and sold by him as "Priming Fence Paint; $1.50 per gallon. First Class Paint for Fences or Rough Work. Same Grade of Paint Sold Under Name of House Paint Around the City at $2.50 and $3.00." That such advertisement was false and misleading and had both the tendency and capacity to deceive for the reason that the paint above described was not sold around the city of Philadelphia under the name of house paint at $2.50 and $3.00 per gallon and that same was not "Priming Fence

Paint," and that the advertisement so published by the respondent had the capacity and tendency to mislead and deceive the purchasing public by creating in the minds of the public false and erroneous beliefs concerning the value and utility of said paints and in some instances induce the public to purchase said paint upon such mistaken beliefs as aforesaid.

PAR. 5. That the respondent advertised, as described in Paragraph 2 above, a paint offered for sale and sold by him as paint "procured from the United States Government Plant at Nitro, West Virginia. This material was manufactured by George D. Wetherill according to Army Specifications W. D. 37. We are going to close this out at 1/3 the original cost to manufacture." That such paint described in such advertisement as set out above and sold by respondent was not manufactured by George D. Wetherill according to Army Specifications W. D. 37; that the paint sold by the manufacturer named to the United States Government Plant at Nitro, West Virginia, was sold by the manufacturer at $1.09½¢ per gallon, which price represented a reasonable profit to the manufacturer; that the general purchasing public believes paints so advertised, labeled, branded and represented to be of the grade, quality, and value represented in such advertisement, label, brand or representation and to be paint procured from the United States Government Plant at Nitro, West Virginia, and manufactured by George D. Wetherill according to Army Specifications W. D. 37 at a cost of $3.00 per gallon; that the reference to such paint in said advertisement as set out above had the capacity or tendency to mislead and deceive the purchasing public by creating in the minds of the public false or erroneous beliefs concerning the value of said paint and in some instances to induce the public to purchase said articles upon the mistaken belief that said articles were of the kind and quality described in the aforesaid advertisements.

CONCLUSION.

That the practices of respondent, under the conditions and circumstances set out in the foregoing findings as to the facts, constituted an unfair method of competition in commerce and were in violation of the provisions of Section 5 of an Act of 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 re-

spondent and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That the respondent, William E. Hinch, his agents representatives, servants and employes, do cease and desist, directly or indirectly, from employing or using, or permitting to be used in his behalf, the word "government" standing alone or in conjunction with other word or words, in connection with the sale or distribution of varnish, enamel or paint, or in the advertisements thereof, *except* (1) when the varnish, enamel or paint has been obtained from the United States Government; or (2) when the varnish, enamel or paint has been manufactured for and accepted by the United States Government; or (3) when the varnish, enamel or paint has been made in accordance with some United States Government formula, specification or requirement, and the word or term indicating United States Government is joined or used with some other words or terms indicating compliance with some United States Government formula, specification or requirement (e. g., made in accordance with Government W. D. specification No. 97); or (4) when the varnish, enamel or paint has been obtained from some government other than the United States Government, and the word or term used to indicate government is joined or used with some other word or term indicating the government from which the varnish was obtained (e. g., French Government Spar Varnish); or (5) when the varnish, enamel or paint has been manufactured for and accepted by some government other than the United States Government, and the term or terms used to indicate government is joined or used with some other word or term indicating the government for which the varnish, enamel or paint was manufactured and by which it was adopted (e. g., Canadian Government Spar Varnish); or, (6) when the varnish, enamel or paint has been manufactured in accordance with the formula, specification or requirement of some government other than the United States Government and the word or term used to indicate Government is joined or used with some other words or terms indicating compliance with the formula, specification or requirement of the government in accordance with whose formula, specification or requirement the varnish, enamel or paint has been manufactured (e. g., made in accordance with specifications of the Italian Government);

From publishing and circulating, or causing to be published and circulated throughout the various States of the United States, the territories thereof, the District of Columbia and foreign countries, advertisements, circulars, folders, letters or any other printed or written matter whatsoever, wherein it is falsely stated, set forth or held out to the public.—

1. That the paint offered for sale and sold by the respondent is "Priming fence paint, $1.50 per gallon. First-class paint for fences or rough work. Same grade of paint sold under name of 'house paint' around the city at $2.50 and $3."

2. That respondent's products were purchased from the United States Government's plant at Nitro, West Virginia, or words to that effect.

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

FEDERAL TRADE COMMISSION

v.

FEDERAL ROPE COMPANY, INC.

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

Docket 164—July 6, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of rope made from the fiber of old ropes and hawsers exclusively, which it did not make of Manila fiber only, and which so closely resembled new rope made of new, unused, and therefore superior fiber that it could only be distinguished by those skilled in the art of rope making, or by expert analysis,

(a) With the effect of misleading and deceiving the public,

(1) Used the word "Manila" on its letterheads, price lists, etc., and on its tags, stencils, and other printed matter attached and applied to said rope, or the wrappings and coverings thereof, notwithstanding the fact that the word "Manila" is properly used only to describe rope composed exclusively of new Manila fiber, and is by custom and agreement not applied to rope not so composed; and

(2) By invoices and by direct oral and written statements likewise falsely represented said rope to the purchasing public as composed exclusively of new Manila fiber;

(b) With the intent and effect of misleading and deceiving the public, simulated the letterheads, price lists, tags, and other printed matter distributed among dealers and consumers of rope, or attached and applied to the same or to the wrappings or coverings thereof, and the style and method of packing and preparing for shipment, of rope manufacturers who employed only new and unused fiber in the manufacture of their product; and

(c) Falsely represented to purchasers and prospective purchasers that its product was made from new and unused fiber and was not stranded from yarn taken from old and used rope:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Federal Rope Company, Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of the Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect

thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Federal Rope Company, Inc., is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business in the City of New York, State of New York, and is now and for more than two years last past has been engaged in the manufacture and sale of rope in and among the several States and Territories of the United States and the District of Columbia in direct competition with other persons, firms and corporations engaged in interstate commerce in the manufacture and sale of rope.

PAR. 2. That the respondent in the conduct of its business manufactures its rope in the City of New York, State of New York, and purchases and enters into contracts of purchase for the necessary materials needed therefor, in other States and Territories of the United States, causing the same to be transported to such factory where they are made into the finished product and sold and shipped to purchasers thereof; that after such products are so made into the finished product and sold and shipped to purchasers thereof, they are continuously moved to, from and among other States and Territories of the United States and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce of such rope between and among the various States of the United States and Territories thereof and District of Columbia.

PAR. 3. That in the manufacture, sale and use of rope, various names are used and applied to them for the purpose of designating the various materials out of which said ropes are made, and that the word "Manila" when applied to rope, both in the technical and popular usage, has a precise and exact meaning, and is only accurately and properly used in identifying and describing rope composed exclusively of new Manila fibers, and that by custom and agreement among rope manufacturers generally, the word "Manila" is not used in the brand, label or any printed matter in connection with any rope containing less than one hundred per cent pure Manila fiber unless the said word "Manila" is qualified by other words conspicuously and clearly showing the percentage of Manila hemp in said rope.

PAR. 4. That with the intent, purpose and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of rope, the respondent by the use of letterheads, price lists,

and other printed matter containing the word "Manila" distributed among dealers and consumers of rope, and by the use of tags, stencils and other printed matter attached and applied to said rope or the wrappings and coverings thereof containing the word "Manila," has for more than two years last past represented, and still continues to represent that the said rope manufactured by respondent is composed entirely and exclusively of new Manila fiber, which representations are false and misleading, and calculated and designed to mislead and deceive the public into the belief that the said rope manufactured by respondent is composed entirely and exclusively of new and unused Manila fiber while in fact it is remade from strands taken from old and used rope and contains other than pure Manila fiber.

PAR 5. That it is the common belief and impression among dealers and consumers of rope and the purchasing public generally that rope having the appearance of and sold as new and unused rope is manufactured entirely from new and unused fiber and not from such as was previously taken from old and used rope; that for more than two years last past with the intent, purpose and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of rope, the respondent has used such methods and devices as letterheads, price lists, tags, stencils and other printed matter distributed among dealers and consumers of rope or attached and applied to such rope or the wrappings and coverings thereof, and has used certain methods, appearances and simulations in packing and distributing said rope to the trade and among consumers generally so as to give said rope the appearance of new and unused rope, which methods and devices have conveyed and do convey, and are calculated and designed to convey the belief and impression that the said rope manufactured by the respondent is composed of new and unused fibers, and that the respondent has at all times herein mentioned concealed and wholly failed to disclose that the rope so manufactured by the respondent is in fact composed of fiber taken from old and used rope.

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

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

[1] For original findings and order see 2 F. T. C. 327.

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

And the Commission having made and entered a report containing its findings as to the facts and conclusion, and having issued and served on the respondent an order to cease and desist made thereon, dated March 4, 1920, and thereafter it appearing to the Commission upon reconsideration of the matter that said findings as to the facts should be modified in certain respects;

Now, therefore, the Federal Trade Commission having duly reconsidered the record, and being now fully advised in the premises, on its own motion under and by virtue of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," hereby modifies its findings as to the facts heretofore made in this proceeding on the 4th day of March, 1920, and the same is hereby modified, so that as modified, said findings as to the facts shall read as follows, to wit:

MODIFIED FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Federal Rope Company, Inc., is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business in the City of New York, State of New York, and is now and for more than two years last past has been engaged in the manufacture and sale of rope and in the shipment of said rope from its place of business to purchasers thereof in other States and Territories of the United States and the District of Columbia, in direct competition with other persons, firms and corporations engaged in interstate commerce in the manufacture and sale of rope.

PAR. 2. That respondent in the course of its business, purchases old and used vegetable fiber rope and hawsers in the State of New York and in other States of the United States and causes same to be transported from the several places where such hawsers are so purchased, to its factories in the City of New York, where said hawsers are unwound and unstranded; that from the fiber of the yarn thus reclaimed all of respondent's product is manufactured; that the rope so manufactured by respondent from old, used and reclaimed fiber so closely resembles in appearance rope manufac-

tured from new and unused fiber that it can not be distinguished therefrom except by those skilled in the art of rope making or by expert analysis; that respondent sells its products to purchasers thereof in States other than the State of New York, and causes the same to be transported pursuant to such sales from the State of New York to such purchasers through, across and into many States and Territories of the United States and the District of Columbia.

PAR. 3. That the word "Manila" when applied to rope, both in technical and popular usage, has a precise and exact meaning, and is only accurately and properly used in identifying and describing rope composed exclusively of new Manila fibers, and that by custom and agreement among rope manufacturers generally, the word "Manila" is not used in the brand, label or any printed matter in connection with any rope containing less than one hundred per cent pure Manila fiber, unless the said word "Manila" is qualified by other words conspicuously and clearly showing the percentage of Manila hemp in said rope. For general purposes and usage rope manufactured from Manila fiber is generally regarded as surpassing in quality rope manufactured from all other fibers.

PAR. 4. That in the manufacture and sale of rope in interstate commerce the respondent, by the use of letterheads, price lists and other printed matter containing the word "Manila" distributed among dealers and consumers of rope, and by the use of tags, stencils and other printed matter attached and applied to said rope or the wrappings and coverings thereof containing the word "Manila" and by means of invoices accompanying the sale of said rope, wherein such rope is characterized and described, and by means of direct oral and written statements made by the respondent's officers and agents, for a period of more than two years immediately prior to the issuance of the complaint herein, represented to the purchasing public that the said rope manufactured by respondent was composed entirely and exclusively of new Manila fiber, which representations were false and misleading, and did mislead and deceive the public into the belief that the said rope manufactured by respondent was composed entirely and exclusively of new and unused Manila fiber, while, in fact, it was remade from yarns taken from old and used rope as aforesaid, and a large part of it was remade from such yarns that contained other than pure Manila fiber.

PAR. 5. That it is the common belief and impression among dealers and consumers of rope and the purchasing public generally that rope having the appearance of and sold as new and unused rope is manufactured from new and unused fiber and not from such as

was previously taken from old and used rope, and that the greater proportion of rope sold in commerce is manufactured from new fiber and that the existence of the practice of remaking rope from old and used rope is not generally known to dealers and consumers of rope, and that such remade rope is much inferior in quality to rope made from new and unused fiber.

PAR. 6. That the respondent for a period of more than two years last past, with the intent, purpose and effect of misleading and deceiving the public in interstate commerce in the manufacture and sale of rope, has used such methods and devices as letterheads, price lists, tags, stencils and other printed matter distributed among dealers and consumers of rope are [or] attached and applied to such rope, or the wrappings or coverings thereof, and in packing and preparing its product for distribution to the purchasers thereof, both dealers and consumers, it has adopted and used the style and method of packing and preparing for shipment used and employed by rope manufacturers who use only new and unused fiber in the manufacture of their product; that is to say, respondent packs its product in coils containing 1,200 feet of rope in length and covers each coil with burlap on which it stencils the words "Manila" or "Pure Manila Rope" and attaches to each coil so packed and prepared for shipment a tag on which is printed the following words "Federal Rope Company" and "Manila Rope" on a scroll representing a piece of rope; also, "Morgan Ave. and Ten Eyck Street—Brooklyn, N. Y." together with the name and address of the purchaser, and does not in any manner mark either the rope or its covering so as to disclose to the purchasers thereof the fact that the rope so manufactured and sold by respondent is made of fiber taken from old and used rope.

PAR. 7. That for a period of more than two years last past, the respondent on various occasions by means of direct statements made by its officers and agents, has falsely represented to purchasers and prospective purchasers of its rope that its said product was made from new and unused fiber and that it was not restranded from yarn taken from old and used rope as aforesaid.

CONCLUSION.

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

MODIFIED ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and the evidence, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and the Commission having heretofore, to wit, on March 4, 1920, entered and served its order upon the respondent requiring it to cease and desist from certain practices:

And it appearing to the Commission upon reconsideration of the matter that said order should be modified in certain respects,

Now, therefore, The Federal Trade Commission on its own motion, under and by virtue of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," hereby orders that the order to cease and desist heretofore made in this proceeding on the 4th day of March, 1920, be and the same is, hereby modified so that, as modified, said order shall read as follows, to wit:

It is now ordered, That the above-named respondent, Federal Rope Company, Inc., cease and desist from using the word "Manila" in any way to designate and describe rope manufactured by it which is not wholly composed of Manila fiber, and

It is further ordered, That the respondent cease and desist from in any manner advertising, holding out, representing and selling any rope not composed of new and unused fibers without plainly indicating the fact that it is manufactured of used or reclaimed fiber.

And the Federal Trade Commission under and by virtue of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," hereby orders that notice of the modification hereinabove mentioned shall be given the said Federal Rope Company, Inc., by registering and mailing a copy thereof addressed to such corporation at its principal office.

FEDERAL TRADE COMMISSION

v.

B. S. PEARSALL BUTTER COMPANY.

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

Docket 550—July 8, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of oleomargarine, butterine, butter, nut butter, and similar products, made sales and contracts for sales of its products upon the condition, agreement or understanding that the purchasers thereof should not deal in the products of its competitors; with the effect of substantially lessening competition and of tending to create a monopoly in the lines of commerce involved:

Held, That such sales and contracts of sales, under the circumstances set forth, constituted a violation of Sec. 3 of the Act of October 15, 1914.

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the B. S. Pearsall Butter Company, hereinafter referred to as respondent, has been and is violating the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the B. S. Pearsall Butter Company, is a corporation existing under the laws of the State of Illinois, with its principal office and place of business in the City of Elgin, Illinois, and is and for more than five years last past has been engaged in manufacturing, selling, distributing and dealing in oleomargarine and nut margarine in interstate commerce among the several states of the United States, the territories thereof, and the District of Columbia, within the purview of Sections 1 and 3 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 14, 1914, in direct and active competition with other persons, firms and corporations similarly engaged.

PAR. 2. That during the five years last past, in the course of and while engaged in such commerce as aforesaid, the respondent made, and continues to make, numerous sales and numerous contracts for sale of its oleomargarine and nut margarine to many and various persons, firms and corporations among the several states of the United States, the territories thereof, and the District of Columbia, for resale within the United States, the territories thereof, and the District of Columbia, on the condition, agreement or understanding, that the respective purchaser thereof deal in the respondent's brands of oleomargarine and nut margarine exclusively, and shall not deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of the respondent, and the effect of such sales and contracts for sale, and such conditions, agreements or understandings, may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which the respondent is engaged, within the contemplation of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

PAR. 3. That during the five years last past, in the course of and while engaged in such commerce as aforesaid, the respondent made, and continues to make, numerous sales and numerous contracts for sale of its oleomargarine and nut margarine to many and various persons, firms and corporations among the several states of the United States, the territories thereof, and the District of Columbia, for resale within the United States, the territories thereof, and the District of Columbia, and fixed and fixes a rebate upon the price charged therefor, on the condition, agreement or understanding, that the respective purchaser thereof deal in the respondent's brands of oleomargarine and nut margarine exclusively, and shall not deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of the respondent, and the effect of such conditions, agreements or understandings, may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which the respondent is engaged, within the contemplation of Section 3 of the Act of Congress herein above mentioned.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved October 15, 1914, the Federal Trade Commission issued and served its amended complaint upon the respondent, the B. S. Pearsall Butter Company, a corporation, charging it with unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent having entered its appearance in person and having filed its answer to the amended complaint of the Commission, and formal hearings having been had before various examiners of the Commission, and testimony having been introduced on behalf of the Commission and on behalf of the respondent, and various stipulations having been entered into between the parties hereto and approved by the Commission; and the whole matter having come regularly on to be heard before the Commission upon the testimony and stipulations hereinbefore referred to and upon the briefs filed herein on behalf of the Commission and in behalf of respondent, and the matter having been fully considered and the Commission being fully advised in the premises makes the following its findings of facts.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the state of Illinois with its principal place of business in the town of Elgin in said state and for several years last past has been engaged in the manufacture of oleomargarine, butterine, butter, nut butter and similar products and in selling and distributing the various products immediately hereinbefore mentioned in interstate commerce, by, through and into the several other states and the territories of the United States in direct and active competition with some sixty-five other persons, firms or corporations similarly engaged.

PAR. 2. For several years last past and in the course of and while engaged in interstate commerce as aforesaid, the respondent made and continues to make numerous sales and numerous contracts for sale of its oleomargarine, nut margarine, and other products to many and various persons, firms and corporations among the several states and territories of the United States for resale within the United States and territories thereof and the District of Columbia on the condition, agreement or understanding that the respective purchasers thereof deal in the respondent's brands of oleomargarine, nut margarine, etc., exclusively, and shall not deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of the respondent.

PAR. 3. During all the times herein mentioned at least twenty competitors of respondent have used contracts containing the exclusive dealing feature similar in effect to the one referred to as being used by respondent in the paragraph next immediately preceding, and in the same territory covered by respondent, while practically all of respondent's sixty-five competitors other than those

using formal exclusive dealing contracts, used and entered into informal understandings and agreements to the same effect.

PAR. 4. The effect of the exclusive dealing feature of the contracts entered into by respondent, and more particularly referred to in paragraph two hereof, is to substantially lessen competition and to tend to create a monopoly in the lines of commerce in which respondent is engaged in various sections of the United States.

CONCLUSION.

The practice engaged in by respondent as set forth in the above findings of facts is in violation of Section 3 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having come regularly on to be heard by the Federal Trade Commission upon the pleadings, the testimony and the evidence received by the examiners of the Commission, the stipulations entered into between parties hereto and approved by the Commission, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of Section 3 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," which said findings and conclusion is hereby referred to and made a part hereof,

Now, therefore, it is ordered, That the respondent, B. S. Pearsall Butter Company, a corporation, its officers, directors, agents and employees, cease and desist from:

Directly or indirectly using formal or informal contracts or understandings to the effect that purchasers or dealers in respondent's products shall not deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of respondent, or in competing commodities.

It is further ordered, That respondent within sixty (60) days from the receipt of this order report in writing to the Commission the manner and extent to which compliance with this order has been made by respondent.

FEDERAL TRADE COMMISSION

v.

BELLAS-HESS & COMPANY.

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

Docket 879—July 11, 1922.

SYLLABUS.

Where a mail order house in its catalogues falsely advertised that certain coats manufactured from a cotton plush with a cotton nap, and therein offered for sale, were made of "Iceland Seal Plush," notwithstanding the fact that the term "seal plush" through long and constant usage had come to be understood by the general public as designating a plush fabric with a long nap or pile, manufactured of "Tussa silk" and closely resembling genuine seal skin, and that the fabric used was in no way its equal; with a capacity and tendency thereby to mislead and deceive the purchasing public:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Bellas-Hess & Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Maine with its principal office and place of business at Washington, Morton & Barrow Streets, New York City; in the State of New York. It has been for more than one year last past and now is engaged in purchasing and selling clothing, shoes, underclothes, shirts, hats, gloves, etc., direct to consumers throughout the United States in interstate commerce. Its method of doing business is thru mail orders exclusively and it advertises its products principally thru catalogs which are mailed to the customers and prospective customers, said catalogs containing

descriptions of the articles sold by the respondent. The customers upon receipt of the catalogs mail their orders for the goods they desire to the main office of the respondent in New York City. Upon receiving these orders, based upon the advertisements of goods in the catalogs as above described, respondent causes the goods so ordered to be transported from its said place of business in the city of New York to the said customers at various points in the various states of the United States. In the course of the conduct of its business respondent is in competition with other persons, partnerships and corporations who sell the same line of goods thru the mails direct to the consumer.

PAR. 2. Among the products named in the foregoing paragraph which the respondent advertises in its catalogs are women's coats made from plush to imitate the fur of the genuine seal. For a number of years it has been generally known in the trade that plush fabric made with a pile of a certain kind of silk known as Tussa silk is the best imitation fur fabric made to resemble the genuine seal and that this particular fabric has been designated and known as "Seal Plush." The respondent in this case purchased and advertised in its said catalogs, a large quantity of coats manufactured from such a fabric woven by the Salts Textile Manufacturing Company, New York City, under the trade name "Salts Peco Seal Plush." The respondent also purchased and advertised on the same pages in said catalogs at lower prices a quantity of coats manufactured from a plush having a cotton pile which is much inferior in value to the fur fabric with silk pile generally known as "Seal Plush."

PAR. 3. Respondent makes false and misleading statements in its said catalogs concerning the origin, nature, qualities and value of the said cotton plush coats advertised by it when it describes them under the caption of "Iceland Seal Plush" as follows:

> It is one of the biggest values in our catalog. The material is deep pile Iceland Seal Plush. It has the appearance of genuine seal and will wear equally as well,

when as a matter of fact the respondent knows that these coats are not manufactured from a fabric generally known in the trade and by the public as "Seal Plush" and do not have the appearance of genuine seal due to the fact that the fabric has a cotton pile and not a silk pile manufactured from Tussa silk. The foregoing false and misleading statements of respondent set out in this paragraph have the capacity and tendency to mislead and deceive the public into the belief that the coats so described possess the qualities alleged and are manufactured from a fabric having a silk pile generally known as "Seal Plush." By reason of said beliefs so created the acts and things done

by the respondent as set out in this paragraph tend to induce the public to purchase coats with cotton pile in preference to coats actually manufactured from a fabric having a silk pile and sold by competitors as "Seal Plush" because of the lower price quoted by respondent and also tend to induce the public to purchase said coats in preference to coats manufactured from fabric with cotton pile and sold by competitors as cotton plush coats using no misleading names and statements.

PAR. 4. The above alleged acts and things done by the respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Bellas-Hess & Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

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

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Maine, having its principal office and place of business in the City of New York, State of New York, and for more than two years last past has been and now is engaged in purchasing and selling clothing, shoes, underclothes, shirts, hats, gloves, etc., by mail direct to the consumer. Respondent in the course of its business, sells and ships its merchandise through and into the various States of the United States and the District of Columbia in interstate commerce, and is in competition with various other persons, firms, partnerships, and corporations similarly engaged.

PAR. 2. In the conduct of its business, respondent distributes catalogues and various other printed matter through the various States

of the United States and the District of Columbia, in which it advertises and describes the various merchandise sold and offered for sale by it.

PAR. 3. Among the commodities advertised, sold, and offered for sale by the respondent in the manner next set out above, are certain coats made of a plush fabric with a long nap or pile. This fabric is manufactured of a particular kind of silk known as "Tussa Silk." This said fabric is of a silky texture with a long silk nap or pile and very closely resembles genuine seal skin. It has been known throughout a long period of time as "Seal Plush"; long and constant usage of the term "Seal Plush" with reference to the particular fabric manufactured of the Tussa Silk has given the term a secondary meaning and it is understood by the general public to designate solely the fabric described above.

PAR. 4. Respondent advertised in the said catalogue and in various other printed matter, certain coats manufactured from a cotton plush and having a cotton pile or nap, which coats were described in the said catalogue as follows:

It is one of the bi gest values in our catalogue. The material is deep pile Iceland Seal Plush. It has the appearance of genuine seal and will wear equally as well.

The said coats so described and advertised were not manufactured of the fabric known as Seal Plush but were manufactured of a cotton fabric with a cotton pile or nap and were in no way equal to the fabric known as Seal Plush. The term "Iceland Seal Plush," as used in said catalogue to advertise and describe the said coats, was false and misleading and had the tendency and capacity to mislead and deceive the purchasing public into the belief that by purchasing the said coats, designated as "Iceland Seal Plush," it was obtaining a coat manufactured of a silk plush fabric commonly known as "Seal Plush," when in truth and in fact it was obtaining a coat manufactured of a cotton fabric in no way equal to the fabric known as "Seal Plush."

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

spondent, the statement of facts agreed on by counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Bellas-Hess & Company, its officers, agents, representatives, servants and employees do cease and desist from

Using the term "Seal Plush," standing alone or in combination with any word or words in its catalogues, advertising matter, or in its trade-marks, trade names, labels or devices, in connection with the sale of coats manufactured from a cotton plush fabric with a cotton nap or pile.

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

FEDERAL TRADE COMMISSION

v.

LOUIS PHILIPPE, INC., AND PARK & TILFORD.

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

Docket 771—July 21, 1922.

SYLLABUS.

Where a concern engaged in the manufacture and sale of toilet preparations which contained a constituent produced from lemon rind, but did not contain lemon juice, labeled the same "An exquisite French preparation of real lemons; cleansing and bleaching cream. * * * whitens the skin," "Creme Angelus, the lemon cleansing cream, * * *. Hygienic. Cleanses and softens the skin. Bleaches. A French preparation of lemon and oil emollients. Softens and whitens the skin. * * *," "An exquisite French retiring cream of real lemons for bleaching the skin. A superfine French skin food * * *," and "Creme Angelus, the lemon tissue cream, a superfine skin improver, * * *. A retiring cream of lemon and oil emollients. Softens. Whitens, * * *"; and

Where a corporation engaged in the sale as exclusive distributor of said concern's aforesaid products, in advertising the same described them as "made with real lemons. The juice of the lemon—Nature's own source of the beautiful complexion of Italy's and Spain's fairest daughters," etc.—as the "product of real lemons," and as "made from real lemons," and pictured a hand squeezing a lemon into an open jar of the cleansing cream and otherwise featured pictured lemons in connection with said preparations;

With the effect of misleading purchasers and the general public into believing that through the use of said preparations they were obtaining the cleansing or detergent effects of lemon juice:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Louis Philippe, Inc., and Park & Tilford, hereinafter referred to as the respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Louis Philippe, Inc., is a corporation organized under the laws of the State of New York, with its principal place of business in New York City, in said State. That the respondent, Park & Tilford, is a corporation organized under the laws of the State of New Jersey, with its principal place of business in New York, N. Y.

PAR. 2. That the respondent, Louis Philippe, Inc., is engaged in the business of manufacturing a toilet preparation, known as "Creme Angelus," which it distributes to the trade throughout the several States of the United States, through the respondent, Park & Tilford, exclusively. That the respondent, Park & Tilford, is engaged in the business, among other things, of buying and selling, in wholesale quantities, toilet articles, including said preparation known as "Creme Angelus," and causes commodities sold by it to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States, and each of said respondents carries on its respective business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That pursuant to the terms of a certain contract theretofore entered into by and between the respondents herein, the respondent Park & Tilford extensively advertised the product "Creme Angelus," in newspapers of general circulation throughout the United States; and in circulars and other printed matter, which were given general circulation by said Park & Tilford; that said advertising matter contained numerous false and deceptive statements of and concerning said product; that among such false and deceptive statements were statements to the effect that "Creme Angelus" was a French lemon cleansing cream, "made with real lemons"; "compounded from real lemons," whereas it contains no juice of the lemon and is not manufactured in France; such advertisements were illustrated in some instances by the picture of a half lemon, the juice of which was being pressed into a jar of the product; that such advertisements illustrated as aforesaid were calculated to and do create a false belief in the minds of the purchasing public that said product "Creme Angelus" is a French preparation and contains, as a principal ingredient, the juice of lemons, and the public is induced to purchase said product by the means of the false and deceptive statements contained in such advertisements.

PAR. 4. That the original packages in which the product "Creme Angelus" has been marketed by respondents, and the individual jars

containing said product, have placed thereon labels, upon which are printed "Creme Angelus"; "A Superfine French Skin Food and Perfect Massage Cream"; "An Unequalled French Retiring Cream of Real Lemons, For Bleaching the Skin"; which statements are false in that said product is of domestic manufacture and contains no juice of lemons, and such labels were calculated to and do mislead and deceive the purchasing public.

PAR. 5. That the false and deceptive statements contained in the advertisements and labels as set out in or referred to in paragraphs 3 and 4 hereof, are further calculated to and have the effect of stifling and suppressing competition in the sale of toilet preparations which have the general characteristics which respondents claim for the product "Creme Angelus," by hindering or preventing competitors of respondents from marketing similar toilet preparations which do in fact contain the juice of lemons.

PAR. 6. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Louis Philippe, Inc., and Park & Tilford, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act. The respondents having appeared by attorneys, Ellis, Ferguson & Colquitt, and having filed their answers, and said Louis Philippe, Inc., having also filed an amended answer, and being desirous of expediting this proceeding and avoiding the expense incident to the taking of testimony, have, each of them separately, stipulated and agreed with W. H. Fuller, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, that these statements or stipulations signed by said W. H. Fuller and Ellis, Ferguson & Colquitt, attorneys for both rspondents, should be taken as the facts in this proceeding, and that such facts should be in lieu of evidence and testimony, and that the Federal Trade Commission shall proceed forthwith upon said statements of fact or stipulations to make and enter a report stating its findings as to the facts and its conclusion therefrom, and issue an order disposing of this proceeding, without the introduction of testimony in support of the same, the parties to that agreement

waiving any and all rights they may have to require the introduction of such testimony.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That both respondents, Louis Philippe, Inc., and Park & Tilford, are corporations organized under the laws of the State of New York, with their principal places of business in the city of New York, N. Y.

PAR. 2. That Louis Philippe is the president and treasurer and owns and controls the majority of the capital stock of Louis Philippe, Inc., which corporation was organized under his direction in 1915; Louis Philippe was formerly a citizen of and a resident in France, until 1910, when he came to the United States, and is now a naturalized citizen of this country. In 1905 he began the production of a toilet preparation which he designated "Creme Angelus," and marketed the same in France for about five years. Since he came to the United States in 1910 he has manufactured and marketed this toilet preparation as an individual and through the corporation which he formed, until the year 1920, when Louis Philippe, Inc., entered into a contract with Park & Tilford, by the terms of which said Park & Tilford agreed to purchase the entire output of manufactured toilet preparations of Louis Philippe, Inc., the delivery of the same to take place at the factory of Louis Philippe, Inc., in the city of New York; that prior to the delivery of these toilet preparations they were completely labeled and fully prepared at the factory of Louis Philippe, Inc., and ready for distribution upon their delivery to Park & Tilford.

PAR. 3. The contract further provided that the advertising of these products should be entirely under the control and direction of Park & Tilford as to the subject matter, style and arrangement; the cost, however, of said advertising to be borne equally by the two respondents in this proceeding. Prior to November, 1920, the "Angelus Cleansing Cream" labels contained the following matter:

An exquisite French preparation of real lemons; cleansing and bleaching cream. Instantly removes dust and make-up. Whitens the skin.

That since November, 1920, said labels contained the following printed matter:

Creme Angelus, the lemon cleansing cream, cleans and instantly removes dirt, dust, and powder from the pores. Hygienic. Cleanses and softens the skin. Bleaches. A French preparation of lemon and oil emollients. Softens and whitens the skin. For sunburn, freckles and tan. Reg. U. S. Pat. Off., Louis Philippe, Inc., N. Y. Made in U. S. A.

That in November, 1920, and prior thereto, labels for the preparation now known as "Tissue Cream" contained the following printed matter:

An exquisite French retiring cream of real lemons for bleaching the skin. A superfine French skin food and perfect massage cream.

Since that date said labels contain the following printed matter:

Creme Angelus, the lemon tissue cream, a superfine skin improver, invigorates and strengthens the tissue by careful massage. A retiring cream of lemon and oil emollients. Softens. Whitens, soothes and refreshes. Reg. U. S. Pat. Off., Louis Philippe, Inc., N. Y. Made in U. S. A.

PAR. 4. That the toilet preparations of "Creme Angelus" are made through a secret formula known only to Louis Philippe; that these preparations contain no juice of lemons, but do contain as one of the ingredients, a constituent produced from lemon rind or skin known as "Oil of Lemon, U. S. P. B. F., hand pressed"; and all of these preparations herein referred to are made in the United States.

PAR. 5. The respondent Park & Tilford is engaged in the business, among other things, of buying and selling in wholesale quantities, all of the output of toilet preparations of Louis Philippe, Inc., and causes such commodities when sold by it to be transported to the purchasers thereof, from the State of New York through and into other States of the United States, and carries on said business in direct and active competition with other persons, partnerships and corporations similarly engaged, and in promoting the sale and distribution of these products, advertised the cleansing cream trademarked "Creme Angelus" on the 31st day of October, 1920, as follows:

Made with real lemons. The juice of the lemon—Nature's own source of the beautiful complexion of Italy's and Spain's fairest daughters—now for the first time skillfully blended with the choicest oil emollients by Louis Philippe into a superfine cleansing cream.

Accompanying this advertisement was a pictorial illustration showing a hand holding half of a cut lemon, from the pulp of which lemon, drops of lemon juice were being squeezed. That advertisement, which appeared in the New York Times of October 31, 1920, was repeated, similarly illustrated, in the same paper of November 11, 1920, and in the New York World of December 12, 1920, but the printed matter did not contain any statement that the cream contained lemon juice. The arrangement of this advertising matter was changed at different times, both as to wording and as to the pictorial illustrations. The New York Times issue of September 12, 1920, contained the advertisement of Angelus cleansing cream de-

scribing it as the "product of real lemons." The pictorial illustration was the hand holding a half of a cut lemon and squeezing from the pulp, drops of lemon juice into an open jar of the cleansing cream; beside the jar was the half of a cut lemon; and this advertisement, as illustrated, was repeated October 10, 1920, and November 7, 1920, in the same newspaper. That respondent, in the latter part of 1920, caused advertisements of "Angelus" products to be inserted in various publications of general circulation in the State of New York and States adjacent thereto, in which advertisements said products were described as being "made from real lemons." Then and thereafter the illustration was changed so as to show a hand holding half a lemon suspended over a jar of "Creme Angelus," with no drops dripping into the jar, and with the top of the jar closed and sealed.

PAR. 6. The advertising campaign of these products was conducted by a reputable advertising agency in the city of New York, under the direction of Park & Tilford. During this campaign Park & Tilford gave directions to this advertising agency to omit from the advertisements statements that "Creme Angelus" contained lemon juice. Through an inadvertence on the part of the advertising agency, twice after notice were statements made that lemon juice was used in the preparations.

PAR. 7. That since June 1, 1921, the advertisements of these preparations have not contained statements that they are made from lemon juice, nor have any of the illustrations contained pictures of real lemons.

PAR. 8. That the effect of such labeling and advertising as herein set forth, where the printed statements referred to the preparations as containing the "juice of lemons," or where the pictorial illustrations showed real lemons from which juice was being squeezed, or other similar illustrations of real lemons, whether associated together or used separately, has been to mislead purchasers and the general public into believing that they are obtaining through the use of these preparations, the cleansing or detergent effects of lemon juice, when in fact there is not nor never has been lemon juice therein.

CONCLUSION.

That the practices of said respondents, under the conditions and circumstances described in the foregoing findings and condensed in the eighth paragraph thereof, 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 under the pleadings and the stipulations received by an examiner duly appointed by 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," which said report is hereby referred to and made a part hereof,

Now, therefore, it is ordered, That the respondents, Louis Philippe, Inc., and Park & Tilford, or either of them, their officers, directors, agents and employes, cease and desist from directly or indirectly making or causing to be made, statements or representations in labels, advertisements in newspapers, magazines and other publications of general circulation, or in other advertising matter which respondents, or either of them cause to be given general circulation, which statements or representations relate to toilet preparations offered for sale or sold by respondents or either of them in the due course of commerce among the several States of the United States, or with foreign nations, and announce in express terms or by implication that such toilet preparations contain the juice of lemons, except and unless such preparations do in fact contain such juice of lemons; or from illustrating such advertisements or advertising matter with pictures which may have the capacity or tendency to create in the minds of the purchasing public, the erroneous belief that such preparations contain the juice of lemons.

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

Commissioner Van Fleet dissenting.

FEDERAL TRADE COMMISSION
v.
SWIFT & COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AND SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 453—August 3, 1922.[1]

SYLLABUS.

Where a corporation engaged in the purchase of live stock and the manufacture, distribution, and sale of meat and meat products, purchased the capital stock of two competing packing plants, assumed the operation of said competing businesses, caused said stock to be issued in the names of certain of its officers and employees to be held for its use and benefit, and caused said officers and employees as officers and stockholders of said competing businesses to convey to it the respective businesses and properties for a nominal consideration; with the result that (1) existing competition between said packing plants and between said corporation and said packing plants in the sale of meat and meat products, and (2) increasing, prospective, and potential competition between said plants in the purchase of live stock, was suppressed and eliminated, and (3) commerce in a section or community was restrained:

Held, That such acquisition of stock, under the circumstances set forth, constituted a violation of Section 7 of the Clayton Act, and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

AMENDED COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Swift & Company, hereinafter referred to as the respondent, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraint and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Swift & Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the City of Chicago, in said State, and has been and is now and at all times hereinafter mentioned engaged in

[1] Findings printed as very slightly modified by the Commission on November 17, 1922.

the business of slaughtering live stock, and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock; including leather; said products, by-products and commodities being sold by respondent in the various States of the United States, the territories thereof, and the District of Columbia, and when sold respondent causes same to be transported from one or more of said States and territories through and into other States and Territories of the United States and the District of Columbia.

PAR. 2. That the Moultrie Packing Company at all the times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Georgia, with its principal place of business at Moultrie, in said State, and was engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products and by-products to be transported when sold, from the State of Georgia, through and into other States of the United States, the territories thereof and to the District of Columbia, and prior to June 1, 1917, was in direct competition with respondent and other persons, partnerships and corporations similarly engaged.

PAR. 3. That Section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," is and provides, in part, as follows:

> 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.

PAR. 4. That on or about June 1, 1917, the respondent purchased 956 shares of the total of 966 shares of the capital stock of said Moultrie Packing Company issued and outstanding, and caused the same to be transferred on the books of said company and reissued to certain officers and employees of the respondent, who thereby became and remained record holders of said stock, but who held the same for the use and benefit of the respondent; that thereafter, on or about the 13th day of August, 1917, the respondent caused its said officers and employees who held the said stock to hold a stockholders' meeting of said company and at such meeting to elect as directors of said Moultrie Packing Company certain officers and employees of the respondent; that thereafter the respondent arranged to acquire the physical

assets and properties of the said Moultrie Packing Company, and caused its said officers and employees, who were the directors and stockholders thereof, to accept an offer of purchase from the respondent and to pass a resolution directing a division of the surplus assets of the Moultrie Packing Company among the stockholders of said company, and a sale of the remaining assets, including the plant, fixtures, machinery and good-will of said company to the respondent; that said sale and transfer was authorized by the Board of Directors of said Moultrie Packing Company composed of officers and employees of the respondent, on or about November 3, 1917, and was ratified at a special meeting of the stockholders of said company, all of whom were officers and employees of the respondent, on or about January 5, 1918; and that since the acquisition of said capital stock by respondent, as above set out, respondent has continuously owned said stock in the manner above stated, and does now own same, and has, through its agents, officers and employees, continuously operated, and controlled the operations of, the plant and business of the said Moultrie Packing Company, whose stock it so acquired, which plant and business respondent operated as the plant and business of the Moultrie Packing Company from about the time of the acquisition of the capital stock as above set out, up to November 3, 1917, and that from about November 3, 1917, respondent has operated said plant and business as the plant and business of Swift & Company, and does now so operate same. That the effect of all the foregoing was to substantially lessen competition between respondent and said Moultrie Packing Company; to restrain commerce in the section and community of and adjacent to Moultrie, Ga., and elsewhere; and to tend to create a monopoly of the lines of commerce carried on by the respondent and said Moultrie Packing Company.

PAR. 5. That the transfer and issue of said stock of the said Moultrie Packing Company to officers and employees of the respondent, the election of employees and officers of respondent as directors and officers of said Moultrie Packing Company, and the pretended sale by such officers of the physical assets and properties of said Moultrie Packing Company to the respondent, were intended by the respondent to conceal the acquisition by it of the said stock of said Moultrie Packing Company, and were intended as a device to evade the provisions of Section 7 of the said Act of Congress approved October 15, 1914.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Swift & Company, hereinafter referred to as respondent, has been and is using unfair

methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. As grounds for said complaint, said Commission relies upon the matters and things set out in paragraphs 1, 2 and 4 of count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraphs 1, 2 and 4 are incorporated herein by reference and adopted as a part of the allegations of this count.

III.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Swift & Company, hereinafter referred to as the respondent, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. As grounds for said complaint, said Commission relies upon the matters and things set out in paragraph 1 of count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraph 1 is incorporated herein by reference and adopted as a part of the allegations of this count.

PAR. 2. That the Andalusia Packing Company at all the times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Alabama, with principal place of business at Andalusia, in said State, having capital stock of $133,250, divided into shares of par value of $50 each, and was engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products to be transported when sold, from the State of Alabama, through and into other States of the United States, and the territories thereof and the District of Columbia, and prior to July 24, 1917, was in direct competition with respondent and other persons, partnerships and corporations, similarly engaged.

PAR. 3. That section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," is and provides, in part, as follows:

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.

PAR. 4. That on or about July 24, 1917, the respondent purchased all of the capital stock of said Andalusia Packing Company, issued and outstanding, and caused the same to be transferred on the books of said company, and issued to certain officers and employees of the respondent who thereby became and remained record holders of said stock, but who held the same for the use and benefit of the respondent; that thereafter, on or about the 24th day of July, 1917, the respondent caused its said officers and employees who held such stock to hold a stockholders' meeting of said company, and at such meeting to elect as directors of said Andalusia Packing Company certain officers and employees of the respondent; that thereafter the respondent arranged to acquire the physical assets and properties of the said Andalusia Packing Company and caused its officers and employees who were the directors and stockholders thereof to accept an offer of purchase from the respondent and to pass a resolution directing a division of the surplus assets of said Andalusia Packing Company among the stockholders of said company, and the sale of the remaining assets, including the plant, fixtures, machinery, and good will of said company to the respondent; that said sale and transfer were authorized by the board of directors of said Andalusia Packing Company, composed of officers and employees of the respondent, on or about March 30, 1918; that on or about June 29, 1918, said board of directors, composed as aforesaid of officers and employees of respondent, resolved to liquidate said Andalusia Packing Company, and that since the time of the acquisition of said capital stock by respondent, as above set out, respondent has continuously owned said stock in the manner above stated, and does now so own same, and has, through its agents, officers and employees, continuously operated, and controlled the operations, of the plant and business of the said Andalusia Packing Company, whose capital stock it so acquired, which it operated from about July 24, 1917, the time of the acquisition of the capital stock, up to about March 30, 1918, as the plant and business of the Andalusia Packing Company, and from about March 30, 1918, respondent has

operated said plant and business as the plant and business of Swift & Company, and does now so operate same. That the effect of all the foregoing was to substantially lessen competition between the respondent and said Andalusia Packing Company; to restrain commerce in the section and community of and adjacent to Andalusia, Ala., and elsewhere; and to tend to create a monopoly of the lines of commerce carried on by respondent and said Andalusia Packing Company.

PAR. 5. That the transfer and issue of said stock of said Andalusia Packing Company to officers and employees of the respondent, the election of officers and employees of respondent as directors and officers of the said Andalusia Packing Company, and the pretended sale by such officers of the physical assets and properties of the said Andalusia Packing Company, were intended by the respondent to conceal the acquisition by it of the said stock of said Andalusia Packing Company, and were intended as a device to evade the provisions of Section 7 of said Act of Congress approved October 15, 1914.

IV.

And the Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Swift & Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. As grounds for said complaint, said Commission relies upon the matters and things set out in paragraph 1 of Count I, and paragraphs 2 and 4 of Count III of this complaint, to the same extent as though the allegations thereon were set out at length herein, and said paragraphs are incorporated herein by reference, and adopted as part of the allegations of this count.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondent, Swift & Company, has been and now is using unfair methods of competition in interstate commerce, in violation of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its

powers and duties, and for other purposes"; and that said respondent, Swift & Company, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and that a proceeding by it as to such alleged violation of Section 5 of the Act of September 26, 1914, would be to the interest of the public; and fully stating its charges in that respect; and respondent having entered its appearance by Messrs. Albert H. and Henry Veeder, of Chicago, Ill., its attorneys, and having duly filed its answer, admitting certain of the allegations of said complaint and denying others, and hearings in said proceeding having taken place before an Examiner of the Commission, and the Commission having offered evidence in support of the charges of said complaint, and respondent having offered evidence in its own defense, and both parties to this proceeding having rested, and the attorneys of both parties having fully argued the issues in the proceeding, and having presented said issues herein to the Commission for final consideration and determination, and the Commission having duly considered the record herein, and being fully advised in the premises, now makes its report and findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.[1]

PARAGRAPH 1. That respondent, Swift & Co., organized in 1885, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the City of Chicago, Ill., and respondent during all of said time has been and now is engaged in the meat-packing industry and trade, including the purchasing and slaughtering of live stock and in the converting and producing of meat and meat products and by-products, and in the sale and shipment and distribution thereof into and through the various States of the United States, the Territories thereof and the District of Columbia, selling, shipping, and distributing same through its various branch houses; and respondent, during said period, has been and now is in direct competition with other persons, partnerships and corporations similarly engaged (except as respondent may have been self-restrained by illegal pools, agreements or understandings) and respondent was thus engaged in competition with the Moultrie Packing Co., of Moultrie, Ga., from about December, 1914, up to the time respondent acquired the capital stock of said company, about June 1, 1917; and respondent was likewise thus engaged in competition with the Andalusia Packing Co., of Andalusia, Ala., from about May,

[1] Printed as very slightly modified by the Commission on November 17, 1922.

1916, to the time when respondent acquired the capital stock of the said company, about July 24, 1917.

PAR. 2. That the Moultrie Packing Company, organized in 1913, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business in the city of Moultrie, Ga., and that said Moultrie Packing Co., from about December, 1914, up to about June, 1917, was continuously engaged in the meat-packing industry and trade, including the purchasing and slaughtering of live stock and the converting and preparation therefrom of meat and meat products and by-products, and in the sale, shipment and distribution of said commodities throughout the State of Georgia, and of a substantial portion of said products, estimated at one-third, from the State of Georgia through and into other States of the United States, and more particularly through and into the States of Florida and Alabama; and in said business of sale, shipment and distribution said Moultrie Packing Company was, prior to June 1, 1917, in direct competition in interstate commerce with respondent and other persons, partnerships and corporations similarly engaged.

PAR. 3. That the Andalusia Packing Company, organized in October, 1915, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business in the city of Andalusia, Ala., and said Andalusia Packing Co., from about May or June, 1916, up to about July 24, 1917, was continuously engaged in the meat-packing industry and trade, including the purchasing and slaughtering of live stock and the converting and preparation therefrom of meat and meat products and by-products, and in the sale, shipment and distribution of said commodities throughout the State of Alabama, and of a substantial portion of said products, estimated at one-fourth, from the State of Alabama through and into other States of the United States, and, more particularly, through the States of Georgia and Florida; and in said business of sale, shipment and distribution, said Andalusia Packing Co. was, prior to about July 24, 1917, in direct competition in interstate commerce with respondent and other persons, partnerships and corporations similarly engaged.

PAR. 4. That—

(*a*) Between March 15, and August 2, 1917, respondent, Swift & Company, acquired by purchase, the entire then outstanding capital stock of said Moultrie Packing Company, and caused such capital stock, except twenty shares thereof not then delivered, to be issued in the names of certain of its officers and employes, and to be held for the use and benefit of said respondent. In the course of the months of June, July and August, 1917, respondent, through said

stock ownership, assumed full possession and control of the plant, assets and business of said Moultrie Packing Company, and at all times thereafter retained and exercised such control. Details of said acquisition and control are substantially as follows:

(*b*) Moultrie Packing Company, a corporation mentioned in Paragraph 2 hereof, was organized under the laws of the State of Georgia, on or about October 8, 1913, by W. C. Vereen and other persons in and about the City of Moultrie, in said State, for the purpose of conducting a general packing business, dealing in live stock, meats of all kinds, cold storage of meats, vegetables and other articles, and in the manufacturing of ice. Said Moultrie Packing Company had an authorized capital stock of $300,000, divided into shares of $100 each. A plant was constructed at the City of Moultrie, Ga., and was opened for business in the Autumn of 1914, and from about December, 1914, up to about June 1, 1917, said Moultrie Packing Company continued in increasing volume its operations of purchasing and slaughtering live stick and in preparing and converting of meat and meat products and by-products therefrom, and in their general sale and distribution. In the course of the next year it secured more live stock than it could slaughter, and extended the market for its products to Atlanta, Ga.; Jacksonville, Fla.; Birmingham, Ala., and to other cities and to other States. Sales by said Moultrie Packing Company were made chiefly through brokers, although it also employed salesmen.

(*c*) F. A. Hunter, of St. Louis, Missouri, General Manager of respondent, Swift & Company, at National Stock Yards, East St. Louis, Illinois, in the early spring of 1917, visited the plant of said Moultrie Packing Company, of Moultrie, Georgia, and introduced himself to said W. C. Vereen, then President of said Moultrie Packing Company, whom he found at said plant. Said Hunter stated that he represented Swift & Company, and asked permission to inspect the plant of said Moultrie Packing Company. He was given such permission and made such inspection.

(*d*) Several weeks later, said Hunter called upon said Vereen in the Piedmont Hotel, in Atlanta, Georgia. At this time said Hunter asked said Vereen if he would not sell the Moultrie Packing Company. Said Hunter said he would try to make the sale of said company to Swift & Company.

(*e*) Several weeks later, May 14, 1917, said Hunter called said Vereen on long distance telephone from Montgomery, Alabama, and made an appointment for said Vereen to meet Louis F. Swift, an

Executive Officer of Swift & Company, respondent herein, at Jacksonville, Florida, the next morning. Said Vereen and said Swift met at the Windsor Hotel, in Jacksonville, May 15, 1917. Said Swift and said Vereen talked over the business of said Moultrie Packing Company, and the source of its supply of live stock, referring to a map as they did so. Said Vereen told Swift that said Vereen would sell his stock in the Moultrie Packing Company for $150 a share, and could probably get all the other stock of said Moultrie Packing Company for the same price. Said Swift offered said Vereen $125 a share for said stock of said Moultrie Packing Company and said Vereen objected that that was not enough, basing his objection upon the earnings of said Moultrie Packing Company. Then said Swift remarked:

Don't you believe, if I were to go to Albany or to Valdosta, Ga., and tell them I would put up a packing plant there twice as large as the Moultrie plant, that they would give me $50,000 or $75,000?

Mr. Vereen stated in his testimony:

I thought a moment, and I said, "Yes, Mr. Swift, I believe they would"; for the reason that I knew that Albany and Valdosta, at that time, were very, very anxious to have a packing plant.

(Testimony of W. C. Vereen, Transcript p. 556.)

There was some further discussion and said Vereen agreed to give said Swift an option till June 1, 1917, on the stock that he owned personally in said Moultrie Packing Company, and to buy up for him at the same price the stock held by others. An option of the above tenor was given at that time by the said Vereen to said Swift, the price of said stock being named as $125 per share. Said Swift reduced said option to writing and it was signed in duplicate at once by said Vereen, and dated May 15, 1917. The option as prepared by said Swift was taken in the name of said F. A. Hunter, and recited that outstanding stock was about $97,000 par, and that the books of the Company showed a profit of about $90,000. Said Swift told said Vereen that if any correspondence became necessary to address Mr. H. J. Nelson, Swift & Company, Union Stock Yards, Chicago.

(*f*) Said Vereen, on his return to Moultrie, called a meeting of the Board of Directors of said Moultrie Packing Company, told them of his conversation with said Swift, and they agreed to accept $125 per share for their holdings of stock in said Moultrie Packing Company, and to take up with all stockholders of said Moultrie Packing Company the matter of getting them to sell their stock at

the same price. Said option expired June 1, 1917, and was extended by said Vereen until July 1, 1917. Said Vereen succeeded, early in June, 1917, in getting all of the outstanding capital stock of Moultrie Packing Company, 966 shares in all, except 20 shares which at that time was located but not available for various reasons, and sent said stock to the Fort Dearborn National Bank, at Chicago, with instructions to said bank to deliver said stock to Swift & Company, respondent herein, on payment for it of $125 a share. The stock was afterwards paid for and delivered to respondent, Swift & Company, and the 20 additional shares were later secured and delivered to respondent, Swift & Company.

(*g*) A financial statement of said Moultrie Packing Company, submitted to its president by its auditor, May 15, 1917, showed net profits of said Company from January 1, 1917, to April 30, 1917, of $62,843.76 and a surplus of $92,170.79.

(*h*) Prior to May 28, 1917, respondent, Swift & Company, after a meeting of certain of its officers and employes in its Board room in Chicago, acting for and on behalf of respondent, caused O. C. E. Matthies, its Auditor, to proceed to Moultrie, Ga., and make an audit of the books of said Moultrie Packing Company. This audit as reported June 1, 1917, to H. J. Nelson, an officer of Swift & Company, respondent, set forth among other things, that "As a result of this investigation, I am of the firm conviction that the capital stock of this concern is worth $165 per share as a going concern, and recommend its purchase. * * *"

(*i*) As of the same date, W. A. Burnett was also sent to Moultrie, Ga., by respondent, to make a physical inspection of the plant of said Moultrie Packing Company. He reported thereafter upon its condition and the estimated cost of changes which were recommended. His report indicated that the physical plant was worth about $202,500.

(*j*) In June, 1917, Swift & Company sent H. C. Wallow, its employee at Chicago, to take charge of the office of said Moultrie Packing Company, and sent F. A. Luchsinger to "watch things" and work with Mr. Brooks, then Manager of said Moultrie Packing Company. Mr. Luchsinger was to be the representative of the respondent, Swift & Company, at said plant. Mr. Brooks remained with said Moultrie Packing Company until about November 1, 1917, but after the coming to Moultrie of said Luchsinger Mr. Brooks was under the direction of respondent, Swift & Company, in his activities at said plant.

(*k*) August 13, 1917, stockholders of said Moultrie Packing Company held an adjourned annual meeting at Moultrie, Ga., at which said W. C. Vereen and said C. H. Wallow, each credited with five shares of the capital stock of said Moultrie Packing Company, were present in person, and W. B. Traynor, C. A. Peacock, J. J. McGuire, T. H. Ingwersen, H. C. Carr and E. B. Kixmiller were represented by proxies. In all, 798 shares were there represented. All stockholders represented or present at said meeting, except said W. C. Vereen, were then officers or employees of respondent, Swift & Company, and held the stock of said Moultrie Packing Company for the use and benefit of said respondent. Said W. C. Vereen was given five shares of stock, to qualify him as an officer and director, which stock he at once upon securing indorsed in blank and returned to Swift & Company. At said stockholders' meeting of August 13, 1917, T. H. Ingwersen, F. J. King, H. C. Carr, A. B. Kixmiller, O. C. E. Matthies and F. A. Luchsinger, all employees or officers of Swift & Company, were elected directors of said Moultrie Packing Company. W. C. Vereen, then without pecuniary interest in said Moultrie Packing Company, was also elected a director. Said stockholders, at said meeting of August 13, 1917, also elected the following officers:

T. H. Ingwersen, President; O. C. E. Matthies, Vice President; C. H. Wallow, Secretary and Treasurer; C. A. Peacock, Assistant Secretary; J. J. McGuire, Assistant Treasurer. All of said officers were then officers or employees of Swift & Company.

(*l*) November 3, 1917, T. H. Ingwersen, F. J. King, H. C. Carr, E. B. Kixmiller, and O. C. E. Matthies, all then officers or employees of respondent, met in Chicago as directors of said Moultrie Packing Company; C A. Peacock, also an officer of respondent, was also present and acted as Secretary and said officers and employees, acting at the same time as such directors of said Moultrie Packing Company, at the instance and direction of respondent, at said meeting of November 3, 1917, adopted a resolution to sell all the business and property of said Moultrie Packing Company to Swift & Company, of Illinois, respondent herein, authorizing and directing the President to carry such sale into effect, and providing that the Company be wound up and liquidated and its assets be distributed among the stockholders in proportion to their holdings.

(*m*) At a special meeting of stockholders held at Moultrie, Ga., January 5, 1918, at which F. A. Luchsinger, W. C. Vereen and C. H. Wallow were present in person, and T. H. Ingwersen, F. J. King, H. C. Carr, E. B. Kixmiller, O. C. E. Matthies, W. B. Traynor, C. A.

Peacock and J. J. McGuire were represented by proxy, said action of said Board of Directors, at its meeting November 3, 1917, selling the property and business of the said Moultrie Packing Company was, at the instance and direction of the respondent, confirmed, and said Moultrie Packing Company was ordered wound up and liquidated, and its assets distributed to stockholders in proportion to their holdings. At said stockholders' meeting of January 5, 1918, 956 shares of the capital stock of said Moultrie Packing Company were represented, being all the outstanding stock except ten shares. All stockholders at said meeting of January 5, 1918, were officers and employees of respondent, Swift & Company, except the said W. C. Vereen, who had no pecuniary interest in the five shares of stock which he then held.

(*n*) A written instrument, dated November 3, 1917, evidences the sale by said Moultrie Packing Company to Swift & Company, of Illinois, respondent herein, of its entire business and plant except real estate, and a deed dated November 24, 1917, evidences the sale by said Moultrie Packing Company of its real estate at Moultrie, Ga., to Swift & Company. Said written instrument and deed were without consideration (other than nominal) moving to said Moultrie Packing Company corporation, and constituted and were mere paper transfers to respondent in the carrying out of the intent and purpose of respondent, following, and as a result of, respondent's prior illegal acquisition of the capital stock of the said Moultrie Packing Company.

PAR. 5. That—

(*a*) On or about July 24, 1917, respondent, Swift & Company, acquired by purchase the entire outstanding capital stock of said Andalusia Packing Company, and caused said capital stock to be reissued to numerous persons who were then officers or employees of respondent, which persons held such stock for the use and benefit of respondent. In the month of August, 1917, respondent, through such stock ownership, assumed complete possession and control of the plant, assets and business of said Andalusia Packing Company, and at all times thereafter retained said possession and control. Details of such acquisition and control are in substance as follows:

(*b*) On or about October 8, 1915, T. E. Henderson, and other residents of Andalusia, Alabama, and in the neighborhood thereof, organized said Andalusia Packing Company, under the laws of the State of Alabama, with power to build, operate and maintain a packing house or packing plant or cold storage buildings and to

engage in, carry on and operate a general packing-house and cold-storage business. Said Andalusia Packing Company had an authorized capital stock of $250,000, all of one class, divided into 5,000 shares of $50 each, par value. Said stock was sold to about 150 to 200 subscribers in the City of Andalusia and the neighborhood thereof, until about 2,665 shares of such stock were outstanding.

(*c*) After the organization of said Andalusia Packing Company, and prior to July, 1916, said corporation constructed a packing plant in said City of Andalusia.

(*d*) About June, 1916, said plant began the operations of purchasing and slaughtering livestock and conducting a general packing and cold storage business, although the volume of said business was not large until October, 1916, and thereafter. Said Andalusia Packing Company secured its livestock principally in the surrounding territory, and found a market for its goods in the State of Alabama, Georgia and Florida, and other States. Its principal output was pork and pork products. Its business grew rapidly and it found a ready and profitable market for its products.

(*e*) Late in May, or early in June, 1917, F. A. Hunter, of St. Louis, General Manager of respondent, Swift & Company, of National Stock Yards, East St. Louis, Illinois, and H. C. Carr, of the livestock-buying and dressed beef department of respondent, Swift & Company, visited Andalusia, Ala., and inspected the plant of said Andalusia Packing Company. They had met President T. E. Henderson, and after the inspection of said plant called upon him at his office in a bank in Andalusia, in which he was also an officer. Livestock and packinghouse conditions were discussed, and said Hunter, before leaving, asked said Henderson if he and his associates wanted to sell their plant. Said Henderson replied that he had not thought of it, and anticipated that there might be trouble with stockholders if such a sale were attempted. Said Hunter finally told said Henderson that if he and his associates wished to sell said Andalusia plant to write said Carr at Chicago. Said Henderson replied that he would prefer to put it in this way: "If you gentlemen take a notion that you want to buy this plant, you let me know." That ended the conversation at the time.

(*f*) Ten days or two weeks thereafter, said Carr wrote said Henderson a letter concerning the purchase of said Andalusia Packing Company plant, and said Henderson replied by telegram, dated June 5, 1917, advising said Carr to send a representative to "discuss matter." Said Carr wired said Henderson, June 6, 1917, that he

would be in Andalusia June 8, 1917, and said Henderson by wire made an appointment with said Carr at said Henderson's office in Andalusia on that date.

(*g*) Said Carr kept said appointment, meeting said Henderson at Andalusia, June 8, 1917, and also meeting A. C. Darling, a stockholder, and then Secretary of said Andalusia Packing Company. As a result, said Henderson and said Darling gave said Carr an agreement in writing, running to H. C. Carr, "for Swift and Company," amounting to a sort of option at $75 per share, par value $50, until June 27, 1917, upon the capital stock held individually by said Henderson, and said Darling, in said Andalusia Packing Company, being 144 shares owned by said Darling and 130 shares owned by said Henderson. Said Darling and said Henderson agreed, also, to use their best efforts toward buying the remaining shares of stock in said Andalusia Packing Company at $75 per share, for respondent. In the event of their failing to secure the other stock, the option upon their own stock was not to bind them.

(*h*) Telegrams were exchanged thereafter between said Carr and said Henderson, resulting in a telegraphic confirmation by said Henderson, June 26, 1917, of the sale of said 2,665 shares of the capital stock of said Andalusia Packing Company, at $70 a share. The facts developed in this proceeding do not fully reveal the reason why the price for said capital stock was finally fixed at $70, rather than $75, per share, the price named in said option; but there were some indications that respondent let it be known to said Henderson and said Darling that an alternative proposition was then being considered by respondent of establishing a packing plant in Montgomery, Ala. Said Carr and said Henderson also corresponded as to details of such sale, such as the assumption of debts of said Andalusia Packing Company by respondent; in relation to outstanding accounts; inventory files and other details, having exchanged letters June 28 and July 2 and 9, 1917.

(*i*) Respondent, Swift & Company, sent its attorney, R. E. Fisher to Andalusia, Ala., prior to July 11, 1917, and said attorney examined the corporate records of said Andalusia Packing Company and the titles to its properties, and reported favorably by telegram to Swift & Company's attorneys in Chicago, July 11, 1917, and to Louis F. Swift, President of respondent in Chicago, by letter of July 14, 1917. Respondent, Swift & Company, also sent its auditor, O. C. E. Matthies, to Andalusia, who checked up inventories and accounts

and made a report thereon; and the construction department of respondent inspected and reported upon the plant of said Andalusia Packing Company. All these matters are summarized in a memorandum dated July 20, 1917, signed by said Carr and addressed by initials to several officers of respondent. At this time said Andalusia Packing Company showed a surplus of $62,724.32, as a result of operations up to May 1, 1917.

(*j*) Certain agreements of guarantee dated July 24, 1917, fixing definitely outstanding notes of said Andalusia Packing Company, and certifying that the shares of capital stock sold were the only shares outstanding, were made by said Henderson and said Darling with the officers of respondent, Swift & Company.

(*k*) Assignments in blank of certificates covering all the shares of capital stock of said Andalusia Packing Company then outstanding were secured from all the stockholders by said Henderson and Darling, in the course of a few weeks following their giving of an option on their capital stock to respondent.

(*l*) After all said stock had been thus secured, said Henderson and said Darling proceeded with the certificates thereof to Chicago, and on July 24, 1917, said certificates of said stock were delivered by said Henderson and Darling in the Directors' room of respondent in Chicago, assigned in blank, to a representative of respondent, Swift & Company, said H. C. Carr, T. H. Ingwersen and L. A. Carton, of respondent, being present at the time.

(*m*) Respondent, Swift & Company, by its check, paid said Henderson $186,550 for said 2,665 shares of capital stock of said Andalusia Packing Company, and said payment was entered in the investment ledgers of respondent, Swift & Company.

(*n*) Said Swift & Company sent to Andalusia, Ala., to take control of the business and property of said Andalusia Packing Company, about July 16, 1917, G. D. Rogers and C. B. Colt, both then employees of respondent, and said Rogers and said Colt, immediately upon the acquisition of said stock by respondent, July 24, 1917, assumed such control on behalf of respondent. T. G. Conner, former superintendent of said plant at Andalusia remained in the employ of said Andalusia Packing Company until about November, 1917, but during that time worked under the direction of respondent.

(*o*) While in said Directors' room, said Henderson, as President, and said Darling, as Secretary, of said Andalusia Packing Company, signed new certificates of stock in said Andalusia Packing Company to T. H. Ingwersen, for 820 shares; to G. D. Rogers, for 100 shares. to H. C. Carr for 820 shares, to W. B. Traynor for 825 shares, to

T. E. Henderson for 100 shares—being in all 2,665 shares, the total capital stock of said Andalusia Packing Company then outstanding. All persons to whom said stock was then so assigned were then officers or employees of respondent, except said T. E. Henderson, and said Henderson immediately assigned his said certificate of stock in blank and returned it to a representative of Swift & Company, respondent. The stock was then placed nominally in the name of said Henderson, to qualify him as a director and as Vice President of said Andalusia Packing Company, at the request of said Carr, of respondent, Swift & Company.

(*p*) T. E. Henderson, T. H. Ingwersen and G. D. Rogers, represented by proxy to H. C. Carr; H. C. Carr and W. B. Traynor, holding 2,665 shares of stock of said Andalusia Packing Company, being all of said stock then outstanding, met at the Northeast corner of Exchange and Packers Avenues, Chicago, July 24, 1917, and amended the by-laws of said Andalusia Packing Company as to the places at which corporate business of said Andalusia Packing Company might thereafter be transacted, and as to other points. Said Henderson, who had secured in advance resignations of officers and directors of said Andalusia Packing Company in office before said stock had been acquired by respondent, presented such resignations at said meeting; said resignations were accepted and the following directors were elected: W. B. Traynor, T. H. Ingwersen, G. D. Rogers, H. C. Carr—all officers or employees of respondent. Said Henderson was permitted to remain a director, at the request of said Carr.

(*q*) Said directors held a special meeting, at the same place, immediately after said stockholders' meeting, all except said Rogers being present, and after having accepted the resignation of the former officers of said Andalusia Packing Company, elected the following officers: T. H. Ingwersen, President; T. E. Henderson, First Vice President; C. A. Peacock, Secretary; C. M. Williamson, Treasurer, and J. J. McGuire, Assistant Treasurer—all of said officers so elected being the officers or employees of respondent, except said Henderson, who accepted his office at the request of said Carr, of respondent, Swift & Company. It was resolved by said directors that said G. D. Rogers should thereafter countersign all checks of said Andalusia Packing Company drawn against its funds in bank, and C. B. Colt, also an employe of respondent, was made statutory agent of said corporation in Alabama.

(*r*) At a special meeting of the Board of Directors of said Andalusia Packing Company, held at Union Stock Yards, Chicago, August

7, 1917, C. M. Williamson, as Treasurer, was authorized to sign checks against the funds in bank of said corporation, and said checks were to be countersigned by said G. D. Rogers.

(*s*) At a special meeting of the directors of said Andalusia Packing Company at Union Stock Yards, Chicago, August 14, 1917, C. B. Colt was elected and designated to succeed to the functions of C. M. Williamson, Treasurer of said corporation.

(*t*) Stockholders of said Andalusia Packing Company, including said H. C. Carr, W. B. Traynor and T. E. Henderson, representing the capital stock of said corporation to the number of 1745 shares, met at Union Stock Yards, Chicago, in annual meeting, October 8, 1917, and reelected the directors elected July 24, 1917.

(*u*) T. H. Ingwersen, H. C. Carr and W. B. Traynor, being a majority of the then directors of the Andalusia Packing Co., met October 29, 1917, at Union Stock Yards, Chicago, and reelected the officers of said corporation then holding.

(*v*) Directors of said Andalusia Packing Company met at Union Stock Yards, Chicago, March 26, 1918, T. H. Ingwersen, W. B. Traynor and H. C. Carr being present, with C. A. Peacock acting as Secretary, and resolved that a dividend of $97,276.14 be declared, payable March 30, 1918, to stockholders of record on the books of the Company on that date.

(*w*) T. H. Ingwersen, H. C. Carr and W. B. Traynor, being a majority of the board of directors, with C. A. Peacock, secretary, of the Andalusia Packing Co., all being officers or employees of respondent, and acting, at the same time, as directors and secretary of said Andalusia Packing Co., purported to meet at the office of said company in Chicago, March 30, 1918, and at the instance and for the benefit of respondent, beneficial owners of all the stock of said Andalusia Packing Co., declared a dividend of $97,276.14; and at the same meeting, acting in the above dual capacity, said persons purported to accept an offer "to purchase all the property and business of this company," and purported to authorize and instruct "the proper officers of this company" "to convey, assign and transfer to said Swift & Co., all of the property and business of this company by proper instruments of conveyance." Such instruments of transfer were executed, and each bears date, both as to execution and acknowledgment, as of March 30, 1918. (Coms. Exs. 187 and 188.) Respondent directed the record of said alleged meeting of March 30, 1918, and the instruments of transfer designated, to be prepared by respondent's general counsel, in a letter dated April 9, 1918, and such record and such instrument were in fact executed between April 8, 1918,

and April 23, 1918, the date when the executed instruments were returned to respondent's counsel by respondent's secretary.

(*y*) By a certain deed in writing, and a certain other instrument in writing, both dated March 30, 1918, said Andalusia Packing Company, through its President, T. H. Ingwersen, and its Secretary, C. A. Peacock, transferred to respondent, Swift & Company, respectively, the real estate at Andalusia, Ala., of said Andalusia Packing Company, and the business and physical assets of said Andalusia Packing Company, wherever situated. Said written instrument of sale and deed were without consideration (other than nominal) moving from respondent to said Andalusia Packing Company corporation, and they constituted, and were, mere paper transfers to respondent in the carrying out of the intent and purpose of respondent, following, and as a result of respondent's prior illegal acquisition of the capital stock of the said Andalusia Packing Company.

PAR. 6. That said acquisition by purchase of the capital stock of said Moultrie Packing Company and of said Andalusia Packing Company by respondent, Swift & Company, as set forth in Paragraphs 4 and 5 hereof, respectively, was fully consummated, and full control of the business and property of said Moultrie Packing Company and of said Andalusia Packing Company by respondent was secured by means of said acquisition of stock before the physical assets of said Moultrie Packing Company and said Andalusia Packing Company, as such, were nominally transferred to respondent.

PAR. 7. That—

(*a*) Prior to the acquisition of said stock of said Moultrie Packing Company and said Andalusia Packing Company by respondent, as set forth in Paragraphs 4 and 5 hereof, said corporations whose stock was so acquired were in direct competition with each other and with the respondent, in the sale of meat and meat products in interstate commerce; but within a few weeks after said acquisition of said stock, said competition of said Moultrie Packing Company, and said competition of Andalusia Packing Company, with each other and with respondent wholly ceased and has not since been resumed. Instances of said competition may be noted as follows:

(*b*) Beginning late in 1914, or early in 1915, said Moultrie Packing Company sold its said meats and meat products in Atlanta, Ga., and many other cities and towns in the State of Georgia, to the same dealers to whom the respondent at the same time sold or endeavored to sell similar products shipped into Atlanta and said other cities and towns in the State of Georgia, in interstate commerce, and sold and offered for sale in interstate commerce in said cities and towns.

(*c*) M. M. Stanaland, for many months (18 months or more), prior to October 22, 1917, was a broker in meats and meat products whose principal place of business was in Atlanta, Ga., and who represented said Moultrie Packing Company. Prior to August, 1917, said Stanaland sold and delivered in Atlanta, Ga., and the neighborhood thereof, meats and meat products manufactured by said Moultrie Packing Company, aggregating many scores of thousands of dollars in value, and estimated in volume at one to three carloads per week; and in such sale of said products, prior to August, 1917, met from day to day, in competition, the salesmen of said respondent, who were selling or endeavoring to sell similar products of respondent, shipped into Atlanta in interstate commerce.

(*d*) Immediately following the taking over of the stock and control of said Moultrie Packing Company, by respondent, said Stanaland experienced difficulties in securing from the said Moultrie Packing Company his usual supplies of meat and meat products, and prices of said meat and of some of said products were gradually advanced by said Moultrie Packing Company under the direction of respondent, so as to make it more and more difficult for said Stanaland to market said meats and meat products to his customers; such prices so fixed by said Moultrie Packing Company for said Stanaland being at times higher than the prices at which the branch house of respondent in Atlanta was permitted at the same time to sell identical products in the same territory. On October 22, 1917, the account of said Moultrie Packing Company was entirely withdrawn from said Stanaland, and said Stanaland ceased to be a broker for said Moultrie Packing Company, and competition between said Moultrie Packing Company and respondent, which had been nominal since July, 1917, wholly ceased in Atlanta and in the neighborhood thereof immediately upon said Stanaland's dismissal.

(*e*) Before said respondent had acquired the stock of said Moultrie Packing Company, the sale of meat and meat products of said Moultrie Packing Company by said Stanaland tended to lower the prices secured by respondent for similar products in Atlanta and in the neighborhood thereof, since the said Stanaland, for said Moultrie Packing Company, sold largely what is known as "soft pork," or peanut-fed pork, which could be produced and sold at a lower price in that locality than could the Western, or corn-fed pork, shipped long distances and sold by respondent at that time in that territory. Said peanut-fed pork was generally considered of a lower grade than Western, or corn-fed pork, and was sold in that market at a

differential of 1 to 5 cents, or an average differential of about 2 cents a pound lower than Western pork; at the same time, its flavor was liked by consumers in that locality, and said peanut-fed pork was in such active demand that it was difficult to secure a supply sufficient to meet such demand.

(*f*) From and after September, 1916, and up to July 24, 1917, J. W. Clarke Company, then brokers in Atlanta, Ga., dealing in meat and meat products, sold as brokers the products of said Andalusia Packing Company, in Atlanta and the neighborhood thereof, to the same dealers to whom respondent sold or endeavored to sell similar products, also shipped to and sold in Atlanta in interstate commerce; and said Andalusia Packing Company, through its broker, J. W. Clarke Company, was likewise, at this time, in competition with said Moultrie Packing Company in Atlanta and the neighborhood thereof, in the sale of meats and meat products. Said J. W. Clarke Company, during the period from September, 1916, to July 24, 1917, sold in Atlanta and the neighborhood thereof, meats and meat products, largely soft, or peanut-fed pork products, and shipped to them in interstate commerce by said Andalusia Packing Company, of the value of many thousands of dollars, estimated at $4,000 or more per week. Said pork was usually sold at a differential below Western, or corn-fed pork, but was in active demand in said territory.

(*g*) Immediately after respondent had acquired the stock of said Andalusia Packing Company, and assumed, through the acquisition of said stock, control thereof, said J. W. Clarke Company found it increasingly difficult to get meat and meat products from said Andalusia Packing Company to fill its orders; prices of said products were advanced by said Andalusia Packing Company, at the instance of respondent, so as to make their sale increasingly difficult, and said prices were at times higher than the prices at which the branch house of respondent in Atlanta was permitted to sell identical products in the same territory.

(*h*) Immediately after the acquisition by respondent of the capital stock of said Andalusia Packing Company, July 24, 1917, the Manager in charge of said Andalusia Packing Company for respondent, adopted the policy of selling the products of said Andalusia Packing Company through respondent's branch houses in Atlanta and elsewhere. As a consequence, said J. W. Clarke Company was gradually eliminated from the business, and about October, 1917, was cut off from shipments by and receipts from said Andalusia Packing Company. Competition of said Andalusia Packing Company with respondent and with said Moultrie Packing Company in Atlanta, Ga.,

and the neighborhood thereof, which was nominal after July 24, 1917, wholly ceased about October, 1917.

(*i*) Between October, 1916, and July, 1917, said Moultrie Packing Company sold and shipped its meat and meat products in interstate commerce, to Jacksonville, Fla., in competition with respondent. Such sales were made through Samuel T. Smith, broker for said Moultrie Packing Company, who sold in Jacksonville, Fla., and the neighborhood thereof, to the same dealers to whom respondent sold or endeavored to sell similar products at the same time, in interstate commerce. The sales of said Samuel T. Smith of the products of said Moultrie Packing Company had amounted, during the period he so represented said Company in Jacksonville, to many thousands of dollars, and estimated at a volume of two carloads of said products per week.

(*j*) After respondent had acquired the capital stock of said Moultrie Packing Company, said Smith found it increasingly difficult to get the meats and meat products of said Moultrie Packing Company at prices at which they could be sold in Jacksonville and the neighborhood thereof, and, at times, respondent, through its branch house in Jacksonville, sold said products at prices substantially lower than said Smith was permitted to make to his customers. After July, 1917, said Smith sold but nominal amounts of said products of said Moultrie Packing Company in Jacksonville and the neighborhood thereof, and in September, 1917, his sales of said products wholly ceased and he ceased to represent said Moultrie Packing Company in the sale of its products in said territory. Thereafter, the products of said Moultrie Packing Company, when sold at all in Jacksonville and the neighborhood thereof, were sold only through the branch house of respondent and competition between respondent and said Moultrie Packing Company in the sale of meat products wholly ceased after September, 1917, in Jacksonville and the neighborhood thereof.

(*k*) Between September, 1916, and July 24, 1917, said Andalusia Packing Company sold and shipped its meats and meat products to Birmingham, Ala., and the neighborhood thereof, to the same dealers to whom, at the same time, respondent sold and endeavored to sell similar products shipped into Birmingham, Ala., and the neighborhood thereof, in interstate commerce.

(*l*) During said period, from October, 1916, to July 24, 1917, E. P. Allen & Company, brokers dealing in meats and meat products, represented said Andalusia Packing Company in the sale of its said products in Birmingham and the neighborhood thereof, where said

E. P. Allen and his salesmen during said period constantly met in competition salesmen of respondent selling similar products. Said Allen and his salesmen in said period solicited the same customers and sold similar products to the same dealers as respondent. Said E. P. Allen & Company sold during said period such products of said Andalusia Packing Company to the volume of many thousands of dollars, the volume being estimated at two to three carloads a week. Said products were of soft, or peanut-fed pork and were sold at a differential lower than Western pork, but were in active demand in said territory.

(*m*) After respondent had acquired the capital stock of said Andalusia Packing Company, July 24, 1917, said E. P. Allen & Company found it increasingly difficult to secure the products of said Andalusia Packing Company to supply its customers, and in many instances the prices which said E. P. Allen & Company were instructed to secure for said products by said Andalusia Packing Company were substantially higher than the prices at which the branch house of respondent in Birmingham, Ala., was permitted to sell the same products in Birmingham and the neighborhood thereof. About the latter part of October, 1917, said Andalusia Packing Company ceased to sell its said products through said E. P. Allen & Company, and thereafter sold said products solely through the branch house or other sales organization of respondent, and competition between said Andalusia Packing Company and respondent, which had been nominal after July 24, 1917, wholly ceased in Birmingham, Ala., and the neighborhood thereof, as well as elsewhere.

(*n*) Similar competition between respondent, said Andalusia Packing Company and said Moultrie Packing Company, prior to said acquisition by respondent of the stock of said Andalusia Packing Company and said Moultrie Packing Company, took place in scores of cities and towns in the State of Georgia, Florida and Alabama, and wholly ceased soon after said acquisition of said stock, and before the purchase by respondent of the physical assets, as such, of said Andalusia Packing Company and said Moultrie Packing Company.

PAR. 8. For many years prior to the times that said Moultrie Packing Company and said Andalusia Packing Company began business many dealers in meats and meat products, including respondent, offered their products for sale to dealers in the territory in which said Moultrie Packing Company and said Andalusia Packing Company did the bulk of their business—namely, in the States of Georgia, Florida and Alabama. Sale in said territory of said products of said Moultrie Packing Company and said Andalusia Packing Com-

pany, from the autumn of 1916 to July, 1917, materially increased competition in said territory in said products, especially in soft or oily pork products. For a time after the acquisition by the respondent of the stock of said Moultrie Packing Company and said Andalusia Packing Company, there was a substantial lessening of competition in said territory in the sale of said oily pork products, and a complete elimination of competition in said products and other meat and meat products between respondent and said Moultrie Packing Company and said Andalusia Packing Company, and between said Moultrie Packing Company and said Andalusia Packing Company.

PAR. 8½. Respondent, in the spring of 1917, decided to enter the southern field in the packing industry, wherein the Moultrie Packing Company and the Andalusia Packing Company were operating, either by building or acquiring a packing plant, after respondent's representatives had reported that at that time, on account of the increasing live-stock production, respondent might profitably enter such field. Respondent's said representative had reported adversely to such entry for the previous two years. Respondent, by its acquisition of the capital stock and control of the said two operating competitive concerns, to wit, the Moultrie Packing Company and the Andalusia Packing Company, rather than building a plant of its own, not only eliminated the then existing competition between respondent and the concerns whose capital stocks were acquired, but also eliminated all increasing, prospective and potential competition from such concerns, particularly in the purchase of live stock.

PAR. 9. That—

(*a*) Moultrie Packing Company, in 1914, slaughtered 53 head of cattle of a dressed weight of 24,739 pounds, and 2,032 hogs, of an aggregate dressed weight of 200,598 pounds; in 1915, said Company slaughtered 1,629 cattle of a dressed weight of 396,748 pounds and 32,658 hogs of a dressed weight of 2,199,441 pounds; in 1916, said Packing Company slaughtered 701 cattle of a dressed weight of 196,333 pounds, and 78,125 hogs of a dressed weight of 7,305,506 pounds; for the first six months of 1917, said Company slaughtered 901 cattle of a dressed weight of 252,280 pounds, and 42,421 hogs of a dressed weight of 3,907,909 pounds; in 1914 said Company produced 20,320 pounds of lard; in 1915, 326,580 pounds; in 1916, 1,171,875 pounds, and for the first six months of 1917, 827,575 pounds. It had ample supply of hogs except in three or four summer months, at times many more than it could handle. Said Company found ready sale for its products and its business was highly profitable and grow-

ing rapidly; up to the time that respondent acquired its capital stock it was marketing its product through salesmen and brokers.

(*b*) Andalusia Packing Company, in 1916 slaughtered 21 cattle of a dressed weight of 6,426 pounds and 31,439 hogs of a dressed weight of 3,065,341 pounds; from January 1, 1917, to May 1, 1917, said Company slaughtered 549 cattle of a live weight of 432,195 pounds and 26,438 hogs of a dressed weight of 2,914,692 pounds. It produced 383,774 pounds of lard in 1916, and 564,293 pounds of lard from January 1, 1917, to May 1, 1917. It had ample supply of live stock, especially hogs, except during three or four summer months. Said Company found a ready sale for its products, and its business was highly profitable and was growing rapidly at the time respondent acquired its capital stock.

(*c*) Respondent greatly enlarged the capacity of the plant of said Moultrie Packing Company, after having acquired its stock; its slaughter of beef cattle was increased radically, but, except in 1919, its slaughter of hogs at said plant had decreased since the acquisition of the capital stock of said plant by respondent. In the last six months of 1917, at the plant of said Moultrie Packing Company there were slaughtered 2,573 cattle and 26,566 hogs; in 1918, at said plant there were slaughtered 18,008 cattle and 72,666 hogs; in 1919, there were slaughtered at said plant, 10,381 cattle and 103,099 hogs; in 1920, at said plant there were slaughtered 8,578 cattle and 65,281 hogs; in the first six months of 1921, there were slaughtered at said plant, 3,626 cattle and 36,080 hogs.

(*d*) The respondent somewhat enlarged the capacity of said Andalusia Packing Company plant after having acquired its stock, or at least made some improvements in said plant. The slaughter of beef cattle was greatly increased after respondent had acquired the stock of said Andalusia Packing Company, but its slaughter of hogs at said plant, after such acquisition, decreased as compared with the slaughter of hogs at said plant before such acquisition. In the last five months of 1917, there were slaughtered at the plant of the Andalusia Packing Company, 21,186 cattle and 63,976 hogs; in 1919, there were slaughtered at said plant, 11,759 cattle and 61,676 hogs; and in 1920, there were slaughtered at said plant 8,687 cattle and 39,523 hogs; for the first six months of 1921, there were slaughtered at said plant 4,552 cattle and 29,313 hogs.

(*e*) Respondent Company, in its various plants, in 1917, slaughtered 2,153,908 cattle, 846,472 calves, 3,162,930 sheep and 7,288,159 hogs; in 1919, the year of its largest production, respondent slaughtered in its various plants, 2,337,124 cattle, 1,231,262 calves,

4,044,719 sheep and 8,662,824 hogs. Its production fell off radically in 1920. Respondent is one of the largest two of the meat packers and does business through branches, salesmen and car routes, all over the United States.

(*f*) In 1919, there were slaughtered in the United States, under federal inspection, as reported officially: 10,989,984 cattle, 3,969,019 calves, 12,691,117 sheep and lambs, 87,380 goats, and 41,611,830 hogs; so that respondent slaughtered more than one-fifth of the cattle and hogs and about one-third of the calves and sheep slaughtered under federal inspection in the year 1919.

PAR. 10. That the acquisition of said capital stock of said Moultrie Packing Company and of said Andalusia Packing Company by respondent, as described in Paragraphs 4 and 5 hereof, was not solely for investment, nor acquired in forming a subsidiary corporation under the permissive provisions prescribed in Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

PAR. 11. That Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," is and provides in part as follows:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly in any line of commerce.

PAR. 12. That the acquisition and continued control and ownership of the capital stock of said Moultrie Packing Company corporation, and of said Andalusia Packing Company corporation, by respondent, and the subsequent continued control and operation of the packing plants and businesses of said corporations by respondent, and the nominal transfers to respondent of the physical assets and businesses of said corporations, following respondent's acquisition of such capital stock and control of said corporations, and the total suppression of competition between the Moultrie Packing Company and the Andalusia Packing Company, and the total suppression of competition between respondent and each of said named companies, resulting from such control and operation by respondent under the conditions and circumstances set forth in the foregoing findings as to the facts, were and are in violation of the provisions of Section 7 of an Act of

Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and were and are unfair methods of competition within the meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

CONCLUSION.

The acquisition and continued control and ownership of the capital stock of said Moultrie Packing Company corporation, and of said Andalusia Packing Company corporation, by respondent, and the subsequent continued control and operation of the packing plants and businesses of said corporations by respondent, and the nominal transfers to respondent of the physical assets and businesses, following respondent's acquisition of such capital stock and control of said corporations, and the total suppression of competition between the Moultrie Packing Company and the Andalusia Packing Company, and the total suppression of competition between respondent and each of said named companies, resulting from such control and operation by respondent, under the conditions and circumstances set forth in the foregoing findings as to the facts, were and are in violation of the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and were and are unfair methods of competition within the meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER.

The Federal Trade Commission having issued and served its complaint herein, and respondent, Swift & Company, having entered its appearance by its attorneys, Messrs. A. N. and Henry Veeder, James M. Sheenan, Esq., and Frank L. Horton, Esq., of Chicago, Ill., duly authorized and empowered to act in the premises, and having filed its answer; and thereafter, hearings in this proceeding having taken place before an Examiner of the Commission; and evidence having been presented before said Examiner on behalf of the Commission and on behalf of respondent; and the presentation of such evidence having been closed, respectively, by the attorneys for the Commission and by the attorneys for the respondent; and thereafter, the

attorneys for the Commission and the attorneys for respondent having duly filed their briefs in this proceeding with the Commission, and having fully argued and presented to the Commission the issues in this proceeding, and having submitted said issues for consideration and determination; and the Commission having fully considered the record, and having been fully advised in the premises, has heretofore made and entered its report and its conclusion that respondent has violated the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report and findings are hereby referred to and made part hereof,

Now, therefore, it is ordered, That respondent, Swift & Company, within six calendar months from and after the date of the service of a copy of this order upon it, shall:

(1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by anyone for its use and benefit, any of the capital stock of the Moultrie Packing Company and of the Andalusia Packing Company, or either of them, and cease and desist from holding, controlling and/or operating, or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business either of the said Moultrie Packing Company or of the said Andalusia Packing Company, which have been held, controlled and operated by respondent and its employees and agents, following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations; and to that end, respondent shall

(2) So divest itself of all the capital stocks heretofore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by anyone for its use and benefit, of the Moultrie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisitions and/or holdings of such capital stocks.

(3) In so divesting itself of such capital stocks respondent shall not sell or transfer, either directly or indirectly, any of such capital

stocks to any officer, director, stockholder, employee or agent of respondent, or to any person under the control of respondent, or to any partnership or corporation either directly or indirectly owned or controlled by respondent.

(4) Cease and desist from further engagements in unfair methods of competition 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," and in so ceasing and desisting, shall cease and desist from further suppressing the competition in trade heretofore existing between the Moultrie Packing Company and the Andalusia Packing Company, and between each of said corporations and the respondent, and also cease and desist from further holding, owning, controlling and/or operating, directly or indirectly, the plants and businesses of the said Moultrie Packing Company and the Andalusia Packing Company, or either of them, either through direct or indirect ownership and/or control of the capital stock of either said Moultrie Packing Company or said Andalusia Packing Company and/or through the control and/or ownership of the properties, physical assets and businesses of either of said named corporations.

It is further ordered, That the said respondent, Swift and Company, shall within ninety (90) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

CHARLES GOODMAN, TRADING UNDER THE NAME AND STYLE OF EAGLE SAFETY RAZOR COMPANY.

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

Docket 790—August 9, 1922.

SYLLABUS.

Where an individual engaged in the manufacture and sale of shaving outfits to premium houses and to jobbers selling thereto, sold at from $13.50 to $18.00 per dozen its "De Luxe Shaving Outfits" packed in individual containers bearing the legend "$5.00"; the fact being that said marked price did not represent the contemplated retail price, or value in premium house transactions, of said outfits so packed, but was a fictitious and misleading price used for the purpose and with the effect of deceiving and misleading the public respecting the normal or usual price, or value, thereof:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Charles Goodman, trading under the name and style of Eagle Safety Razor Company, hereinafter referred to as the respondent, has been and is using methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues its complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Charles Goodman, conducts his business under the name of Eagle Safety Razor Company, in the City of New York, State of New York, where he is engaged in the manufacture of safety razors and shaving outfits and selling and causing them to be transported in commerce to purchasers, from the State of New York, into the several States of the United States, the District of Columbia, and foreign countries, and in the conduct of such business the respondent is in competition with other persons, partnerships and corporations engaged in the sale of safety razors and shaving outfits in interstate and foreign commerce.

PAR. 2. That the respondent, in the course of his business as described in Paragraph One hereof, sells safety razors and shaving outfits manufactured by him packed in separate cases upon which he conspicuously prints false, fictitious and misleading price marks, well knowing that the prices, so marked on such cases, are not the prices at which his customers to whom he sells such safety razors and shaving outfits sell, or expect to sell them, to their respective customers, and well knowing that such prices do not represent the true value or the actual and usual retail prices of such safety razors and outfits and well knowing that said false, fictitious and misleading price marks are used and will be used by his customers for the purpose of deceiving the public, who purchase them and cause such purchasers to believe that they are obtaining, at a greatly reduced price, safety razors and shaving outfits which ordinarily sell for a much higher price; that the respondent manufactures and sells several different classes of outfits, which he calls by several different trade names such as "De Luxe Shaving Outfit," "Eagle Premier Shaving Outfit," "Above 'Em All" and "Eagle Junior"; that De Luxe Shaving Outfit consists of a nickle-plated safety razor with several blades, a shaving brush, a container with shaving soap and a stropper attachment therein, all of which he packs in cases on which is printed "5^{00}" representing that the price of such articles is $5.00; that such articles are not worth $5.00, nor are they sold or expected to be sold at such price; that the respondent sells the De Luxe Shaving Outfit for from $141 to $150 per gross, less $1 each; or from $13.50 to $18 per dozen, or about $1.00 to $1.50 each; that the respondent sells such outfits, himself, at $2.00 each and well knows that they are to be offered at retail, by the persons to whom he sells them, at prices much less than the price printed on the cases and that said price marks are to be used by such persons, to whom he sells, to mislead and deceive their purchasers and the purchasing public generally and to make them believe that the safety razors and shaving outfits contained in such cases are worth much more than the price at which they are actually sold; that in selling such razors and shaving outfits so marked the respondent comes in direct competition with other manufacturers of safety razors and shaving outfits who do not mark their output with such false, fictitious and misleading prices, and the said respondent, while engaged in commerce by the means aforesaid, aids, abets and assists retailers and other persons to whom he sells such outfits to use unfair methods of competition against others similarly engaged, but who do not sell their output marked with such false, fictitious and misleading prices.

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 herein, Charles Goodman, trading under the name and style of Eagle Safety Razor Company, charging him with the use of unfair methods of competition in interstate commerce, in violation of the provisions of the said Act. Respondent did not file an answer, but appeared in proper person at a hearing in New York City, New York, on August 18, 1921, and made answer at said hearing in response to the allegations in the complaint, and pursuant to order and designation of the Federal Trade Commission, an Examiner of the Commission theretofore duly appointed, proceeded to hear and receive testimony and to take evidence in the above entitled cause in the City of New York, New York, on that date, to-wit, August 18, 1921. The examination of the respondent was not concluded at that time, and subsequently a stipulation as to the facts was entered into between the Chief Counsel for the Federal Trade Commission and the respondent, Charles Goodman, trading under the name and style of Eagle Safety Razor Company, and approved by the Commission; and the whole matter having come regularly on to be heard by the Commission upon the testimony and stipulation hereinbefore referred to, and the matter having been fully considered and the Commission being fully advised in the premises makes the following its findings of facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Charles Goodman, the respondent in this complaint, conducts his business under the name of Eagle Safety Razor Company, in the City of New York, State of New York, and is engaged in the manufacture and sale of safety razors and shaving outfits, causing such outfits to be transported in commerce to purchasers in the State of New York, in the several States of the United States and the District of Columbia, and also in foreign countries, and in the conduct of such business respondent is in competition with other persons, partnerships and corporations similarly engaged, and he has been so engaged for more than two years last past.

PAR. 2. The respondent manufactures, sells and transports in interstate commerce, different classes of safety razors and shaving outfits, which he distributes under the following names:

"De Luxe Shaving Outfit"
"Eagle Premier Shaving Outfit"
"Above 'Em All", and
"Eagle Jr."

172 Conclusion.

The De Luxe shaving outfit consists of a nickel-plated safety razor, 12 shaving blades, a collapsible shaving brush in a nickel case, a container with a stick of Williams' shaving soap, and a stropper attachment, all of which articles he assembles and packs in single boxes or containers, and upon said containers there is printed or embossed the legend "$5.00."

PAR. 3. It is intended that the legend $5.00 shall represent to the purchasing public the value of the container and the articles packed therein. It is a fictitious and misleading price or value that is marked on these containers that were disposed of in interstate commerce, and was calculated to deceive and mislead, and did actually deceive and mislead, the public as to the true price or value of the outfit contained therein. Only a relatively small part of these outfits reached the public through cash sales, as the respondent's business largely consists of manufacturing these outfits for disposal to premium houses who use the outfits as premiums in connection with other operations. Some of the outfits are sold direct to the premium houses, and others, through jobbers and wholesalers who supply that type of business with premiums. The De Luxe shaving outfit is sold by respondent to the middleman, either a jobber, wholesaler or premium house, for from $140 to $150 per gross, or from $13.50 to $18 a dozen, which makes the cost to the purchaser from respondent, from about $1 each to a fraction more than $1 each, according to the actual amount at which the sale in gross or dozen lots is made. The respondent does not sell to the retail trade at all. A custom has grown up in the razor trade of marking, printing or embossing on the packages containing the articles, prices much higher than the prices at which the articles are intended to be sold to the ultimate purchaser, and respondent was and is acquainted with this custom in the trade, and at the time the prices were marked on the containers in which the De Luxe shaving outfits were packed it was not expected by respondent that they would be sold by the retail trade at the price marked thereon, or that in premium house transactions the price marked thereon would be the value of the articles contained therein.

CONCLUSION.

That the methods described in the above report upon the facts, under the circumstances set forth therein, are unfair methods of competition in interstate commerce, in violation of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the appearance of the respondent in proper person at the hearing, without having filed an answer, and without counsel; the testimony and evidence taken before a trial examiner, the stipulation as to the facts and the findings as to the facts and the conclusion of the trial examiner, 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, Charles Goodman, trading under the name and style of Eagle Safety Razor Company, his agents, servants and employes, cease and desist from marketing in interstate commerce, razor outfits bearing upon the containers in which said razor outfits are packed, or in any manner indicating thereon or upon the articles therein, any false, fictitious or misleading statement concerning the price of said outfits, or any false, fictitious or misleading statement as to the value of same.

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

FEDERAL TRADE COMMISSION.

v.

DESOTO PAINT MANUFACTURING COMPANY.

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

Docket 753—August 12, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints, stains, varnishes, and other similar products, gave to professional or contracting painters purchasing its "Heavy Body Paints," arbitrary discounts without the knowledge of their customers, as an inducement to said favored class to use, and to recommend to the purchasing public generally and particularly to owners of buildings contracting with them, the use of, its products, and to refuse to use those of its competitors:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the DeSoto Paint Manufacturing Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

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

PAR. 2. That respondent is engaged in the business of manufacturing, selling and distributing paints, stains, varnishes, etc., and causes such products, sold by it to be transported to the purchasers thereof from the State of Tennessee, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged. Respondent markets its products direct to professional or contracting painters, and also through dealers, who resell same to contracting painters and the consuming public generally; its business aggregates several hundred thousand dollars each month and

constitutes a substantial portion of the whole trade and commerce in paints, stains, varnishes, etc., in the States of the United States adjacent to Tennessee.

PAR. 3. That respondent, in the course of its business as described in Paragraph 2 hereof, makes an arbitrary selection from among its purchasers of certain of its products known as "DeSoto Heavy Body Paints," to which purchasers rebates or bonuses are paid; that to professional or contracting painters respondent gives, or causes to be given, one certificate for each gallon of paint purchased, which certificates are redeemed by respondent at the rate of 20 cents for each gallon of colored paints purchased and 10 cents for each gallon of white paint purchased, and which certificates are not given to purchasers other than professional or contracting painters; that such certificates are given to professional or contracting painters, as aforesaid, to induce them to use respondent's products in their contract work, and to refuse to use the products of competitors of respondent, and to induce such professional or contracting painters to recommend respondent's products to the purchasing public generally, and particularly to owners of buildings contracting with them, thereby aiding in the sale of respondent's products, to the exclusion of the products of competitors of respondent, which practice has the capacity to allow such contracting painters to obtain from their customers the full retail price for respondent's products, and in addition thereto, to secretly receive from respondent a bonus or gratuity.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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, DeSoto Paint Manufacturing Company, charging it with the use of unfair methods of competition in commerce in violation of the said Act.

The respondent having entered its appearance by its attorneys and filed its answer herein hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondent before an Examiner of the Federal Trade

Commission, theretofore duly appointed, and the testimony so taken was reduced to writing and filed in the office of the Commission.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its principal place of business in the City of Memphis in said State.

PAR. 2. Respondent is engaged in the business of manufacturing, selling and distributing paints, stains, varnishes and similar products, and causes such products sold by it to be transported to the purchasers thereof from the State of Tennessee, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged. Respondent markets its said products direct to professional or contracting painters, and also through dealers who resell same to contracting painters and to the consuming public generally; and its business aggregates more than three hundred thousand dollars each year.

PAR. 3. Respondent, in the course of its business as described in Paragraph 2 hereof, makes an arbitrary selection from among its purchasers of certain of its products known as "DeSoto Heavy Body Paints" to which purchasers rebates or bonuses are paid, as follows, to wit: To professional or contracting painters respondent gives, or causes to be given, one certificate for each gallon of paint purchased, which certificates are redeemed by respondent at the rate of 20 cents for each gallon of colored paints purchased and 10 cents for each gallon of white paint purchased, but to purchasers other than professional or contracting painters respondent neither gives nor causes to be given such or similar certificates. Respondent gives such certificates to professional or contracting painters, as aforesaid, to induce them to use respondent's products in their contract work, and to refuse to use the products of competitors of respondent, and to induce such professional or contracting painters to recommend respondent's products to the purchasing public generally, and particularly to owners of buildings contracting with them, thereby aiding in the sale of respondent's products, to the exclusion of the products of competitors of respondent. This practice has the capacity to enable and allow and does so enable and allow such contracting

painters to obtain and such contracting painters do so obtain from their customers the full retail price for respondent's products, and in addition thereto, without the knowledge of their customers, a bonus or gratuity from respondent.

PAR. 4. Respondent, during the year 1921 and prior to the 15th day of October therein, issued certificates as described in Paragraph 3 hereof to the value of $2,072.30 and during the same period expended $798.50 for the redemption of similar certificates submitted to it for redemption in the regular course of its business.

PAR. 5. The discrimination in price between purchasers of DeSoto Heavy Body Paint made by respondent as described in Paragraph 3 hereof is not on account of any difference in grade, quality, or quantity of said paint sold, is not occasioned by reason of any difference in the cost of selling or transportation, and is not a discrimination made in good faith to meet competition. Said professional or contracting painters are not required to carry any stock of paints to meet the requirements of their work nor are they required to buy respondent's paint in quantity exceeding one gallon in order to entitle them to one of said certificates and to the redemption thereof by respondent.

PAR. 6. Respondent's certificates as described in Paragraph 3 hereof prior to some time in the year 1919 required the painter to secure, upon each certificate offered to respondent for redemption, the signature and address of one of respondent's agents or dealers to a statement in the certificate that said painter was a professional painter and had used one gallon of DeSoto Heavy Body Paint. Some time during the year 1919 respondent changed the statement in the certificate to be signed by its agent or dealer so as to state that the painter offering the certificate for redemption is a professional painter and has bought one gallon of DeSoto Heavy Body Paint from said agent or dealer. Notice of this change has not been fully impressed upon painters and some of them understand that they are still entitled to secure cash for the certificates from respondent on all DeSoto Heavy Body Paint used by them no matter whether the paint is bought by them or by the owner of the property on which the paint is used, and in some instances respondent redeems certificates offered for redemption by painters who have not in fact bought the paint but have merely applied it in the course of their work by the day for contractors or for the owners of the property to which the paint was applied.

PAR. 7. Respondent stipulates that each painter, offering certificates to respondent for redemption as described in Paragraphs 3 and 4 hereof, shall sign his name to a statement in the certificate

and fill in blanks therein showing the name of the owner of the property upon which said painter applied DeSoto Heavy Body Paint and the number of coats of said paint that he applied thereon. The information thus stipulated for, if supplied, could be used by respondent as the basis for appeals through circulars or other advertising media to the owners of the property upon which respondent's paint has been used and to the painters who applied the same to make further purchases of respondent's paint when the property should need repainting. Respondent, however, in some instances redeems certificates in which said information has not been fully supplied; and respondent has not made any systematic use of the information thus supplied for the advertising purposes aforesaid.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, 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 the respondent, DeSoto Paint Manufacturing Company, its officers and agents and employees, do cease and desist from discriminating in net selling prices, by any method or device, between purchasers of the same grade, quality and quantity of commodities, upon the basis of a classification of its customers as "professional or contracting painters," or any similar classification which relates to the customers' form of business, policy, or business methods, in any transaction in, or directly affecting interstate commerce, in the distribution of its products:

Provided, That nothing herein contained shall prevent discrimination in prices between purchasers of commodities on account of differences in grade, quality or quantity of the commodity sold, or

that makes only due allowance for differences in the cost of sale or transportation, or discrimination in prices in the same or different communities made in good faith to meet competition, or the selection of customers in good faith and not in restraint of trade.

And it is further ordered, That respondent, DeSoto Paint Manufacturing Company, shall file with the Commission, within ninety (90) days from the date of this order, its report in writing, stating in detail the manner and form in which this order has been conformed to, and shall attach to such report true copies of all classified lists of customers, price lists, circulars and catalogues, advertisements and other printed matter in which are set forth the classifications of its said customers and trade discounts, cash discounts or prices of its products offered or given by respondent to the purchasers of said products.

FEDERAL TRADE COMMISSION

v.

SIMONS, HATCH & WHITTEN COMPANY.

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

Docket 770—August 17, 1922.

SYLLABUS.

Where a corporation engaged in the sale at wholesale of hosiery in competition with concerns who either correctly branded, labeled, and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; respectively branded, labeled, advertised and sold hosiery containing no genuine silk as "fiber silk," hosiery composed entirely of cotton as "silk lisle," and hosiery composed of cotton and wool in approximately equal proportion as "cashmere" or "wool"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Simons, Hatch & Whitten Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent, Simons, Hatch & Whitten Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the City of Boston, in the State of Massachusetts, and is engaged in the business of selling hosiery at wholesale, and of causing hosiery so sold by it to be transported to the purchasers thereof from the State of Massachusetts through and into other States of the United States, and in the conduct of such business is in direct and active competition with other corporations, copartnerships and individuals similarly engaged.

PAR. 2. That respondent, in the course of its business as described in Paragraph 1 hereof, sells hosiery, which it knows is made of an animal or vegetable fibre and contains no silk, labeled, advertised and branded "Fibre Silk," without any other word or words descriptive of the material of which the hosiery is manufactured; that respondent, in the course of its business as described in Paragraph 1 hereof, sells hosiery, which it knows is made entirely of mercerized cotton, labeled, advertised and branded "Silk Lisle," without any other word or words descriptive of the material of which the hosiery is manufactured; that respondent, in the course of its business as described in Paragraph 1 hereof, sells hosiery, which it knows is made of cotton and wool in approximately equal proportions, labeled, advertised and branded "Cashmere," without any other word or words descriptive of the materials of which the hosiery is manufactured; that respondent, in the course of its business as described in Paragraph 1 hereof, sells hosiery, which it knows is made of cotton and wool in approximately equal proportions, labeled, advertised and branded "Wool," without any other word or words descriptive of the materials of which the hosiery is manufactured; that each and all of the above described labels, advertisements and brands, when used on hosiery as above described, are false and misleading and are calculated to, and actually do, mislead and deceive the purchasing public as to the quality of such hosiery.

PAR. 3. That by reason of the facts set out in the foregoing paragraphs, the respondent is using unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Simons, Hatch & Whitten Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having entered its appearance in its own proper person and filed its answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, and having made, executed and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this

case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Simons, Hatch & Whitten Company, is a corporation duly incorporated and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the City of Boston, in the State of Massachusetts.

PAR. 2. That the respondent is engaged in the business of selling hosiery at wholesale, and of causing hosiery so sold by it to be transported to the purchasers thereof from the State of Massachusetts through and into other States of the United States, and in the conduct of such business is in direct and active competition with other corporations, copartnerships and individuals similarly engaged.

PAR. 3. That respondent, in the course of its business as described in Paragraph 2 above, sells and ships hosiery which contains no true silk, which it labels, advertises and brands and so distributes in packages or containers which it labels, advertises and brands "Fibre Silk"; sells and ships hosiery made entirely of cotton which it labels, advertises and brands and distributes in packages or containers which it labels, advertises and brands "Silk Lisle"; sells and ships hosiery made of cotton and wool in approximately equal proportions which it labels, advertises and brands, and which it distributes in packages or containers which it labels, advertises and brands "Cashmere" or "Wool"; that dealers purchasing these various kinds of hosiery, labeled, advertised and branded as aforesaid, and in packages or containers labeled, advertised and branded as aforesaid, offer and sell them so labeled to the general purchasing public. That neither the said hosiery nor the boxes or packages containing it are labeled, advertised or branded with any other word or words to indicate the kind or grade of materials entering into the manufacture of said hosiery.

PAR. 4. That the words "Fibre Silk" or "Silk Lisle" when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signify and are understood by a substantial part of the purchasing public to mean hosiery which con-

tains some proportion of true silk. That the word "Cashmere" when applied to hosiery without any other word or words descriptive of the kind or grade of materials signifies, and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of a high grade of wool; that the word "Wool," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of wool.

PAR. 5. That many of respondent's competitors in the selling of hosiery are engaged in interstate commerce, selling and shipping their goods from one state into another. That a number of such competitors have sold and shipped, and now sell and ship, in said commerce between the states, hosiery which is made entirely of silk, which hosiery, and the packages or containers of which, are labeled, advertised and branded "Silk"; that a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery, which hosiery is made entirely of twisted cotton yarns, which hosiery, and the packages or containers of which, are labeled, advertised and branded "Lisle." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery which is made entirely of high grade wool, which hosiery, and the packages or containers of which are labeled, advertised and branded "Cashmere." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery which is made entirely of wool, which hosiery, and the packages or containers of which, are labeled, advertised and branded "Wool."

PAR. 6. That a number of respondent's competitors engaged in interstate commerce, as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of an animal or vegetable fiber and containing no silk, which hosiery and the packages or containers of which are labeled, advertised, and branded with the name of the fiber or fibers of which the hosiery is composed, and with no other word or words descriptive of the materials; or are labeled, advertised, and branded with no words descriptive of the materials. That a number of respondent's competitors in interstate commerce, as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of cotton, or mercerized cotton, which hosiery, and the packages and containers of which, are labeled, advertised, and branded with no other word or words descriptive of the material except "Cotton" or "Mercerized Cotton," or are labeled, advertised, and branded with no word or words descriptive of the ma-

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

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

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Simons, Hatch & Whitten Company, and its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly:

I. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "silk," or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silkworm, or (2) unless, where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

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

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

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

FEDERAL TRADE COMMISSION

v.

MORRISON & COMPANY.

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

Docket 849—September 12, 1922.

SYLLABUS.

Where a corporation engaged in the sale of cutlery, etc., under the style of "Hamilton Razor Company" and "Hartford Cutlery Company," sold to retailers at prices ranging from $3.50 to $7.50 per dozen, approximately, razors packed in individual containers marked at its request "Hartford Cutlery Company, price $3.00" or "Hamilton Razor Company, price $3.00"; the fact being that said marked price did not represent the price at which it was contemplated that they were to be sold to the ultimate purchasers, but was a fictitious price used to mislead such purchasers; thereby tending to mislead the purchasing public into believing that it was selling high-grade razors at greatly reduced prices:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Morrison & Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Illinois, with principal place of business at Chicago, in said State.

PAR. 2. That respondent is engaged in the business of selling jewelry, cutlery, optical goods and other commodities and novelties in wholesale quantities, and causes commodities sold by it to be transported to the purchasers thereof from the State of Illinois, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged. Respondent carries on a portion of its business under the trade name of Hamilton Razor Company.

PAR. 3. That respondent, in the course of its business as described in paragraph 2 hereof, during the years 1919 and 1920, purchased razors at prices ranging from $3.75 to $6.10 per dozen, packed singly in containers marked, "Hartford Cutlery Co. Price $3.00." That said containers were so marked by the manufacturer of the razors at respondent's request; that said proposed resale price was false, fictitious and misleading in that it was greatly in excess of the price at which respondent and its vendees contemplated that said razors would be and were sold to the public; that said razors were sold to the purchasing public at from 75¢ to $2.00 each. That said false, fictitious and misleading prices were calculated to and actually did mislead and deceive the public with regard to the grade or quality of the razors in said containers, and induced the public to buy said razors in the mistaken belief that high-grade razors were being sold at a greatly reduced price; that by causing the containers of said razors to be so falsely and fictitiously marked, respondent was unfairly competing with other dealers who did not indulge in said practice.

PAR. 4. That by reason of the facts recited, the respondent has been and is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to definite its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent, not having filed an answer in conformity with Rule III of the Rules of Practice of the Commission, as directed in said complaint, but having made default, the testimony of witnesses was taken in support of the charges stated in the complaint before an examiner for the Commission theretofore duly appointed, whereupon respondent entered its appearance and stipulated that the Commission might issue its order requiring respondent to cease and desist from the practices charged in the complaint.

And thereupon this proceeding came on for final hearing upon the complaint, testimony, and evidence introduced, 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, Morrison & Company, is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in Chicago, in said State.

PAR. 2. The respondent is engaged in the business of buying and selling in wholesale quantities, jewelry, silverware, optical goods, and cutlery, including razors; that razors were sold by respondent to retailers for resale to the purchasing public, and respondent caused such razors when sold by it, to be transported to the purchasers thereof from the State of Illinois, through and into other States of the United States; respondent carried on its said business in direct, active competition with other persons, partnerships and corporations similarly engaged, and conducted a portion of its business under the trade name of "Hamilton Razor Company" and "Hartford Cutlery Company."

PAR. 3. The respondent in the course of its business, as described in paragraph 2 hereof, bought razors direct from manufacturers in the United States and from importers in the years 1919 and 1920 and prior thereto, the prices ranging from $2.75 per dozen to $6.10 per dozen, which razors were resold by respondent to retailers at prices approximately 25% greater than the cost price to respondent; that razors so sold by respondent were packed singly in cases upon which were printed in gilt letters, "Hartford Cutlery Company, price $3.00" or "Hamilton Razor Company, price $3.00"; that the containers in which such razors were packed were so marked by the manufacturers thereof, at the request of the respondent.

PAR. 4. The price $3.00 printed upon the containers of the razors sold by respondent, as set out in paragraph 3 hereof, was not the price at which, to the knowledge and intent of the respondent, such razors were to be sold to the ultimate purchasers in due course of retail trade, but was a false and fictitious price, placed upon such containers for the purpose of creating in the minds of the purchasers at retail, the erroneous belief that such razors were reasonably worth the price so printed on such containers; that the use by respondent of such price marks, under the circumstances stated, had the capacity and tendency to create in the minds of the purchasing public the erroneous belief that high-grade razors were being sold by respondent at greatly reduced prices.

CONCLUSION.

That the practices of the said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of

Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Morrison & Company, its officers, directors, agents, servants and employees, do cease and desist from marketing, in interstate commerce, razors, bearing upon the containers in which said razors are packed any false, fictitious or misleading statement of or concerning the price of said razors or any false, fictitious or misleading statement as to the value of said razors.

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

FEDERAL TRADE COMMISSION

v.

J. REED THOMPSON, ANDREW N. THOMPSON, GEORGE L. THOMPSON AND A. WALTER THOMPSON, STYLING THEMSELVES THOMPSON BROTHERS.

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

Docket 683—September 27, 1922.

SYLLABUS.

Where a firm engaged in the manufacture and sale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; branded, labeled, advertised and sold hosiery composed of cotton and of an animal or vegetable fiber, but containing no genuine silk as "Ladies Silk Boot Hose" and "Ladies Art Silk Hose"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that J. Reed Thompson, Andrew N. Thompson, George L. Thompson and A. Walter Thompson, partners styling themselves Thompson Brothers, hereinafter referred to as respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondents constitute a partnership and carry on business at Milroy, Pa., under the firm name and style of Thompson Brothers and are engaged in the business of manufacturing and selling hosiery at wholesale, causing hosiery sold by them to be transported to the purchasers thereof from the State of Pennsylvania, through and into other states of the United States, and carry on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That respondents, in the course of their business as described in paragraph 1 hereof, place on hosiery sold by them, made

of cotton and artificial silk, but which contain no genuine silk, and upon the boxes in which such hosiery is eventually offered for sale by the retail dealers to the purchasing public, certain false and deceptive labels among which are the following:

"Ladies' Silk Boot Hose"
"Ladies' Art Silk Hose";

which labels are false and misleading and are calculated to and do mislead and deceive the purchasing public.

PAR. 3. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, 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, J. Reed Thompson, Andrew N. Thompson, George L. Thompson, and A. Walter Thompson, styling themselves Thompson Brothers, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, J. Reed Thompson, Andrew N. Thompson, George L. Thompson, and A. Walter Thompson, constitute a partnership and carry on business at Milroy, Pennsylvania, under the firm name and style of Thompson Brothers.

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

PAR. 3. That the respondents in the course of their business as described in paragraph 2 above, sell and ship hosiery made of an animal or vegetable fibre, but containing no true silk, and cotton, which they label, advertise and brand, and in packages or containers which they label, advertise and brand "Ladies' Silk Boot Hose." That dealers purchasing this hosiery from respondents or from respondents' customers labeled, advertised and branded, or in packages or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it are labeled, advertised or branded with any other word or words descriptive of the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 4. That the respondents, in the conduct of their business as described in paragraph 2 above, sell and ship hosiery made of an animal or vegetable fibre, but containing no true silk, and cotton, which they label, advertise and brand, and in packages or containers which they label, advertise and brand "Ladies' Art Silk Hose." That dealers purchasing this hosiery from respondents or from respondents' customers, labeled, advertised and branded, or in packages or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it are labeled, advertised or branded with any other word or words descriptive of the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 5. That the term "Silk Boot Hose," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of material derived from the cocoon of the silkworm. That the term "Art Silk Hose," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is

understood by a substantial part of the purchasing public to mean hosiery which is made entirely of material derived from the cocoon of the silkworm.

PAR. 6. That many of respondents' competitors in the selling of hosiery are engaged in interstate commerce, selling and shipping their goods from one state into another. That many such competitors sold and shipped and now sell and ship in said commerce between the States, hosiery which is made entirely of silk, which hosiery and the packages or containers of which are labeled, advertised and branded "Ladies' Silk Boot Hose." That many such competitors sold and shipped, and now sell and ship in commerce between the states, hosiery, which hosiery is made entirely of material derived from the cocoon of the silkworm, which hosiery and the packages or containers of which are labeled, advertised and branded "Silk Hose."

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

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

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods

of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondents, J. Reed Thompson, Andrew N. Thompson, George L. Thompson and A. Walter Thompson, styling themselves Thompson Brothers, and their officers, agents, representatives, servants and employees, cease and desist from directly or indirectly using as labels or brands on hosiery sold by them, or on the containers thereof, or in advertisements thereof, the word "silk," or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silkworm, or (2) unless, where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

FEDERAL TRADE COMMISSION
v.
OSCAR SCHMIED.

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

Docket 699—September 27, 1922.

SYLLABUS.

Where an individual engaged in the sale at wholesale of hosiery in competition with concerns who either correctly branded, labeled, and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect, sold hosiery composed of cotton and genuine silk branded, labeled, and advertised as "Ladies' Silk Hose," "Men's Silk Half Hose," "Silk Hose" and "Silk Half Hose"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Oscar Schmied, hereinafter referred to as the respondent, has been, and now is, using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief:

PARAGRAPH 1. That the respondent, Oscar Schmied, is a wholesaler of hosiery, having his office and place of business in the city of New York, State of New York, and in the course of his business as such wholesaler of hosiery, purchases quantities of hosiery from manufacturers thereof, and enters into contracts with manufacturers of hosiery for the purchase of quantities thereof and resells the same to dealers in States other than the State of New York and in States other than the State in which such hosiery is manufactured and causes the same to be transported to such dealers in the several States of the United States and the District of Columbia; and in the conduct of such business is in direct competition with persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the course of his business as described in paragraph 1 hereof, causes to be placed upon certain lines of hosiery so sold and caused to be transported by him, and upon the boxes in which such hosiery is eventually exhibited for sale to the purchasing public, certain false and misleading brands and labels, viz, "Ladies' Silk Hose," "Men's Silk Half Hose," "Silk Hose," and "Silk Half Hose," whereas in truth and in fact the material of which such hosiery, so labeled and branded, is made is not silk, but is composed of cotton and silk in varying proportions; that such labels and brands are misleading and are calculated to and do deceive the purchasing public into the belief that such hosiery is manufactured wholly of silk.

PAR. 3. That by reason of the facts recited the respondent is using unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent having entered his appearance in his own proper person and filed his answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, and having made, executed, and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony and proceed forthwith with such agreed statement of facts, to make its findings as to the facts, and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Oscar Schmied, is engaged in business in his own name, and has his principal place of business in the city of New York, State of New York.

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

PAR. 3. That respondent in the conduct of his business as described in paragraph 2 above, sells and ships hosiery made of material derived from the cocoon of the silkworm and cotton in varying proportions labeled, advertised, and branded, and in packages or containers labeled, advertised, and branded, "Ladies' Silk Hose," "Men's Silk Half Hose," "Silk Hose," and "Silk Half Hose." That dealers purchasing this hosiery from respondent or from respondent's customers labeled, advertised, and branded, or in packages or containers labeled, advertised, and branded, as aforesaid, offer and sell it so labeled, advertised, and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised, or branded with any other word or words to indicate the character, kind, or grade of material entering into the manufacture of said hosiery.

PAR. 4. That the term "Silk Hose," without any other word or words descriptive of the character, kind, or grade of material or materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery made entirely of material derived from the cocoon of the silkworm. That the term "Silk Half Hose," without any other word or words descriptive of the character, kind, or grade of material or materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery made entirely of material derived from the cocoon of the silkworm.

PAR. 5. That many of respondent's competitors in the selling of hosiery, are engaged in interstate commerce, selling and shipping their goods from one State into another. That many such competitors sell and ship, in said commerce between the States of the United States, hosiery made entirely of material derived from the cocoon of the silkworm, which hosiery and the packages or containers for which are labeled, advertised, and branded "Silk Hose." That many such competitors sell and ship, in said commerce between the States of the United States, hosiery made entirely of material derived from the cocoon of the silkworm, which hosiery and the pack-

ages or containers for which are labeled, advertised, and branded "Silk Half Hose."

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

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

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respond-

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

It is now ordered, That the respondent, Oscar Schmied, and his officers, agents, representatives, servants and employees, cease and desist from directly or indirectly using as labels or brands on hosiery sold by him, or on the containers thereof, or in advertisements thereof, the words "Silk" or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silkworm, or (2) unless where the hosiery is made partly of silk it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

FEDERAL TRADE COMMISSION

v.

PINENE MANUFACTURING COMPANY, INC.

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

Docket 774—September 27, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of chemicals, oils, thinners, etc.,

(*a*) Called a petroleum distillate with a small portion of turpentine added. "Pinene," a name accepted in chemical nomenclature as designating the chief constituent of spirits of turpentine;

(*b*) Falsely represented, by means of advertisements in papers of nation wide circulation, and by means of circular letters, letterheads, etc., that its aforesaid product was "equal to turpentine," was "a chemically correct substitue for turpentine," and was "a synthetic turpentine embodying all the physical measurements of spirits of turpentine and meeting all technical requirements of turpentine";

With the tendency and capacity thereby to mislead and deceive the purchasing public into believing that in the purchase of said product it was obtaining the chemical known as "Pinene" and a commodity conforming to the foregoing statements:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Pinene Manufacturing Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Pennsylvania, with principal place of business at Philadelphia, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling drugs, chemicals, oils, thinners, etc., and causes products sold by it to be transported to the purchasers thereof, from the State of Pennsylvania through and into other States of the United

States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in Paragraph Two hereof, makes use of advertisements which it causes to be published in trade papers of nation-wide circulation, and letterheads, circulars, circular letters, and other advertising matter, which are given general circulation by respondent, which advertisements and advertising matter contain false and deceptive statements of and concerning a product labeled "Pinene," which respondent manufactures and sells; that among such false and deceptive statements are statements to the effect that said product, "Pinene," is equal to turpentine, is made of pine-tree spirits, and is a chemically correct substitute for turpentine; that it is a synthetic turpentine embodying all the physical measurements of spirits of turpentine and meeting all technical requirements, whereas said product is essentially a petroleum distillate, with a small proportion of turpentine added, and is not equal to turpentine; that such false and deceptive statements are calculated to and do mislead and deceive the purchasing public and persons are thereby induced to purchase said product upon the mistaken belief that it is equal to turpentine; the purchasing public are further misled and deceived by the use by respondent of the name "Pinene" for said product, for the reason that pinene is accepted in chemical nomenclature to designate the chief constituent of spirits of turpentine, and respondent's said product contains little if any of the compound pinene.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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, Pinene Manufacturing Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act. The respondent having entered its appearance by its attorneys and filed its answer herein, a statement of facts was agreed upon by counsel for the Commission and counsel for the respondent, to be taken in lieu of evidence, and thereupon this proceeding came on for final hearing, and the Commission, hav-

ing duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business in the city of Philadelphia in said State, where it is engaged in the manufacture and sale of chemicals, oils, thinners, etc., and in the transportation thereof in commerce from the city of Philadelphia through and into the various States of the United States and the District of Columbia, in competition with various other firms, corporations and partnerships similarly engaged.

PAR. 2. Among the various products sold and offered for sale by respondent in the manner set out above, is one certain product which it calls "Pinene," and which it advertises and sells as a paint thinner and describes in the manner next set out below.

PAR. 3. Respondent, in connection with the sale of the said product, Pinene, represents by means of advertisements which it places, or causes to be placed, in papers of nation-wide circulation, and by means of circulars and circular letters, letterheads and other advertising matter which it gives general circulation, that its product, Pinene, is—

Equal to turpentine and is a chemically correct substitute for turpentine; that it is a synthetic turpentine embodying all the physical measurements of spirits of turpentine and meeting all technical requirements of turpentine.

Such statements, as applied to respondent's product, Pinene, are false and misleading. The aforesaid Pinene, as manufactured, advertised and sold by respondent, is a petroleum distillate with a small portion of turpentine added. It is not a synthetic turpentine embodying all the physical measurements of spirits of turpentine and meeting all technical requirements of turpentine. It is not equal to turpentine and is not a chemically correct substitute for turpentine, and such statements as set out above, with reference to the said Pinene, have both the tendency and capacity to deceive and mislead the purchasing public into the belief that by purchasing respondent's product it is obtaining—

A synthetic turpentine embodying all the physical measurements of spirits of turpentine and meeting all the requirements of turpentine;

that it is obtaining a commodity that is—

Equal to turpentine and is a chemically correct substitute for turpentine,

when in truth and in fact it is obtaining a petroleum distillate in no way justifying the above representations.

PAR. 4. The name "Pinene" is accepted in chemical nomenclature to designate the chief constituent of spirits of turpentine, and the use of the word "Pinene" as a name for respondent's product and in its advertisements as herein before set out, is false and misleading and has both the tendency and capacity to mislead and deceive the general purchasing public into the belief that by purchasing respondent's product it is obtaining the chemical known as Pinene, when in truth and in fact it is obtaining a petroleum distillate.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Pinene Manufacturing Company, Inc., its officers, agents, representatives, servants, and employees, do cease and desist—

(1) From using the word "Pinene" standing alone or in connection with any other word or words as a brand, label, trade-mark or trade name or in any advertisement or in any manner whatsoever in connection with the sale in interstate commerce of petroleum distillate.

(2) From publishing in trade papers, letterheads, circulars, circular letters and other advertising matter statements relative to the aforementioned petroleum distillate, designated by respondent as "Pinene," the statements that—

It is a pine tree spirit. It is a chemically correct substitute for turpentine. It is a synthetic turpentine embodying all the physical measurements of spirits of turpentine and meeting all the requirements of turpentine,

or statements of similar import.

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

FEDERAL TRADE COMMISSION

v.

BUDD TAILORING COMPANY.

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

Docket 853—October 4, 1922.

SYLLABUS.

Where a corporation engaged in conducting a tailoring business, falsely represented to prospective customers, through its agents, that under its so-called "cooperative advertising plan" (whereby the company contracted, in consideration of 60 payments of 50 cents in advance each week, to deliver to the holder of the contract a $30 suit or overcoat, reserving the right, in consideration of new customers that might be secured by said holder, to discount said price to any extent it might see fit) customers would be organized into groups or "clubs" of 60 each, the name of one of whom would be selected by chance each week to receive a suit or overcoat, without further payment or obligation; the fact being that selections were made arbitrarily and largely without regard to services tendered, by said corporation in such business districts as would best advertise itself and serve to secure other customers, and that customers not so selected, after completing their payment, were compelled to pay an additional amount in order to secure goods of serviceable quality and equal in appearance to garments ordinarily sold at $30; with the result that through such false representations large numbers of customers were secured:

Held, That the holding out of such false and misleading inducements to purchase, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Budd Tailoring Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce within the District of Columbia, in violation of Section 5 of an Act of Congress, approved September 26, 1914, entitled: "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

I.

PARAGRAPH 1. For its first charge herein, the Commission says that respondent is a corporation organized and doing business under and

by virtue of the laws of the State of Maryland and owns and conducts tailoring establishments in various cities of the United States.

PAR. 2. That on or about the 19th day of August, 1919, respondent opened a gentlemen's tailoring establishment in the City of Washington, District of Columbia, at the premises known as 945 Pennsylvania Avenue in said City and District and there engaged in the business of selling gentlemen's clothing to residents of said District and the territory adjacent thereto, in competition with other persons, partnerships, and corporations similarly engaged in said District; that respondent conducted its said business continuously from said date until the 19th day of March, 1921, when respondent ceased and abandoned its said business in the District of Columbia, removed therefrom and has not at any time since said last named date engaged in any business whatsoever in said District.

PAR. 3. That in the conduct of its said business in the District of Columbia, respondent conducted a lottery in violation of the provisions of Section 863 of the code of laws for the District of Columbia in the following manner, to-wit: Respondent solicited customers among the residents of said District and offered to sell to each such customer a suit of clothing or an overcoat as such customer might choose for the price of $30 upon the following terms and conditions; that such customer should make 60 weekly payments of 50¢ each or until such sum of $30 had been fully paid in advance whereupon respondent would make to the measure and order of such customer the suit or overcoat so contracted for and deliver same to such customer free of further payments; that respondent would group customers entering into such agreement into groups of 60 customers each, denominated by respondent clubs, and that upon receipt of the first such payment of 50¢ by each member in each such club and each week thereafter until the expiration of 59 weeks respondent would cause the name of one customer in each such club to be drawn by chance and would deliver to each customer so selected the suit contracted for by him free of any further charge or payment other than the payments made by such customer, under the advance payment plan above set out, prior and up to the time of said selection; that by means of the foregoing offer respondent secured large numbers of customers each of whom agreed to purchase a suit from respondent upon the terms and conditions above set out and thereafter respondent proceeded to conduct a lottery and to select by chance the name of one such customer each week for a period of time to the Commission unknown; that upon the selection of each such name by chance, respondent delivered to the customer so selected a suit of clothing free of all further charge or payment other than the payments made

by such customer under the advance payment plan above set out, prior and up to the time of his said selection.

PAR. 4. That the above alleged acts and things so done by respondent constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26th, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

II.

PARAGRAPH 1. For its second separate charge herein the Commission says that respondent is a corporation organized and doing business under and by virtue of the laws of the State of Maryland and owns and conducts tailoring establishments in various cities of the United States.

PAR. 2. That on or about the 19th day of August, 1919, respondent opened a gentlemen's tailoring establishment in the City of Washington, District of Columbia, at the premises known as 945 Pennsylvania Avenue in said City and District and there engaged in the business of selling gentlemen's clothing to residents of said District and the territory adjacent thereto, in competition with other persons, partnerships and corporations similarly engaged in said District; that respondent conducted its said business continuously from said date until the 19th day of March, 1921, when respondent ceased and abandoned its said business in the District of Columbia, removed therefrom and has not since said last named date engaged in any business whatsoever in said District.

PAR. 3. That in the conduct of its said business in the District of Columbia respondent solicited customers among the citizens of said District by means of certain agents employed by respondent for that purpose and denominated by respondent, solicitors; that by and through said agents respondent offered to sell to each customer a suit of clothing or an overcoat as such customer might choose for the sum of $30 to be paid for by such customer in 60 weekly payments of 50¢ each payable in advance upon the following terms and conditions; that upon the completion of said 60 weekly payments or when said total sum of $30 had been so paid, respondent would make and deliver to such customer the suit or overcoat so chosen by him as above set out; that the customers so secured by respondent would be grouped into clubs and that upon the initial payment of 50¢ by each customer in each such club, respondent would select the name of one customer in each such club to whom the suit of clothing or overcoat chosen by such customer under the agreement above set out would be made and delivered to him without further charge

or payment other than the payments made by such customer, under the advance payment plan above set out, prior and up to the time of his said selection and that each week thereafter for a period of 59 weeks respondent would similarly select and deliver a suit or overcoat to one customer in each such club; that said terms and conditions were calculated to create and did create the belief among the persons so solicited by respondent that in selling and distributing suits and overcoats under such offer, respondent would conduct a lottery wherein one customer would win a suit or overcoat each week by chance; that by means of such offer respondent secured a large number of customers in the District of Columbia each of whom agreed to purchase a suit or overcoat upon the terms and conditions above set out; that thereafter and in pursuance of said method of conducting its said business, respondent proceeded from time to time arbitrarily to select the name of one such customer to whom respondent delivered a suit of clothing free of any further charge or payment on the part of the customer so selected other than the payments made by such customer, under the advance payment plan above set out, prior and up to the time of his said selection; that a large majority of the persons entering into said agreement with respondent regularly made the weekly payments of 50¢ therein provided for until, in each instance, the customer had been selected by respondent to receive a suit in advance of full payment as above set out, or had paid to respondent the full amount of $30 provided for in said agreement; that the above alleged acts and things were done by respondent in order to evade the provisions of Section 863 of the code of law for the District of Columbia and for the purpose of simulating a lottery whereby persons solicited by respondent might be induced and were induced to purchase suits and overcoats upon the plan, terms and conditions hereinbefore set out;

PAR. 4. That the above alleged acts and things done by respondent constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

III.

PARAGRAPH 1. For its third separate charge herein the Commission says that respondent is a corporation organized and doing business under and by virtue of the laws of the State of Maryland and owns and conducts tailoring establishments in various cities of the United States.

PAR. 2. That on or about the 19th day of August, 1919, respondent opened a gentlemen's tailoring establishment in the City of Washington, District of Columbia, at the premises known as 945 Pennsylvania Avenue in said City and District and there engaged in the business of selling gentlemen's clothing to residents of said District and the territory adjacent thereto, in competition with other persons, partnerships and corporations similarly engaged in said District; that respondent conducted its said business continuously from said date until the 19th day of March, 1921, when respondent abandoned its said business in the District of Columbia, removed therefrom and has not since said last named date, engaged in any business whatsoever in said District;

PAR. 3. That in the conduct of its said business in the District of Columbia respondent by and through agents employed for that purpose solicited customers among the citizens of said District and offered to sell each such customer a suit of clothing or overcoat at the choice of such customer upon the following terms and conditions to wit: that each customer should pay to respondent the sum of 50¢ per week for a period of 60 weeks or until the total sum of $30 had been paid by such customer whereupon respondent would make and deliver such customer a suit or overcoat chosen by him; that respondent was then selecting each week from among its customers and would continue to so select each week thereafter for an indefinite period one customer who would be given a made to order suit of clothing or overcoat directly after such selection, without further charge or payment on his part other than the payments made by such customer, under the advance payment plan above set out, prior and up to the time of his said selection; that the customer so selected would be chosen by respondent in consideration of and in return for services theretofore rendered by such customer to respondent which said services respondent represented to be the securing by such customer of other customers for respondent or the doing of such other acts or things as may have been requested by respondent and performed by such customer; that each person entering into an agreement to purchase a suit upon the terms hereinbefore set out had an equal chance with all other customers of respondent to secure new customers or render other services and thus to be selected to receive in return therefor a suit of clothing or an overcoat as he might choose without further charge or payment on his part other than the payments made by such customer, under the advance payment plan above set out, prior and up to the time of his said selection; that upon the agreement of the person so solicited to purchase a suit under the terms and conditions above set out, respondent issued to such person a booklet

in which all the payments made by such person were recorded in spaces provided for that purpose and numbered so as to show the number, amount and date of the collection of each such payment; that in each said booklet appeared the following contract which said contract respondent required said person to execute:

CONTRACT.

In consideration of 60 payments of 50¢ in advance each week, The Budd Tailoring Company agrees to deliver to the holder of this contract a gent's suit or coat to the price of $30.00.

In order to advertise our clothing on a broader principle and to continually increase our sales, the company reserves the following privileges as a special and separate advantage to customers holding this contract, who in return agree to use their influence in getting us new customers.

The company reserves the right to discount the above price of one suit to any extent it may see it fit, to increase our sales, provided new customers are secured by the party. Said credit being for services rendered. The above is not an inducement for the original purchase.

No money can be lost during the life of this contract, as the amount paid in will be credited to your account and can be applied to any $30 garment any time.

No orders are accepted on clothing sold for less than $30, and no money will be returned.

With the consent in writing, of the Company, the holder of this contract may assign same to any other person, and said party shall upon completing payments be entitled to merchandise to the price of $30.

Agents are expressly prohibited from making any agreement contrary to the terms herein specified and customers are warned that we will not be responsible in any manner, shape or form other than the expressed terms of this agreement.

It is expressly understood that this contract in no wise embraces any scheme of chance, gift enterprise or plan governed by chance, but the discount allowed is solely on account of services rendered the Company in making sales to their friends and acquaintances.

It is hereby jointly agreed that this is essentially a cooperative contract between us and each and every contract holder wherein said holder agrees to waive any and all claims, now or during

the life of this contract, contrary to the printed terms herein specified.

THE BUDD TAILORING CO.

that respondent through its said solicitors represented to the person solicited by it that said contract was intended to and did provide for the weekly selection of a customer to receive a suit or overcoat free of further payment as hereinbefore alleged; that pursuant to said representations and the execution of said agreement respondent did from time to time select from among its said customers one who should receive and did receive the suit of clothing or overcoat so contracted for by him free of any further charge or payment; that said customers so selected either rendered no services for said selection or rendered services of a negligible character and value therefor; that the suits and overcoats so delivered by respondent to the customers thus selected were of good quality and workmanship and well worth the price of $30, by reason whereof other customers and prospective customers of respondent were led to believe and did believe that in the event they were similarly chosen to receive a suit before the payment of the entire agreed price of $30, or in any event upon the payment of said entire sum of $30, they would receive suits equal in quality and value to those given by respondent to customers specially selected by it as above set out; that after large numbers of customers had paid said entire amount of $30 and had thus become entitled to a suit or overcoat as provided for in said contract, respondent supplied no suits or overcoats of a quality and value equal to those theretofore delivered to selected customers as above set out, but offered to such customers who had paid said full amount of $30, materials from which suits or overcoats might be selected, which were far inferior to the materials theretofore furnished by respondent in the suits and overcoats delivered to said selected customers and the suits and overcoats made by the respondent from said materials so offered to said customers who had so paid in full were not of the reasonable value of $30; that when such customers who had paid in full complained to respondent that the quality and value of the garments and materials so offered to such customers for selection was far below the quality and value of the materials, suits and overcoats which respondent had furnished to aforesaid specially selected customers, respondent refused to give such complaining customers suits or materials of any better quality or value than those first offered to them unless and until such customers had paid to respondent an additional sum of money, and further refused to return to such customers the money paid by them to respondent under said contract.

PAR. 4. That the above alleged acts and things done by respondent constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent, Budd Tailoring Company, having entered its appearance and filed its answer and pursuant to the order and designation of the Federal Trade Commission hearings were had before an examiner of the Commission and testimony and evidence having been introduced in behalf of the Commission and in behalf of the respondent;

Thereupon this proceeding came on for final hearing before the Commission upon the testimony and evidence introduced, the Examiner's report and exceptions thereto and upon briefs for both sides, 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, Budd Tailoring Company, is a corporation organized under the laws of the State of Maryland, December 1919, with an authorized capital stock of $10,000. Its principal place of business in the District of Columbia from its incorporation to and including the 19th day of March, 1921, was located in the Franklin National Bank Building, at 945 Pennsylvania Avenue, Northwest.

PAR. 2. The respondent's predecessor prior to December, 1919, and the respondent since its incorporation, conducted in the District of Columbia, a men's custom tailoring establishment, for a period of nineteen months, from the 19th day of August, 1919 to the 19th day of March, 1921, on which latter date said respondent ceased and abandoned its business in the said District of Columbia, removed therefrom and has not at any time since the last named date engaged in any business whatsoever in the said District.

PAR. 3. The respondent, while engaged in the men's custom tailoring business and selling clothing to residents of the District of Columbia, was in competition with other persons, partnerships and corporations similarly engaged in said District. Said respondent owns and conducts tailoring establishments, operated on like plans, in other and various cities of the United States.

PAR. 4. The respondent in order to solicit the purchase or sale of men's suits of clothing or overcoats to prospective purchasers in the District of Columbia, under what was termed its "cooperative advertising plan," provided for this purpose a contract in writing by the terms of which said agreement it was provided as follows:

> In consideration of 60 payments of 50¢ in advance each week, The Budd Tailoring Company agrees to deliver to the holder of this contract a gent's suit or coat to the price of $30.00.
>
> In order to advertise our clothing on a broader principle and to continually increase our sales, the company reserves the following privileges as a special and separate advantage to customers holding this contract, who in return agree to use their influence in getting us new customers.
>
> The company reserves the right to discount the above price of one suit to any extent it may see fit, to increase our sales, provided new customers are secured by the party. Said credit being for services rendered. The above is not an inducement for the original purchase.
>
> No money can be lost during the life of this contract, as the amount paid in will be credited to your account and can be applied to any $30.00 garment any time.
>
> No orders are accepted on clothing sold for less than $30.00, and no money will be returned.
>
> With the consent in writing, of the Company, the holder of this contract may assign same to any other person, and said party shall upon completing payments be entitled to merchandise to the price of $30.00.
>
> Agents are expressly prohibited from making any agreement contrary to the terms herein specified, and customers are warned that we will not be responsible in any manner, shape or form other than the expressed terms of this agreement.
>
> It is expressly understood that this contract in no wise embraces any scheme of chance, gift enterprise or plan governed by chance, but the discount allowed is solely on account of services rendered the Company in making sales to their friends and acquaintances.

It is hereby jointly agreed that this is essentially a cooperative contract between us and each and every contract holder wherein said holder agrees to waive any and all claims, now or during the life of this contract, contrary to the printed terms herein specified.

PAR. 5. In the conduct of its business in the District of Columbia, respondent solicited customers among the residents of said District by means of certain agents employed for that purpose and denominated solicitors. Said agents or solicitors represented on behalf of the respondent that groups were being organized under its cooperative advertising plan, consisting of sixty customers each, denominated by respondent clubs and by and through said agents or solicitors, respondent offered to sell to each such customer a suit of clothing or an overcoat, as such customer might choose, for the sum of $30.00 to be paid for by such customer in sixty weekly payments, or when said total sum of $30.00 had been so paid, respondent would make to the measure and order of such customer, the suit of clothing or overcoat so contracted for and deliver same to such customers free from further payments; said agent or solicitor on behalf of said respondent further represented to such customer, or prospective customers, entering into such agreement, that upon the receipt of the first such payment of 50¢ from each member in each such club, and each week thereafter until the expiration of fifty-nine weeks, respondent would cause the name of one customer in each such club or group to be drawn or selected by chance and would deliver to each customer so drawn or so selected, the suit of clothing or overcoat contracted for by him, free of any further charge or payment, other than the payments made by such customer under the advanced payment plan above set forth.

Pursuant to the agreement or contract set forth in Paragraph Four hereof and the representations made by the agents or solicitors on behalf of the respondent, some three or four thousand customers in the District of Columbia agreed to and did purchase a suit of clothing or overcoat from respondent upon the terms and conditions of said contract or agreement and the said representations made by the agents and solicitors of the said respondent.

PAR. 6. The respondent did not group or attempt to group its customers into clubs of sixty each, or any other denomination, but arbitrarily selected from time to time such contract holders as it so desired and gave certainly one hundred, but not more than two hundred customers, suits of clothing or overcoats before said customers had completed their payments of $30.00 and without further charge or payment other than the payments made by such customers prior and up to the time of said selection.

The customers chosen by respondent to receive suits of clothing or overcoats were arbitrarily selected in such business districts or in such business sections of the District of Columbia, as would best advertise its business in order to secure other customers under its so-called cooperative advertising plan. Such selections were made largely without regard to services rendered and in one instance where the customer had only paid one weekly payment of 50¢ and had not rendered any service whatsoever to the respondent company.

That notwithstanding the respondent company contracted or agreed to sell men's custom made suits of clothing or overcoats at the specified price of $30.00 each, no reference being made to goods of higher price or quality, when said payments were completed the samples of the goods submitted from which such selection of clothing was to be made, were of such inferior quality that the customer was obliged to and did pay to the respondent company an additional sum of money in order to obtain goods of the appearance and quality usually made into suits sold at said price. About 60% of the customers who had previously contracted for $30.00 suits were obliged to pay or did pay over or above that amount in order to acquire goods of serviceable quality.

PAR. 7. The said customers were led to believe and did believe from the statements made by the agents of the respondent on behalf of the respondent that said respondent was selling suits of clothing and overcoats at the specified price of $30.00, dividing its customers into groups or clubs of sixty customers each, and as the further result of such representations or inducements of said agents or solicitors that a member would be drawn each week from each such club to receive a suit of clothing or overcoat free from any further charge or payment, more than three thousand customers or prospective customers were induced by such representations to enter into the agreement hereinbefore referred to, in the belief that each had equal chance with the other members of the so-called club of sixty to procure a suit of clothing or overcoat before completing the sixty weekly payments of 50¢ each.

PAR. 8. The arbitrary selection of customers from time to time by respondent to receive suits of clothing or overcoats free from any further charge or payment, was not as a reward for services rendered by said customers but rather as an inducement to secure additional customers through respondent's said form of solicitation or advertisement, and that additional customers were so influenced and secured through such representations made by respondent's agreement that the said customers or prospective customers had equal chance with the other fifty-nine alleged club members to secure a suit of clothing or overcoat before completing the sixty weekly payments.

CONCLUSION.

The practices of said respondent, as set forth in the foregoing findings as to the facts, are unfair methods of competition in commerce and constitute a violation of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Budd Tailoring Company, its officers, agents, solicitors, representatives, servants, and employees, cease and desist from directly or indirectly:

1. Falsely representing through its agents, or by or through any other means whatsoever, to its customers or prospective customers, its method of marketing its merchandise in commerce, and especially from,

2. Falsely representing through its agents or by or through any other means whatsoever, to its customers or prospective customers, that in the sale of suits of clothing or overcoats customers would be divided into clubs or groups of sixty persons each and that from such clubs or groups each week the names of persons would be drawn or otherwise selected by chance to receive a suit of clothing or overcoat without further charge or payment.

3. From representing to customers or prospective customers that under respondent's plan of marketing its merchandise each and every customer would have an equal chance or opportunity with other customers in the selection and designation of those who were to receive suits of clothing or overcoats at a price under the full payment of $30.00, when in truth and in fact no equality of opportunity is given.

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

Syllabus.

FEDERAL TRADE COMMISSION

v.

ESKAY HARRIS FEATURE FILM COMPANY.

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

Docket 741—October 17, 1922.

SYLLABUS.

Where a corporation engaged in the business of buying, selling and leasing motion picture films,

(*a*) Purchased, slightly altered, and retitled a picture made up in large part of film from a production which as "Your Obedient Servant" had been widely exhibited to the public, and so advertised, offered and leased the same without clearly indicating that said photoplay had already been exhibited under another title;

(*b*) Used as a new title therefor the name "Black Beauty," the fact being that the story therein set forth was not that of the famous novel of that name, and that a competitor was already engaged in the preparation of a so-called superproduction faithfully portraying the story of "Black Beauty" (a fact well known in the trade and motion picture industry), had given said production said title, and had at large expense extensively advertised the same;

(*c*) Used as advertising matter in connection therewith letters, lithographic posters, heralds, booklets, etc., which had a capacity and tendency to, and did, cause exhibitors and the motion picture theater going public to believe that said rebuilt photoplay had been made or produced by it, and had never theretofore been distributed or exhibited under any other name;

(*d*) In connection with the lease and distribution of said rebuilt photoplay, prominently featured in its letters and advertising matter the name of the author of the novel "Black Beauty" and styled its production "An American adaptation of the world famous autobiography of a horse," with the effect of deceiving and misleading the trade and motion picture theater going public into the erroneous belief that said photoplay set forth the story thereof, and that its photoplay and that of said competitor were one and the same, and of thereby enabling it to appropriate the advertising values created by said competitor; and

(*e*) Advertised in a trade publication of general circulation that it controlled the motion picture rights and title in the name "Black Beauty" and would prosecute any infringement to the full extent of the law, and so notified said competitor, which had itself theretofore registered in the Copyright Office the title so claimed; the fact being that said corporation had never registered such a claim, had no such rights as asserted, instituted no such threatened suits, and advertised and circulated such warning notice to unduly hinder said competitor in the lease and distribution of its aforesaid superproduction:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Eskay Harris Feature Film Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

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

PAR. 2. That respondent is engaged in the business of producing moving picture films, purchasing, leasing and reissuing moving picture films made by others and selling or leasing such films for use in moving picture theatres and other public places in various States of the United States, and causes such films, when sold or leased, to be transported to the purchasers or lessees thereof, from the State of New York, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of its business, as described in Paragraph Two hereof, on July 27, 1920, closed negotiations, which had been begun in February 1920, with the owner thereof, for five positive prints of a moving picture film entitled "Your Obedient Servant," each in three reels of aggregate length of about 2,656 feet, which prints were delivered to respondent on September 13, 1920; this film had been produced by Thos. A. Edison Co. inc., copyrighted and released on or about September 20, 1917, and thereafter extensively exhibited in moving picture theaters throughout the United States under the said title "Your Obedient Servant" and such film became well-known to patrons of moving picture theaters throughout the United States; that such film was described in the certificate of copyright registration, issued by the Copyright Office of the United States, Library of Congress, as "A drama suggested by Anna Sewell's story of 'Black Beauty'; directed by Edw. H. Griffith. Photoplay by Thos. A. Edison Co. inc. * * *;" that said film was and is not a strict adaptation from said story, but is for the most part foreign thereto.

PAR. 4. That after the acquisition of the prints of "Your Obedient Servant," as set out in Paragraph Three hereof, respondent made additional scenes aggregating about 300 feet of film which were added to the original material of said film "Your Obedient Servant" and a number of its original subtitles and captions were deleted and a larger number of subtitles and captions were added, same having been selected from the book entitled "Black Beauty" by Anna Sewell, which added subtitles and captions covered about 1,000 feet of film, and the film as thus rebuilt was enlarged from three reels to four reels and aggregated approximately 3,500 feet, and the film as thus rebuilt by respondent was entitled "Black Beauty," and was extensively advertised by respondent and offered for exhibition purposes upon lease contracts to proprietors of moving picture theatres and other places of amusement under that title, without clearly and distinctly showing to lessees and the patrons of moving picture theatres that such film entitled "Black Beauty" was an old film changed and re-issued under a new title as herein set out.

PAR. 5. That prior to the acquisition by respondent of the film "Your Obedient Servant" as set out in Paragraph Three hereof, the Vitagraph Company of America was having prepared a scenario based on the novel by Anna Sewell, entitled "Black Beauty," which scenario was completed on July 17, 1920, and immediately thereafter said Vitagraph Company announced that it was about to produce a moving picture entitled "Black Beauty" embodying such scenario, and thereupon inaugurated an extensive advertising and publicity campaign with the view of acquainting the proprietors and patrons of moving picture theaters with said film and creating a great demand therefor, which film was completed in December, 1920; that said Vitagraph Company is one of the pioneers in the production and leasing of moving picture films, and for a number of years has carried on an extensive business, causing films to be transported to the purchasers or lessees thereof, from the States of New York and California, through and into various other States of the United States and foreign countries.

PAR. 6. That the adoption by respondent of the title "Black Beauty" for the film reconstructed by it from the old film entitled "Your Obedient Servant," as set out in Paragraph Four hereof, was calculated to and has enabled respondent to wrongfully utilize and appropriate the value created by the said advertising and publicity campaign carried on by said Vitagraph Company for its said film "Black Beauty"; and in thus utilizing it, to

(*a*) deceive the motion picture distributors, exhibitors and theatre patrons by making them believe that respondent's said reconstructed

film was and is the same film as that of the same name made by the Vitagraph Company as aforesaid; and

(*b*) deceive the motion picture distributors, exhibitors and theatre patrons by making them believe that respondent's said reconstructed film was and is a strict adaptation from Anna Sewell's said story entitled "Black Beauty," whereas the same did not strictly or substantially follow said story, but was for the most part foreign thereto; that respondent in order further wrongfully to utilize the value of the advertising done by said Vitagraph Company, and in order to intimidate distributors and exhibitors of motion picture films and cause them to refuse to advertise, sell, distribute or produce the release of said film when issued by the Vitagraph Company, published in various trade journals an advertisement containing a statement to the effect that it controls the motion picture rights and title of "Black Beauty," and will prosecute any infringement to the full extent of the law, and a warning is given that anyone showing a motion picture entitled "Black Beauty" without respondent's permission does so at his own risk; whereas respondent did not control the motion picture rights and title of the name "Black Beauty," but published the said notice for the purpose of intimidating distributors of motion picture films and causing them to refuse to advertise the forthcoming release of said film, made by the Vitagraph Company, or to distribute it when released.

PAR. 7. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Eskay Harris Feature Film Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. The respondent, Eskay Harris Feature Film Company, entered its appearance by its attorneys, O'Brien, Malevinsky & Driscoll, and having filed its answer herein, hearings were had and evidence was thereupon introduced in support of the complaint and the answer before an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Eskay Harris Feature Film Company, is a corporation organized under the laws of the State of New York in the year 1915 with an authorized capital stock of $200,000 of which $71,000 has been issued, with its principal office and place of business located at 126 West 46th Street in the city and state of New York, and is engaged in the business of dealing in motion picture films. That its said business is confined almost entirely to purchasing or leasing motion picture films made by others and then selling or leasing the same to exhibitors both theatrical and non-theatrical, located throughout the various states of the United States, and in the conduct of such business respondent causes these films to be transported by common carriers from the makers thereof through different states of the United States in and to the city and state of New York where they are so leased to exhibitors and then transported by common carriers from the city and state of New York through, to and into other states of the United States, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in such motion picture films between and among the several states of the United States, and more particularly from different states of the United States, in and to the city and state of New York and therefrom through and into other states of the United States, and the respondent so conducts and carries on its business in direct competition with other persons, firms and corporations similarly engaged including the Vitagraph Company of America.

PAR. 2. That the Vitagraph Company of America is a corporation organized under the laws of the state of New York with its principal office in the city of Brooklyn, New York, with an authorized capital stock of $24,000,000 of which there has been issued 3,250,000 preferred and 3,250,000 common, and is engaged in the business of producing, distributing and leasing motion picture films. That in the conduct of its business the Vitagraph Company of America owns and operates studios located in the cities of Los Angeles, state of California, and Brooklyn, state of New York, where it makes and produces motion picture films by photographing upon celluloid film scenes which when projected through a machine upon a screen de-

picts what is known as a motion picture, and in the making of these films large quantities of unexposed celluloid film from which the negative print is made are shipped from Rochester, state of New York, to these studios and the negative prints are then shipped and transported to the laboratory located in Brooklyn, New York, where the positive prints are produced; and in the photographing of the scenes in its studios the corporation employs numerous actors, actresses, directors, continuity and title writers, camera men and designers and other artists and artisans who are assembled from different states of the United States, and also causes a large amount of scenery, paraphernalia, costumes and similar stage properties to be moved and transported from different states in and to such state where the same are used in connection with the production of these films; that the corporation from its principal office in the city of Brooklyn, New York, makes and enters into contracts or leases for the exhibition of the positive prints with exhibitors throughout the United States and foreign countries by correspondence and through traveling salesmen and its branch offices, and after these positive prints are produced in the laboratories it causes them to be moved and transported by common carriers to its branch offices or exchanges and from there to theaters in the principal cities and towns of the United States and Canada where they are displayed and exhibited to the public after which they are moved and transported to other theaters in different states and countries for exhibition; and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in such motion picture films between and among the several states of the United States and foreign countries, and more particularly from different states of the United States through other states in and to the city of Brooklyn, state of New York, and the city of Los Angeles, state of California, and therefrom through and into other states of the United States and foreign countries.

PAR. 3. That in the year 1917 the Thomas A. Edison, Inc., a corporation of Orange, New Jersey, produced a certain motion picture photoplay which it named and titled Your Obedient Servant, registering such name in the copyright office of the United States of America on the 20th day of September, 1917, and thereafter this picture was shown and exhibited under and by such name and title in approximately 5,000 theaters located throughout all the different States of the United States, and in the year 1918, said Thomas A. Edison, Inc., sold the negative of said motion picture photoplay to one George Kleine, of Chicago, Illinois, who continued to distribute prints of the same to exhibitors generally throughout the United States, who,

in turn, exhibited the picture to the public, and neither said Thomas A. Edison, Inc., or the said George Kleine, or any exhibitor who leased from them ever used any name or title in connection with such other than that of Your Obedient Servant. That the aforesaid motion picture photoplay depicts and portrays a drama during the period of the Civil War in the United States in which a horse is featured and such photoplay was suggested by the story of Black Beauty which is an autobiography of a horse written about forty years ago by Anna Sewell, an English authoress, and which has been extensively read and both the story and the name of Black Beauty have become and are well and favorably known to the American public. The said photoplay, Your Obedient Servant, does not depict or portray the scenes, episodes, incidents or characters set out in the Sewell Book other than that a horse named Black Beauty is cast to take a leading and prominent part therein, and the story in the photoplay Your Obedient Servant is not the Anna Sewell story of Black Beauty and none of the subtitles appearing in such photoplay are taken from the book written by Anna Sewell.

PAR. 4. That in the year 1918 Samuel Kantrowich, the aforesaid President, Treasurer and General Manager of the respondent corporation saw the photoplay Your Obedient Servant at a public exhibition at Jersey City, New Jersey, under and by such name and thereafter, to wit, on or about July 12, 1920, requested the Photo Products Export Company, the New York representative of said George Kleine, for a showing of the same, and shortly after July 21, 1920, the Picture was screened for him, and on August 19, 1920, the said Kantrowich, acting for and on behalf of the respondent corporation ordered five positive prints of the same at and for an agreed price of $863.20, and on September 13, 1920, the Photo Products Export Company received these prints from Chicago and thereafter delivered them to the said respondent. That the negotiations for the sale of these five prints were entered into by and between Frank A. Tichenor, president of said Photo Products Export Company and the said Kantrowich, between whom it was mutually understood and agreed as one of the conditions of the sale that the respondent should use the prints for non-theatrical purposes only and that the respondent paid the purchase price of $863.20 on the 21st day of September, 1920, and thereafter claimed and asserted the right to and did use such prints for theatrical purposes.

PAR. 5. That after the five prints of the picture, Your Obedient Servant, had been delivered on September 13, 1920, as aforesaid, the respondent made minor changes in the wording and phraseology of

the fifty-three subtitles in such picture and added thereto sixteen new subtitles, seven of which were taken from the Anna Sewell book of Black Beauty, and also added scenes of a mare and colt taken in a meadow at Ossining, New York, and of animals taken at a farm near Mt. Kisco, New York, and approximately 20 feet of film depicting a race horse scene. That this added film was approximately 900 feet, 700 feet of which consisted of subtitles and 200 feet of scenes. That the original motion picture photoplay Your Obedient Servant was in three reels of approximately 2,400 feet in length and the picture was thus enlarged by respondent to four reels aggregating approximately 3,500 feet, and to this rebuilt photoplay the respondent gave the name of Black Beauty and proceeded to advertise, lease and offer to lease the same in commerce aforesaid under and by such name and title to exhibitors both theatrical and non-theatrical generally throughout the United States without clearly, distinctly, definitely and unmistakably showing or stating that such rebuilt picture had been formerly released and exhibited to the public under the name and title of Your Obedient Servant, and the advertising matter which included letters, lithographic posters, heralds, booklets, newspaper advertisements and slides, used by the respondent in so offering and holding out its said rebuilt picture to the trade and general public as aforesaid had the capacity and the tendency to and did cause exhibitors and the motion picture theatre going public to believe that this rebuilt motion picture photoplay was one which had been made or produced by the respondent and never theretofore distributed or exhibited under any name or title other than Black Beauty.

PAR. 6. That in November, 1919, the Vitagraph Company of America decided to produce a motion picture photoplay entitled Black Beauty which would faithfully and truly depict and portray Anna Sewell's story of a horse and in the winter of 1919 sent an announcement to this effect by means of news items to approximately 2,300 newspapers of general circulation throughout the United States. That the continuity of said photoplay was finished in January, 1920, whereupon the preliminary work of the production commenced. On July 12, 1920, the first scenes were photographed in its studio at Los Angeles, California, the last scenes being taken on December 4, 1920, and on January 5, 1921, the picture was released for exhibition and thereafter shown in more than 1,500 motion picture theatres throughout the United States. That this photoplay is composed of two stories, to wit, a melodrama interwoven with the autobiography of a horse and all of the principal characters, scenes,

incidents and episodes of the book Black Beauty by Anna Sewell are faithfully, truly and correctly depicted and portrayed therein. That said photoplay is what is known in the industry as a superproduction being in six reels of approximately 1,000 feet per reel, and in so producing such picture the Vitagraph Company of America expended and paid out the sum of $209,000.01 of which amount $57,557.65 was expended for advertising purposes.

PAR. 7. That in the spring of 1920 said Vitagraph Company sent circulars announcing its forthcoming production to all the humane societies throughout the United States and caused to be inserted a similar announcement in the Motion Picture News, a trade paper with a general circulation throughout the motion picture industry, in its issue of August 7, 1920, which issue was released to the trade and the public on Friday, July 30, 1920; thereafter said Vitagraph Company caused to be inserted other announcements of its forthcoming production which appeared in this and similar trade papers every week throughout the months of August, September, October and November, 1920, and the fact that the said Vitagraph Company was producing a photoplay entitled Black Beauty was well known in the trade and motion picture industry during the months of July, August, September and October of 1920. That after the completion of its said motion picture photoplay, to wit, on the 24th day of January, 1921, the Vitagraph Company of America registered in the copyright office of the United States of America a claim to copyright its said picture registering the same under the name of Black Beauty.

PAR. 8. That the respondent caused to be inserted a paid advertisement in the issue of December 22, 1920, of Wid's Daily, a trade paper published daily with a general circulation throughout the motion picture industry in the words and figures as follows, to wit:

WARNING.

Anyone showing a motion
picture entitled
"BLACK BEAUTY"
without our permission
DOES SO AT THEIR OWN RISK.
We control the motion picture
rights and title of the name of
"Black Beauty" and will pros-
ecute any infringement to the
full extent of the law.
ESKAY HARRIS FEATURE FILM CO., INC.
126 West 46th St., N. Y. C.

and thereafter the respondent sent copies of this Warning by registered mail to the managers of the twenty-four branch offices of the Vitagraph Company of America located throughout the United States. That the respondent never registered in the copyright office of the United States of America a claim to copyright its motion picture photoplay rebuilt from that of Your Obedient Servant as aforesaid, and did not control "the motion picture rights and title of the name of 'Black Beauty'" and has not instituted any suit at law or in equity for any alleged infringement; that such warning notice was so advertised and circulated to unduly hinder the Vitagraph Company of America in the leasing and distribution in commerce as aforesaid of its superproduction entitled and named Black Beauty.

PAR. 9. That the respondent in leasing and distributing its rebuilt motion picture photoplay in commerce as aforesaid in its letters and advertising matter, in addition to titling and naming said photoplay as Black Beauty, had prominently featured the name Anna Sewell and has styled its photoplay as "An American adaptation of the world famous autobiography of a horse." That such letters and advertising matter had the capacity and the tendency to and did deceive and mislead the trade and motion picture theater going public into the erroneous belief that such photoplay depicted and portrayed the characters, scenes, incidents and episodes appearing in the book of Anna Sewell entitled Black Beauty, and misled the trade and motion picture theater going public into the erroneous belief that respondent's photoplay and that of the Vitagraph Company of America were one and the same, thereby enabling the respondent to appropriate the advertising values created by the extensive campaign carried on by the Vitagraph Company of America in advertising its photoplay Black Beauty.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleadings, and the testimony and evidence received by an Examiner duly appointed by the Commission and the argument of counsel for the Commission and brief of the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof, now, therefore:

It is ordered, That the respondent, Eskay Harris Feature Film Company, its agents, representatives and employees cease and desist from directly or indirectly;

1. Procuring motion picture photoplays which have been exhibited to the public under and by given titles and changing such titles and advertising, selling, leasing, or offering to sell or lease the films depicting such retitled photoplays unless the fact that such photoplays have been formerly exhibited under other titles be stated and set forth in the photoplay itself and in any and all advertising and publicity matter used in connection therewith in letters and type equal in size and prominence to those used in displaying the new title.

2. From using the words "Black Beauty" standing alone or in conjunction with other words as a title for or an identification of the film depicting in whole or in part the photoplay produced in 1917 by Thomas A. Edison, Inc., titled "Your Obedient Servant" or in any lantern slides, posters, heralds, booklets, or in any advertising or publicity matter used in connection with such film.

3. Publishing or circulating any warning notice threatening to bring suit against anyone showing a motion picture entitled "Black Beauty" without the permission of the Eskay Harris Feature Film Company and asserting that the motion picture rights and title to the name of Black Beauty are controlled by said company.

It is further ordered, That the respondent, Eskay Harris Feature Film Company, within thirty (30) days from the date of service of this order upon it file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

W. A. SHOFFNER AND L. I. YOUNG, PARTNERS, STYLING THEMSELVES THE ALAMANCE HOSIERY MILLS.

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

Docket 677—October 24, 1922.

SYLLABUS.

Where a firm engaged in the manufacture and sale of hosiery in competition with concerns who either correctly branded, labeled, and advertised their products with reference to composition or failed to brand, label, and advertise the same at all in that respect; branded, labeled, advertised, and sold hosiery composed entirely of mercerized cotton as "American Silk"; thereby misleading a substantial part of the purchasing public into believing said goods to be composed entirely of silk:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that W. A. Shoffner and L. I. Young, partners styling themselves the Alamance Hosiery Mills, hereinafter referred to as the respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondents are engaged at Burlington, N. C., in the business of manufacturing and selling hosiery, which product is sold to jobbers in various States outside of the State of North Carolina, and respondents cause the hosiery manufactured by them to be transported to the purchasers thereof, from the State of North Carolina through and into various other States of the United States; that in the conduct of such business respondents are in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondents in the course of their business, as described in paragraph 1 hereof, place upon hosiery sold by them, and

upon the boxes containing same, false and deceptive labels, in that such labels are calculated to and do create in the minds of the purchasing public, the mistaken belief that such hosiery is made of materials of better and more expensive grades or qualities than those of which such hosiery is in fact made; that among such false and deceptive labels, so used by respondents, are labels containing the words "American Silk," which labels are placed upon hosiery which contain no genuine silk, and on the boxes containing such hosiery.

PAR. 3. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, W. A. Shoffner and L. I. Young, partners, styling themselves the Alamance Hosiery Mills, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, W. A. Shoffner and L. I. Young, constitute a partnership and carry on business at Burlington, N. C., under the firm name and style of the Alamance Hosiery Mills.

PAR. 2. That the respondents are engaged in the business of manufacturing and selling, in the State of North Carolina and in other States of the United States, hosiery and in causing same to be shipped and transported from the State of North Carolina through

and into other States of the United States pursuant to such sales in competition with other copartnerships, corporations, and individuals engaged in similar commerce between and among the States of the United States, and that there has been and is continuously a current of trade to and from the said respondents in said hosiery among and between the States of the United States.

PAR. 3. That prior to April 1, 1920, the respondents in the conduct of their business, as described in paragraph 2 above, sold and shipped hosiery made entirely of mercerized cotton, which it labeled, advertised, and branded, and distributed in packages or containers which it labeled, advertised, and branded "American Silk." That dealers purchasing this hosiery from respondents or respondents' customers, labeled, advertised, and branded, and in packages or containers labeled, advertised, and branded as aforesaid, offer and sell it so labeled to the general purchasing public. That neither the said hosiery, nor the boxes nor packages containing it are labeled, advertised or branded with any other word or words to indicate the kind or grade of materials entering into the manufacture of said hosiery.

PAR. 4. That the term "American Silk," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery which contains material derived from the cocoon of the silkworm.

PAR. 5. That many of respondents' competitors in the selling of hosiery are engaged in interstate commerce selling and shipping their goods from one State into another. That a number of such competitors have sold and shipped, and now sell and ship in commerce between the States, hosiery which is made entirely of silk, which hosiery and the packages or containers of which are labeled, advertised, and branded "Silk."

PAR. 6. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made entirely of mercerized cotton, which hosiery and the packages or containers for which are labeled, advertised, and branded with no word or words descriptive of the material entering into the manufacture of said hosiery. That a number of respondents' competitors in interstate commerce as aforesaid have sold and shipped, and now sell and ship, hosiery made entirely of mercerized cotton, which hosiery and the packages or containers of which are labeled, advertised, and branded with no word or words descriptive of the material except "Cotton" or "Mercerized Cotton."

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

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondents, W. A. Shoffner and L. I. Young, partners, styling themselves the Alamance Hosiery Mills, and their officers, agents, representatives, servants and employees, cease and desist from directly or indirectly:

I. Using as labels or brands on hosiery sold by them, or on the containers thereof, or in advertisements thereof, the word "silk," or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silkworm, or (2) unless, where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

FEDERAL TRADE COMMISSION

v.

HANCOCK KNITTING MILLS.

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

Docket 680—October 24, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; branded, labeled, advertised and sold hosiery composed entirely of mercerized cotton as "Silk Lisle," "Best Silk Lisle," and "Oriental Sylk"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Hancock Knitting Mills, hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

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

PAR. 3. That respondent, in the course of its business as described in paragraph 2 hereof, places on hosiery sold by it, made wholly of cotton, and upon the boxes in which such hosiery is eventually offered for sale by the retail dealers to the purchasing public, the

following, among other labels, viz.: "Silk Lisle," "Best Silk Lisle" and "Oriental Sylk," and upon hosiery made of cotton and wool in approximately equal parts, and upon the boxes in which such hosiery is eventually offered for sale by the retail dealers, to the purchasing public, the label "Men's Cashmere Half Hose," which labels are false and misleading and are calculated to and do mislead and deceive the purchasing public.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent having entered its appearance in its own proper person and filed its answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, and having made, executed and filed an agreed statements of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Hancock Knitting Mills, is a corporation duly incorporated and doing business under and by virtue of the laws of the state of Pennsylvania, with its principal place of business in the City of Philadelphia, in said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling at wholesale, in the state of Pennsylvania and in other states of the United States, hosiery, and in causing same to be shipped and transported from the state of Pennsylvania through

and into other states of the United States pursuant to such sales, in competition with other corporations, copartnerships and individuals engaged in similar commerce between and among the states of the United States, and that there has been and is continuously a current of trade to and from the said respondent in said hosiery among and between the states of the United States.

PAR. 3. That prior to April 1, 1920, the respondent in the conduct of its business as described in paragraph two above, sold and shipped hosiery, made entirely of mercerized cotton, which it labeled, advertised and branded, and in packages or containers which it labeled, advertised and branded "Silk Lisle"; that dealers purchasing this hosiery from respondent or from respondent's customers, labeled, advertised and branded, or in packages or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words to indicate the character, kind or grade of material entering into the manufacture of said hosiery.

PAR. 4. That prior to April 1, 1920, the respondent in the conduct of its business as described in paragraph two above, sold and shipped hosiery, made entirely of mercerized cotton, which it labeled, advertised and branded, and in packages or containers which it labeled, advertised and branded "Best Silk Lisle." That dealers purchasing this hosiery from respondent or from respondent's customers, labeled, advertised and branded, or in packages advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words descriptive of the character, kind or grade of material entering into the manufacture of said hosiery.

PAR. 5. That prior to April 1, 1920, the respondent in the conduct of its business as described in paragraph two above, sold and shipped hosiery, made entirely of mercerized cotton, which it labeled, advertised and branded, and in packages or containers which it labeled, advertised and branded "Oriental Sylk." That dealers purchasing this hosiery from respondent or from respondent's customers, labeled, advertised and branded, or in packages or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words descriptive of the character, kind or grade of material entering into the manufacture of said hosiery.

PAR. 6. That the terms "Silk Lisle" and "Best Silk Lisle," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signify and are understood by a substantial part of the purchasing public to mean hosiery which contains some proportion of true silk. That the term "Oriental Sylk," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery which contains material derived from the cocoon of the silk worm.

PAR. 7. That many of respondent's competitors in the selling of hosiery are engaged in interstate commerce, selling and shipping their goods from one state into another. That many such competitors have sold and shipped and now sell and ship, in said commerce between states, hosiery which is made entirely of silk, which hosiery and the packages or containers of which are labeled, advertised and branded "Silk"; that a number of such competitors have sold and shipped and now sell and ship in commerce between the states, hosiery, which hosiery is made entirely of twisted cotton yarns, which hosiery and the packages or containers of which are labeled, advertised, and branded "Lisle."

PAR. 8. That a number of respondent's competitors, engaged in interstate commerce as aforesaid, have sold and shipped and now sell and ship, hosiery, which is made entirely of cotton or mercerized cotton and containing no silk, which hosiery and the packages or containers of which are labeled, advertised and branded with no other word or words descriptive of the material except "Cotton" or "Mercerized Cotton," or are labeled, advertised and branded with no word or words descriptive of the material. That a number of respondent's competitors in interstate commerce as aforesaid have sold and are now selling and shipping hosiery which is made of a mixture of silk and cotton, which hosiery and the packages or containers of which are labeled, advertised and branded with the words "Silk and Cotton," or with no word or words descriptive of the materials.

PAR. 9. The labels or brands under which respondent sells, advertises and ships hosiery, as set forth in the foregoing findings, tend to and do mislead and deceive a substantial part of the purchasing public as to the composition of materials of said hosiery; said labels or brands as so used by respondent cause said hosiery to compete unfairly with goods of its competitors in interstate commerce, who, as set forth in paragraphs 7 and 8 above, sell hosiery made entirely of silk or lisle; or hosiery made wholly or in part of other materials than those named, and labeled or branded so as to indicate the true

composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the Respondent, Hancock Knitting Mills, its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the words "Silk," or "Sylk," or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silk worm, or (2) unless where the hosiery is made partly of silk it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

The Commission also made similar findings and order as of October 24, 1922, in the case of Fidelity Knitting Mills (of Philadelphia, Pa., Docket 681), in which the facts involved appear to have been identical or substantially identical with those in the preceding case.

FEDERAL TRADE COMMISSION

v.

JOHN F. MOORE, CLARENCE G. FISHER, EDWARD J. MURPHY AND W. K. MATHEWS, PARTNERS, STYLING THEMSELVES MOORE & FISHER.

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

Docket 687—October 24, 1922.

SYLLABUS.

Where a firm engaged in the sale at wholesale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; sold hosiery composed of cotton and of silk, hosiery composed of wool and cotton in about equal proportions, and hosiery composed entirely of mercerized cotton, respectively branded and labeled "Pure Thread Silk," "Merino" or "Cashmere," and "Silk Lisle"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that John T. Moore, Clarence G. Fisher, Edward J. Murphy, and W. K. Mathews, partners styling themselves Moore & Fisher, hereinafter referred to as respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

PAR. 2. That the respondents in the course of their business as described in paragraph 1 hereof, make use of certain false and deceptive brands and labels which are placed upon hosiery sold by them and upon the boxes containing such hosiery; that among such false and deceptive labels are the following: Hosiery made of mixed cotton and silk is labeled "World's Best Pure Thread Silk"; hosiery made of silk and cotton so woven as to put the silk on the outside and cotton on the inside is labeled "Silk Plated"; hosiery which contains no silk is labeled "Silk Lisle"; hosiery made of mixed cotton and wool is branded "Cashmere." That the use of such labels as aforesaid is calculated to and does mislead and deceive the purchasing public.

PAR. 3. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, John F. Moore, Clarence G. Fisher, Edward J. Murphy and W. K. Mathews, partners, styling themselves Moore & Fisher, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, John F. Moore, Clarence G. Fisher, Edward J. Murphy and W. K. Mathews, constitute a partnership, and carry on business at New York, N. Y., under the firm name and style of Moore & Fisher.

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

PAR. 3. That the respondents, prior to April 1, 1920, in the course of their business as described in paragraph 2 above, sold and shipped hosiery made of a proportion of material derived from the cocoon of the silkworm, and cotton, which was labeled and branded, and distributed in packages or containers which were labeled and branded "Pure Thread Silk"; sold and shipped hosiery made of wool and cotton in about equal proportions which was labeled and branded, and distributed in packages or containers labeled and branded "Merino" or "Cashmere"; sold and shipped hosiery made entirely of mercerized cotton which was labeled and branded, and distributed in packages or containers labeled and branded "Silk Lisle." That dealers purchasing these various kinds of hosiery, labeled and branded, and in packages or containers labeled and branded as aforesaid, offer and sell them so labeled to the general purchasing public. That neither the said hosiery, nor the packages or boxes containing it are labeled or branded with any other word or words to indicate the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 4. That the words "Pure Thread Silk" when applied to hosiery without any other word or words descriptive of the kind or grade of material signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of material derived from the cocoon of the silkworm. That the words "Merino" or "Cashmere" when applied to hosiery without any other word or words descriptive of the kind or grade of material signify and are understood by a substantial part of the purchasing public to mean hosiery which is made entirely of a high-grade wool;

that the words "Silk Lisle" when applied to hosiery without any other word or words descriptive of the kind or grade of material signify and are understood by a substantial part of the purchasing public to mean hosiery which is made in part, at least, of material derived from the cocoon of the silkworm.

PAR. 5. That many of respondents' competitors in selling hosiery are engaged in interstate commerce, selling and shipping their goods from one State into another. That a number of such competitors have sold and shipped, and are now selling and shipping in said commerce between the States, hosiery which is made of material derived from the cocoon of the silkworm, which hosiery and the packages or containers of which are labeled, advertised, and branded "Pure Thread Silk." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the States, hosiery which is made entirely of a high-grade wool, which hosiery and the packages or containers of which are labeled, advertised, and branded "Cashmere." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the States, hosiery which is made entirely of twisted cotton yarns, which hosiery and the packages or containers are labeled, advertised, and branded "Lisle."

PAR. 6. That many of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of a small proportion of the material derived from the cocoon of the silkworm and cotton, which hosiery and the packages or containers of which are labeled, advertised, and branded with no other word or words descriptive of the material except "Silk and Cotton," or are labeled, advertised, and branded with no word or words descriptive of the material. That many of respondents' competitors, engaged in interstate commerce, as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of a small proportion of material derived from the cocoon of the silkworm and twisted cotton yarns, which hosiery and the packages or containers of which are labeled, advertised, and branded with no other word or words descriptive of the material except "Silk and Lisle," or are labeled, advertised, and branded with no word or words descriptive of the material. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of wool and cotton in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised, and branded with no other word or words descriptive of the material except "Wool and

Cotton," or are labeled, advertised, and branded with no word or words descriptive of the material. That many of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made entirely of mercerized cotton, which hosiery and the packages or containers of which are labeled, advertised, and branded with no other word or words descriptive of the material except "Mercerized Cotton," or are labeled, advertised, and branded with no word or words descriptive of the material.

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

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondents, John F. Moore, Clarence G. Fisher, Edward J. Murphy and W. K. Mathews, partners, styling

themselves Moore & Fisher, and their officers, agents, representatives, servants and employees cease and desist from directly or indirectly:

I. Using as labels or brands on hosiery sold by it, or on the containers thereof, the word "silk," or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silkworm, or (2) unless, where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

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

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

FEDERAL TRADE COMMISSION

v.

P. E. ENNIS, DOING BUSINESS UNDER THE NAME AND STYLE OF PURE SILK HOSIERY MILLS.

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

Docket 859—October 24, 1922.

SYLLABUS.

Where an individual, and his corporate successor, engaged in the purchase and sale of hosiery, but neither owning nor operating any mills manufacturing said product,

(*a*) Respectively adopted and used as a trade-name, the names "Pure Silk Hosiery Mills," and "Pure Silk Hosiery Mills, Inc.," and so carried on their business; and

(*b*) Used letterheads, circulars, circular letters, pamphlets and advertisements in publications of general circulation, falsely setting forth, in effect, that they were manufacturers of hosiery and that by reason of the direct sale of hosiery by them from manufacturer to consumer, the public was enabled to purchase for $5.50 three pairs of hose, which in the usual course of trade from manufacturer, to wholesaler, to retailer, sold at $4.00 a pair;

With the capacity and tendency thereby to mislead and deceive the purchasing public by inducing numerous persons to purchase from them on the basis of said false representations, to the injury of manufacturers who did in fact sell direct to the public, and of competing dealers who purchased from the manufacturer and resold to the public:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that P. E. Ennis, doing business under the name and style Pure Silk Hosiery Mills, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent is a resident of the City of Chicago, State of Illinois and is engaged in selling hosiery in said city and State and in other States, under the trade-name and style of Pure Silk Hosiery Mills, as hereinafter more fully set out.

PAR. 2. That on or about the 16th day of August, 1920, respondent entered into a contract with Abraham Goodman, Jacob Goodman, Lazure L. Goodman and W. L. Kobin, partners doing business under the name and style "Real Silk Hosiery Mills," said partners all being residents of the City of Indianapolis, Indiana, and there engaged in the manufacture of men's and women's hosiery, by the terms of which contract respondent became the agent of said partnership for the purpose of selling, in the State of Illinois and other States of the United States, silk hosiery manufactured by said partnership, said sales to be made by agents of respondents through the personal solicitation of customers and the orders secured by such solicitation to be filled by said partnership by shipment from its mills in said City of Indianapolis, direct to the purchasers; that said partnership furnished to respondent certain printed matter for use by respondent and his said agents in and about the solicitation of customers consisting, amongst other things, of printed slips headed "Suggestions" which contained instructions as to the use and care of silk hosiery, order blanks upon which the customer's order for hosiery was entered and salesmen's credential cards upon all of which appeared the name "Real Silk Hosiery Mills"; that in conformity with the terms of said contract respondent appointed a large number of agents, through whom he solicited and obtained from large numbers of persons residing in various States of the United States orders for silk hosiery manufactured by aforesaid partnership, in and about which solicitation said agents made appropriate use of aforesaid printed matter; that all orders for hosiery obtained by respondent in the manner above set out were sent by him from the City of Chicago, State of Illinois, to said partnership at the City of Indianapolis, State of Indiana, and said partnership filled said orders by sending the hosiery therein ordered from its mill and place of business in said City of Indianapolis into and through various States of the United States to the purchasers thereof at their several places of residence in various States of the United States.

PAR. 3. That on or about the 2d day of April, 1921, aforesaid contract was abrogated by the parties thereto whereupon respondent, through his aforesaid agents, engaged in the sale of hosiery made by manufacturers other than said partnership and conducted said last named business under the name and style "Pure Silk Hosiery

Mills" in a manner in all respects similar to the manner in which he had theretofore sold the hosiery of said partnership and still so engages in such new business; that in connection with his said new business respondent furnished his aforesaid agents with certain printed matter consisting among other things of printed slips headed "Helpful Hints" which contained instructions as to the use and care of silk hosiery, order blanks upon which the consumer's order for hosiery was entered and salesmen's credential cards all of which bore the name "Pure Silk Hosiery Mills," and closely simulated in language and form, the slips headed "Suggestions," the order blanks and salesmen's credential cards, respectively, furnished by aforesaid partnership and formerly used by respondent and his agents in and about the sale of said partnership's hosiery, as hereinbefore set out; that in the solicitation of customers for said new business, respondent's said agents made use of said printed matter bearing the name "Pure Silk Hosiery Mills" in like manner as they had, in soliciting sales for the hosiery manufactured by aforesaid partnership, theretofore used the printed matter furnished by said partnership as hereinbefore set out; that respondent has, ever since the commencement of his said new business, continued to conduct the same in the manner above set out and still so conducts said new business and therein has continuously been and now is in competition with all persons, partnerships and corporations similarly and otherwise engaged in the hosiery trade.

PAR. 4. That the use by respondent of the name "Pure Silk Hosiery Mills," in the manner and under the circumstances hereinbefore set out was and is calculated to create, and has the capacity and tendency of creating, the belief amongst the persons solicited by respondent in his aforesaid new business, that the "Pure Silk Hosiery Mills" is identical with the "Real Silk Hosiery Mills"; that respondent has made no change in the source of supply of the hosiery offered by him and that the same has been and still is the product of the Real Silk Hosiery Mills, and of inducing the public, including customers of respondent who formerly purchased from him hosiery manufactured by aforesaid partnership to purchase, as and for hosiery made by said partnership, hosiery made by other manufacturers.

PAR. 5. That respondent further, in the course of his aforesaid new business, falsely asserts and represents to prospective purchasers through his aforesaid agents and by means of statements appearing in leaflets, circulars and other literature, that the Pure Silk Hosiery Mills actually manufactures in its own mills the hosiery

offered for sale and is therefore able to sell the same to the said purchasers at mill prices and that said hosiery is dyed by the Pure Silk Hosiery Mills in its own plant in order to make sure that said hosiery shall be sanitary and non-poisonous, whereas in truth and in fact there exists no Pure Silk Hosiery Mills except as a trade-name under which respondent does business and respondent does not manufacture or dye the hosiery sold by him as hereinbefore set out, but buys such hosiery from the manufacturer thereof and resells the same at a profit over and above the cost to him of such hosiery; that said false representations have the capacity and tendency of misleading and deceiving the public into the erroneous belief that the Pure Silk Hosiery Mills is a business concern which operates a mill or mills in which the hosiery offered for sale by respondent's agents is manufactured and dyed, that said concern is therefore able to sell said hosiery to the ultimate consumer at wholesale price and at a price substantially less than that usually demanded by the retailer in the ordinary course of trade for like products of similar quality, that said hosiery is dyed by said concern in its own plant whereby the possibility of the use of unsanitary and poisonous dyes is eliminated; that by reason of the premises aforesaid false assertions tend to induce the public to purchase the hosiery offered by respondent in preference to hosiery of similar kind and quality offered by retail dealers.

PAR. 6. That the use by respondent of the trade-name "Pure Silk Hosiery Mills," in the manner and under the circumstances hereinbefore set out, constitutes an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

PAR. 7. That the false assertions of respondent set out in Paragraph Five hereof and the use of said assertions by respondent in the manner and under the circumstances in said Paragraph set out, constitute an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, P. E. Ennis, doing business under

the name and style of Pure Silk Hosiery Mills, charging him with unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent, having entered his appearance by his attorneys, McInerney & Power of Chicago, Illinois, and filed his answer herein, denying certain allegations in the complaint and admitting others, thereupon testimony of witnesses was submitted on behalf of the Commission, and by the respondent, before Warren R. Choate, an Examiner for the Federal Trade Commission, and it appearing that said respondent in September, 1921, had caused to be organized under the laws of the State of Illinois, a corporation under the name and style of Pure Silk Hosiery Mills, Inc., to which corporation said respondent had turned over the business and property theretofore owned and carried on by him under the name and style of the Pure Silk Hosiery Mills; it was thereupon stipulated that the complaint in this proceeding should stand and be regarded as having been duly issued and served upon the said Pure Silk Hosiery Mills, Inc., the successor in business to the respondent, P. E. Ennis, doing business under the name and style, Pure Silk Hosiery Mills, and the Federal Trade Commission being now fully advised in the premises, and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, P. E. Ennis, a resident and citizen of the State of Illinois, from April 2, 1921, to September 8, 1921, was engaged in the business of selling hosiery, with principal place of business in Chicago, Illinois, and carried on such business under the name and style of Pure Silk Hosiery Mills, causing hosiery sold by him to be transported to the purchasers thereof from Chicago, Illinois, 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. That on September 8, 1921, the respondent, P. E. Ennis, caused to be organized under the laws of the State of Illinois, a corporation under the name and style of Pure Silk Hosiery Mills, Inc., which corporation, immediately after its organization, took over the business and property theretofore owned and carried on by P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills, and became, and still is, the successor in business to the respondent named in the complaint, and pursuant to the terms of the stipulation hereinbefore referred to, said corporation, Pure Silk

Hosiery Mills, Inc., will stand and be regarded as a respondent herein; that said Pure Silk Hosiery Mills, Inc., since its organization, has also caused hosiery sold by it to be transported to the purchasers thereof from the State of Illinois, through and into other States of the United States, and has carried on its said business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That neither the respondent, P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills, nor the successor in business, Pure Silk Hosiery Mills, Inc., owned or operated any factory or mills in which hosiery was manufactured, at the time of the taking of the testimony herein on March 8th and 9th, 1922, or prior thereto, but the hosiery sold by them was purchased in wholesale quantities from the manufacturers thereof and then resold by them to the public in due course of commerce among the several States of the United States.

PAR. 4. That the respondent named in the complaint herein, and his successor in business, in the course of the business carried on by them, have made use of letter-heads, circulars, circular letters, pamphlets and advertisements in publications of general circulation, which contained false and misleading statements to the effect, among other things, that respondents were manufacturers of hosiery and by reason of the direct sale of hosiery by them, from manufacturer to consumer, the public is thereby enabled to purchase for $5.50, three pairs of hose, which, in the usual course of trade from manufacturer to wholesaler, to retailer, to the public, such hosiery would sell for $4.00 per pair.

PAR. 5. That the use by the respondent, P. E. Ennis, of the word "Mills" in the trade name, under which he carried on business prior to September 8, 1921, and the word "Mills" in the corporate name of his successor in business, under the circumstances set out in Paragraph Four hereof, 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 at prices substantially below those at which hosiery of like grade and quality would sell in the usual course of trade from manufacturer to jobber, to 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.

CONCLUSION.

That the acts and things done by the respondents, P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills and his successor in business, the Pure Silk Hosiery Mills, Inc., as set out in the above findings as to the facts, constitute an unfair method of competition in interstate commerce, in violation of the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent, P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills, having entered his appearance by his attorneys, McInerney & Power, and having filed his answer, and testimony in support of the charges stated in the complaint and on behalf of respondent having been submitted, and it appearing that said respondent, in September, 1921, caused a corporation to be organized under the laws of the State of Illinois, under the name and style of Pure Silk Hosiery Mills, Inc., which corporation became and is the successor in business to P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills, the respondent named in the complaint herein, and by stipulation said corporation has been made a party-respondent herein, and the Commission having made its report stating its findings as to the facts and conclusion, that the respondent, P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills, and its said successor in business, the Pure Silk Hosiery Mills, Inc., 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," which said report is hereby referred to and made a part hereof.

Now, therefore, it is ordered, That the respondents, P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills, and his successor in business, the Pure Silk Hosiery Mills, Inc., and each of them, cease and desist from carrying on the business of selling hosiery, in commerce among the several States of the United States, under a trade name or corporate name which includes the word "Mills," in combination with the words "Pure Silk Hosiery," or words of like import, unless and until such respondents, or either

of them, actually owns or operates a factory or mills in which hosiery sold by them, or either of them, is manufactured.

It is further ordered, That the respondents, P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills and the Pure Silk Hosiery Mills, Inc., within sixty days after the date of the service upon them of this order, file with the Commission their reports in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

C. H. PARKER COMPANY.

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

Docket 851—October 30, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints and varnishes sent circular letters to the trade offering as "Navy Architectural Spar and Interior Varnish" a product not made for, used, or approved by the Navy, but on the contrary rejected by it as not conforming to its specifications:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the C. H. Parker Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Indiana, with principal place of business at Valparaiso in said State.

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

PAR. 3. That respondent in the course of its business as described in Paragraph 2 hereof, on May 27, 1921, and on other dates, mailed to dealers engaged in the sale of paints and varnishes, throughout the several States of the United States, circular letters

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which contained the statement that respondent was sacrificing for immediate sale 30,000 gallons of "Navy Architectural Spar and Interior Varnish"; that said statement was false, fraudulent and misleading in that the product so offered for sale was not "Navy Architectural Spar and Interior Varnish," the fact being that the product referred to and described in said circular letters, had been made by respondent ostensibly under a contract with the Navy Department of the United States, and had been rejected by said Department because the product had not been made in conformity with the Government specifications set out in said contract, in that one of the ingredients required by said specifications was spirits of turpentine, but the product as furnished by respondent contained no spirits of turpentine and did contain petroleum spirits which had been substituted by respondent for spirits of turpentine; that by reason of said false, fraudulent and misleading statement in said circular letters contained, the said dealers and the purchasing public were induced to purchase said varnish in the belief that it had been procured from the Government by respondent or manufactured in accordance with Government specifications.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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, C. H. Parker Company, charging it with unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having entered its appearance in person and formal hearings having been had before George McCorkle, an Examiner of the Commission, and testimony having been introduced in behalf of the Commission, and no testimony being offered on behalf of the respondent;

Thereupon, this proceeding came on for final hearing upon the testimony and the evidence introduced; and the Commission having ...ly considered the record, and being now fully advised in the ...ses, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, C. H. Parker Company, is a corporation organized and doing business under the laws of the State of Indiana, with its principal office and place of business at Valparaiso, in said State, and engaged in manufacturing, selling and shipping paints and varnishes throughout the State of Indiana, and from that State into many of the other States of the United States, in competition with other persons, firms, partnerships and corporations similarly engaged.

PAR. 2. Prior to June 9, 1921, at various times, respondent mailed to dealers engaged in the sale of paints and varnishes throughout the various States of the United States, circular letters containing the statement that respondent was sacrificing for immediate sale 30,000 gallons of Navy Architectural Spar and Interior Varnish.

PAR. 3. The words "Navy Architectural Spar and Interior Varnish," as used by respondent, has a tendency to convey, and did convey to paint and varnish dealers who received the circulars mentioned in the next preceding paragraph, the idea that such varnishes were either used or approved by the United States Navy, whereas as a matter of fact respondent's varnishes had not only neither been used nor approved by the United States Navy, but on the contrary the United States Navy had rejected the varnishes offered by respondent as not being according to the United States Navy specifications.

CONCLUSION.

The practices engaged in by respondent, as set forth and described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and the evidence, respondent having specifically waived the filing of briefs, arguments, etc.; and the Commission having made its findings as to the facts, with its conclusion that respondent has violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An

Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, C. H. Parker Company, a corporation organized and existing under the laws of the State of Indiana, its officers, directors, agents, servants and employes, cease and desist from directly or indirectly selling or offering for sale, or advertising for sale in interstate commerce, paints, varnishes or other similar materials in connection with the word "Navy," unless as a matter of fact, its paints, varnishes, and other similar materials are made in accordance with specifications laid down and approved by the Navy Department.

It is further ordered, That respondent, within sixty (60) days after the receipt of this order, report in writing to the Commision the manner and extent to which compliance with this order has been made by said respondent.

FEDERAL TRADE COMMISSION

v.

CHARLES D. DAUM, THOMAS J. ROGERS AND HARRY SPRITZER, PARTNERS, STYLING THEMSELVES THE DAUM, ROGERS, SPRITZER COMPANY.

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

Docket 684—November 1, 1922.

SYLLABUS.

Where a firm engaged in the sale at wholesale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; sold hosiery composed in equal proportions of cotton and silk, hosiery composed of wool and cotton in about equal proportions, and hosiery composed of wool and of an animal or vegetable fiber with a luster somewhat similar to, but containing no genuine silk, in boxes or containers respectively branded, labeled and advertised "Men's Silk Half Hose," "Cashmere Hose," and "Silk and Wool"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Charles Daum, Thomas J. Rogers and Harry Spritzer, partners styling themselves the Daum, Rogers, Spritzer Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That respondents constitute a partnership and carry on business at New York, N. Y., under the firm name and style of the Daum, Rogers, Spritzer Co., and are engaged in the business of selling hosiery at wholesale, causing hosiery sold by them to be transported to the purchasers thereof from the State of New York,

through and into other States of the United States, and carry on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the respondents in the course of their business as described in Paragraph One hereof, make use of certain false and deceptive brands and labels which are placed upon hosiery sold by them and the boxes containing such hosiery; that among such false and deceptive labels are the following: Hosiery composed of cotton and silk so woven as to put the silk on the outside and the cotton on the inside are labeled as "Men's Silk Half Hose"; hosiery composed of mixed cotton and wool are labeled "Cashmere Hose"; hosiery composed of wool and a mixture of silk fiber, but which contain no genuine silk are labeled "silk and wool." That the use of such brands and labels as aforesaid, is calculated to and does mislead and deceive the purchasing public.

PAR. 3. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, 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, Charles D. Daum, Thomas J. Rogers and Harry Spritzer, partners, styling themselves the Daum, Rogers, Spritzer Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

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

makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Charles D. Daum, Thomas J. Rogers and Harry Spritzer, constitute a partnership and carry on business at New York, New York, under the firm name of the Daum, Rogers, Spritzer Company.

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

PAR. 3. That until on or about April 1, 1920, the respondents, in the conduct of their business as described in Paragraph Two above, sold and shipped hosiery made of silk and cotton in equal proportions, said hosiery being packed in boxes or containers which were labeled, advertised and branded "Men's Silk Half Hose." That dealers purchasing this hosiery from respondents, packed in boxes or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words to indicate the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 4. That until on or about April 1, 1920, the respondents, in the conduct of their business as described in Paragraph Two above, sold and shipped hosiery made of wool and cotton in about equal proportions, said hosiery being packed in boxes or containers which were labeled, advertised and branded "Cashmere Hose." That dealers purchasing this hosiery from respondents, packed in boxes or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words descriptive of the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 5. That until on or about April 1, 1920, the respondents, in the conduct of their business as described in Paragraph Two above, sold and shipped hosiery made of wool and an animal or vegetable fibre having a luster somewhat similar to true silk, but containing no true silk, said hosiery being packed in boxes or containers which were labeled, advertised and branded "Silk and Wool." That dealers purchasing this hosiery from respondents, packed in boxes or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words descriptive of the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 6. That the hosiery, above referred to and heretofore sold by the Daum, Rogers, Spritzer Co., was bought by them from manufacturers who themselves labeled, advertised and branded the hosiery sold by the Daum, Rogers, Spritzer Company without authorization or direction from the said Daum, Rogers, Spritzer Co. That the said Daum, Rogers, Spritzer Co. had nothing to do with the manufacturing, packing or labeling of the said hosiery, but bought and subsequently sold the hosiery thus manufactured, packed, labeled, advertised and branded.

PAR. 7. That the term "Men's Silk Half Hose," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean, hosiery made entirely of material derived from the cocoon of the silk worm. That the term "Cashmere Hose," when applied to hosiery without any other word or words descriptive of the kind or grade of material, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of a high grade wool. That the term "Silk and Wool," when applied to hosiery without any other word or words descriptive of the kind or grade of material, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made of material derived from the cocoon of the silk worm, and wool.

PAR. 8. That many of respondents' competitors in the selling of hosiery, are engaged in interstate commerce, selling and shipping their goods from one state into another. That a number of such competitors have sold and shipped, and now sell and ship in said commerce between the states, hosiery which is made entirely of silk. which hosiery and the packages or containers of which are labeled,

advertised and branded "Mens' Silk Half Hose." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery made entirely of a high-grade wool, which hosiery and the packages or containers of which are labeled, advertised and branded "Cashmere Hose." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery, made of material derived from the cocoon of the silk worm, and wool in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded "Silk and Wool."

PAR. 9. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped and now sell and ship, hosiery which is made of material derived from the cocoon of the silk worm, and cotton in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded with no word or words descriptive of the material or materials entering into the manufacture of said hosiery. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery made of material derived from the cocoon of the silk worm, and cotton in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded with the words "Silk and Cotton" or "Silk and Lisle."

PAR. 10. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship hosiery which is made of wool and cotton in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded with no word or words descriptive of the material or materials entering into the manufacture of said hosiery. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of wool and cotton in about equal proportions, which hosiery and the package or containers of which are labeled, advertised and branded with the words "Wool and Cotton."

PAR. 11. That a number of respondents' competitors engaged in interstate commerce as aforesaid, have sold and shipped and now sell and ship, hosiery which is made of material derived from the cocoon of the silk worm and wool in about equal proportions which hosiery and the packages or containers of which are labeled, advertised and branded with no word or words descriptive of the material or materials entering into the manufacture of said hosiery. That a

number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped and now sell and ship hosiery which is made of material derived from the cocoon of the silk worm, and wool in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded with the words "Silk and Wool."

PAR. 12. The labels or brands under which the respondents sell and ship hosiery as set forth in the foregoing findings, tend to, and do mislead and deceive a substantial part of the purchasing public as to the composition and materials of said hosiery; said labels or brands, as so used by respondent, cause said hosiery to compete unfairly with the goods of their competitors in interstate commerce, who, as set forth in paragraphs 7, 8, 9 and 10 above, sell hosiery made wholly of silk, cotton, cashmere or wool; or hosiery made entirely or in part of other materials than those named, and labeled, or branded so as to indicate the true composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondents, Charles D. Daum, Thomas J. Rogers and Harry Spritzer, partners, styling themselves the Daum, Rogers, Spritzer Company, and its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly:

I. Using as labels or brands on hosiery sold by them, or on the containers thereof, or in advertisements thereof, the word "silk," or

any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silk worm, or (2) unless, where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

III. Using as labels or brands on hosiery sold by them or on the containers thereof, or in advertisements thereof, the words "silk and wool" (1) unless the hosiery so labeled, branded or advertised be composed entirely of wool and material derived from the cocoon of the silk worm or (2) unless, where the hosiery is composed of wool, and material derived from the cocoon of the silk worm, and some other staple or staples, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

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

FEDERAL TRADE COMMISSION

v.

ROCKFORD MITTEN & HOSIERY COMPANY.

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

Docket 686—November 1, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; branded, labeled, advertised and sold hosiery composed of cotton and wool in approximately equal proportions as "Wool Fashioned Hose," "Women's Black Cashmere Hose," "Fashioned Cashmere Hose," "Women's Black Cashmere Hose Fashioned" and "Ladies High Grade Cashmere"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Rockford Mitten & Hosiery Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

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

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

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent having entered its appearance in its own proper person and filed its answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, and having made, executed and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Rockford Mitten and Hosiery Company, is a corporation duly incorporated under and by virtue

of the laws of the state of Illinois, with its principal place of business in the City of Rockford in said state.

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

PAR. 3. That the respondent in the conduct of its business prior to July 1, 1920, has sold and shipped hosiery which was made of cotton and wool in approximately equal proportions which it labeled, advertised and branded, and in packages or containers which it labeled, advertised and branded "Wool Fashioned Hose" and "Woman's Black Cashmere Hose" and "Fashioned Cashmere Hose" and "Woman's Black Cashmere Hose Fashioned" and Ladies' High Grade Cashmere." That dealers purchasing these various kinds of hosiery, labeled, advertised and branded, and in packages or containers labeled, advertised and branded, as aforesaid, offer and sell them so labeled to the general purchasing public. That neither the said hosiery nor the packages or boxes containing it were labeled, advertised or branded with any other word or words to indicate the kind or grade of materials entering into the manufacture of said hosiery.

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

PAR. 5. That many of respondent's competitors, in the sale of hosiery, are engaged in interstate commerce, selling and shipping their goods from one state into another. That a number of such competitors have sold and shipped, and now sell and ship in said commerce between the states, hosiery, which is made entirely of wool, which hosiery and the packages or containers of which are labeled,

advertised and branded "Wool"; that a number of such competitors have sold and shipped, and now sell and ship in interstate commerce between the states, hosiery, which is made entirely of a high grade wool, which hosiery and the packages or containers of which are labeled, advertised and branded "Cashmere."

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

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

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondent, and the statement of facts agreed upon by the respond-

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

It is now ordered, That the respondent, Rockford Mitten and Hosiery Company, its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly:

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

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

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

FEDERAL TRADE COMMISSION

v.

SULLOWAY MILLS.

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

Docket 736—November 1, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; branded, labeled, advertised and sold hosiery composed of cotton and wool in approximately equal proportions as "Foot Warmer Wool Hosiery," "Wool," "Oxford Wool," "Black Cashmere," "Cashmere," and "Ladies Cashmere Hose"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sulloway Mills, hereinafter referred to as respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in this respect on information and belief as follows:

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

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

PAR. 3. That respondent, in the course of its business as described in Paragraph Two hereof, places upon hosiery sold by it and upon the boxes containing same, false and deceptive labels, which labels are calculated to and do create in the minds of the purchasing public, the mistaken belief that such hosiery is made wholly of wool, whereas such hosiery is made of wool and materials other than wool, in approximately equal proportions; that among such false and de-

ceptive labels so used by respondent, are labels which contain the words "Foot-warmer Woolen Hosiery," the word "Wool," "Oxford Wool," "Cashmere," "Black Cashmere," "Ladies' Cashmere Hose."

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent having entered its appearance by its attorney and filed its answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, and having made, executed and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Sulloway Mills, is a corporation duly incorporated and doing business under and by virtue of the laws of the state of New Hampshire, with its principal place of business in the city of Franklin, state of New Hampshire.

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

PAR. 3. That the respondent until it learned of this investigation by the Commission, about October 1, 1920, in the conduct of its business described in Paragraph Two above, sold and shipped hosiery made of cotton and wool in approximately equal proportions, which it labeled, advertised and branded, and in packages or containers which it labeled, advertised and branded "Foot-Warmer Woolen Hosiery" and "Wool" and "Oxford Wool" and "Black Cashmere" and "Cashmere" and "Ladies Cashmere Hose." That dealers purchasing this hosiery from respondent or from respondent's customers, labeled, advertised and branded, or in packages or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the boxes containing it were labeled, advertised or branded with any other word or words to indicate the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 4. That the word "Woolen," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery made entirely of wool. That the word "Wool," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery made entirely of wool. That the term "Oxford Wool," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery made entirely of wool. That the word "Cashmere," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery made entirely of a high grade of wool.

PAR. 5. That many of respondent's competitors are engaged in the business of selling hosiery to persons in states other than those in which their principal factories or places of business are located, and of causing hosiery so sold to be transported from the states in which their principal factories or places of business are located through and into other states of the United States pursuant to such sales. That many such competitors, prior to October 1, 1920, sold and shipped and are now selling and shipping, in said commerce between the states of the United States, hosiery made entirely of wool, which hosiery and the packages or containers for which are labeled, advertised and branded "Woolen" without any other word or words descriptive of the character, kind or grade of material of which such

hosiery is made. That many such competitors, prior to October 1, 1920, sold and shipped and are now selling and shipping, in said commerce between the states of the United States, hosiery made entirely of wool, which hosiery and the packages or containers for which are labeled, advertised and branded "Wool" without any other word or words descriptive of the character, kind or grade of material of which such hosiery is made. That many such competitors, prior to October 1, 1920, sold and shipped and are now selling and shipping, in said commerce between the states of the United States, hosiery made entirely of wool, which hosiery and the packages or containers for which are labeled, advertised and branded "Oxford Wool," without any other word or words descriptive of the character, kind or grade of material of which such hosiery is made. That many such competitors, prior to October 1, 1920, sold and shipped and are now selling and shipping, in said commerce between the states of the United States, hosiery made entirely of wool, which hosiery and the packages or containers for which are labeled, advertised and branded "Cashmere," without any other word or words descriptive of the character, kind or grade of materials of which such hosiery is made.

PAR. 6. That many of respondent's competitors, in the course of commerce between the States as described in Paragraph Five above, prior to October 1, 1920, sold and shipped and are now selling and shipping hosiery made of wool and cotton in approximately equal proportions, which hosiery and the packages or containers for which are labeled, advertised and branded with no word or words descriptive of the material or materials entering into the manufacture of such hosiery. That many of respondent's competitors, in the course of commerce between the states as described in Paragraph Five above, prior to October 1, 1920, sold and shipped and are now selling and shipping hosiery made of wool and cotton in approximately equal proportions, and the labels, advertisements and brands on which and on the packages or containers for which contain the words "Woolen and Cotton," or the words "Wool and Cotton," or the words "Cashmere and Cotton."

PAR. 7. The labels or brands under which the respondent sells, advertises and ships hosiery as set forth in the foregoing findings, tend to and do mislead and deceive a substantial part of the purchasing public as to the composition of materials of said hosiery; said labels or brands as so used by respondent cause said hosiery to compete unfairly with goods of its competitors in interstate commerce, who, as set forth in paragraphs 5 and 6 above, sell hosiery made entirely of wool; or hosiery made wholly or in part of other materials

than those named, and labeled or branded so as to indicate the true composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Sulloway Mills, and its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly:

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

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

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

FEDERAL TRADE COMMISSION

v.

THE IMPERIAL PRODUCTION COMPANY, J. T. CRAIG, S. F. TUBBS, AND J. B. BRIGHT.

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

Docket 867—November 1, 1922.

SYLLABUS.

Where a concern, and individuals instrumental in, and responsible for its organization, in promoting the sale of said concern's stock,

(a) Made false and misleading representations in their advertisements with reference to its plan of organization, resources, business progress, good will and future, and with reference to the standing, ability, and integrity of said individuals;

(b) Misrepresented in their advertisements alleged nearby or surrounding production and operations, misrepresented the prospects of the concern as reflected by alleged declarations of geologists, and as reflected by its nearness to localities or sections to which large interests were alleged to be giving attention, or to certain famous fields, and misrepresented its own operations and output, alleged earnings, and general financial situation with reference to dividend possibilities; and were thereby enabled to sell large amounts of its stock; and

(c) Widely advertised in connection with their solicitation of stock the payment of alleged dividends, the fact being that at no time did earnings warrant the payment of any dividends, and that such payments were made from the proceeds from stock sales, and were made for the particular purpose of promoting such sales:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Imperial Production Company, J. T. Craig, S. F. Tubbs, and J. B. Bright, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereto would be to the interest of the public, issues its complaint, stating its charges in this respect upon information and belief as follows:

PARAGRAPH 1. The respondents, J. T. Craig and S. F. Tubbs, are residents of the State of Texas, each having his principal office and place of business in the City of Dallas, in said State, and the respondent, J. B. Bright, is a resident of the State of Oklahoma, having his principal office and place of business at Kiowa, in said State.

That J. T. Craig, S. F. Tubbs, and J. B. Bright, respondents above mentioned, caused to be organized under a declaration of trust, on or about September 25, 1919, the respondent, Imperial Production Company, with an authorized capitalization of one million shares with a par value of $1.00 each and thereafter engaged in its promotion and the sale of stock therein;

That in the course of such promotion and organization of said company, the respondents, J. T. Craig, S. F. Tubbs and J. B. Bright, transferred to it certain oil leases in the State of Texas and elsewhere and in return therefor received its entire capital stock; that subsequently they donated to the treasury of the respondent company five hundred thousand shares of said stock, it being understood and agreed by and between them as trustees thereof that another two hundred and fifty thousand shares would be used from time to time as the occasion or the necessities of the situation might require for the purchase of further and additional leases or other holdings for and on behalf of respondent, Imperial Production Company.

PAR. 2. That the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, in conducting the business of promoting and organizing the said respondent, Imperial Production Company, transported or caused to be transported through the mails and otherwise large quantities of letters, circulars, and advertising matter, into and through the various States and Territories of the United States, and have procured subscriptions for and sold stock in said company to many persons, copartnerships, and corporations throughout the United States, and have each and all transported or caused to be transported the said stock sold as aforesaid, from the City of Dallas, in the said State of Texas, to purchasers thereof in and through the various States of the United States, in direct competition with other persons, copartnerships, and corporations engaged in the sale and distribution of stock and securities.

PAR. 3. That the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, each for himself and in conjunction with each other, have deceived and defrauded the public, particularly that part thereof who have purchased or contracted to purchase stock in the said respondent, Imperial Production Company, by means of false and misleading advertisements, false representations and false publications, and by making, publishing, advertising, and circulating false

and misleading reports, false statements and false representations regarding the plan of organization, resources, business progress, good will, and prospects of the Imperial Production Company, and the standing, ability, and integrity of the respondents associated therewith in the promotion thereof, and have represented, advertised, published, and circulated particularly the following statements and representations, all of which, in whole or in part, were false and misleading, and known to be such by respondents, by means of which they, and each of them, have sold much of the stock of the said company, to wit:

That the tract of land described by respondents in their literature as Tract No. 1 was surrounded by production;

That there were producing wells on all sides of Tract No. 2;

That Tract No. 4 was a short distance southeast of the town of Duval, Cotton County, Oklahoma, which was across Red River north of the Burkwaggoner Pool and near several wells, and that geologists declared that the Burkwaggoner Pool crosses the Red River at this place and that there was no doubt that said tract was in this pool, meaning Burkwaggoner Pool;

That Tracts Nos. 6 and 7 in Hardemann and Foard Counties, in the State of Texas, were surrounded by wells in process of drilling;

That Tract No. 8, consisting of 120 acres, was near wells in process of drilling;

That Tract No. 9, in Fisher County, Texas, was surrounded by deep tests in process of drilling;

That Tract No. 10 was located on splendid geological structure and that there was drilling near this tract on two sides of it;

That Tract No. 16 was located in New Mexico, a State which was getting "a big play by the big oil companies";

That Tract No. 17, situated in Robertson County, Texas, was "near the big gas fields";

That a number of deep tests were drilling near the 800 acres in Maverick County, Texas;

That Tract No. 20, consisting of 10 acres in Tillman County, Oklahoma, was "only a short distance across the Red River from the big wells on the Northwest Burkburnett Extension";

That Tract No. 23, in Haskell County, Oklahoma, was located on splendid geological structure and that big gas had been found in that county and that "It lies right to catch the Henrietta sand where they are getting some big wells";

That in Jones County, Texas, where Tract No. 24 of respondents' was located there were "Many deep tests going down by the big companies";

That there were deep tests going down on all sides of Tract No. 26;

That there was a lot of activity by the big oil companies in Terrell County, Texas, where Tract No. 28 of Imperial Production Company was situated;

That Tract No. 31, consisting of 10 acres in Claiborne, Louisiana, was "near the famous Homer Oil Fields, where wells come in at 1,150 to 2,250 feet, making as high as 20,000 barrels" and that this tract lay between Homer and Bull Bayou Fields;

That Imperial Production Company owned two producing wells with settled production of 80 barrels per day, then pumping and fully equipped;

That the respondent, Imperial Production Company, was a real producing oil company with several thousand acres of good oil leases, several of which were in the famous Burkburnett oil fields, and surrounded by producing wells, and also had two producing wells in Musgraves' addition to the town of Burkburnett, making at least 80 barrels per day which would afford plenty of oil to take care of dividends for several months;

That the earnings of the company averaged $5,000.00 per month;

That with present production the respondent, Imperial Production Company, would be able to pay a dividend of 2% monthly;

That in December, 1919, respondents had closed an option on one thousand barrels daily production in the Burkwaggoner Fields. Wichita County;

That the earnings of the Imperial Production Company were far in excess of dividend requirements.

Whereas, in truth and in fact, there was no production in the vicinity of Tract No. 1 and wells sunk near it produced no oil;

There were no producing wells on all sides of Tract No. 2, there being some production to the north of said tract and small production to the south;

There were no oil wells near Tract No. 4 and geological maps do not indicate that the so-called Burkwaggoner Pool crosses the Red River at any point;

There were no drilling operations in the neighborhood either of Tract No. 6 or Tract No. 7, in Hardemann and Foard Counties, Texas;

There were no drilling operations within many miles of Tract No. 8 or of Tract No. 9, and only one test well drilled in the vicinity of the latter;

There were no drilling operations in the vicinity of Tract No. 10;

There were no drilling operations in the vicinity of Tract No. 16, in New Mexico, and none of the big oil companies were then giving New Mexico serious attention as oil-producing territory;

There were no gas fields in Robertson County, Texas, nor in the vicinity of Tract No. 17;

The only drilling operations of any character in the neighborhood of Tract No. 19 consisted of a gas well four miles to the north of it;

Tillman County, Oklahoma, is considered strictly wildcat territory and no production has ever been secured within it;

Haskell County, Oklahoma, is classed as wildcat territory, and contains no gas wells;

None of the so-called big companies are operating in Jones County, Texas;

There are no test wells within many miles of Tract No. 26, in Mills County, Texas;

None of the big oil companies were engaging in a "lot of activity" in Terrell County, Texas, as advertised, or in any activity in such county, nor were any of them conducting any testing operation for oil therein;

Tract No. 31 is neither in or near the so-called Homer nor Bull Bayou Fields, but is situated nine miles southwest of the latter field, in a district where there has never been any production;

That the respondent company averaged from its two alleged wells upon the tract known as No. 37 no more than 14 barrels of oil per day;

That the respondent company never owned in Burkwaggoner field or elsewhere any well or wells of any character or description of one thousand barrels daily production or any production in excess of 14 barrels per day; and at no time during the period when its literature, consisting of circulars, letters, and other advertising matter, was distributed in and through the various States of the United States, in the promotion and sale of its stock, did the respondent earn directly or indirectly from production or otherwise, enough money to justify or pay a dividend of 2% or any dividend whatever, and that such dividend or dividends as were from time to time paid by the respondent, Imperial Production Company, were falsely so called and were declared and made in order to promote the sale of its stock.

PAR. 4. That the probable and natural tendency of each and all of the representations so made to the public by respondent in procuring subscriptions for and selling stock in said company was, and they and each of them had the capacity and were calculated, to induce subscriptions for and purchase of said stock, and many persons in various States of the United States, to whom such false and misleading representations were so made by the respondent, believed them to be true, or some one or more of them, and relying thereon

and because thereof purchased a considerable amount of stock in the said Imperial Production Company.

PAR. 5. That by reason of the facts recited the respondents, and each and all of them, have been and are using unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, the Imperial Production Company, J. T. Craig, S. F. Tubbs, and J. B. Bright, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the said Act.

The respondents having entered their appearance by their attorney, and filed their answer herein, and having entered into a stipulation with counsel for the Commission that, subject to the Commission's approval, the matters and facts contained therein and introduced of record before a duly authorized Examiner of the Commission, shall constitute the facts in this proceeding and shall be taken and considered in lieu of testimony and that the Commission may proceed upon such stipulation and agreement of facts to make and enter its report stating its findings as to the facts and its conclusions thereon, and issue its order disposing of this proceeding without the introduction of testimony, and thereupon the Federal Trade Commission having duly considered the record and being now fully advised in the premises, make this its report, stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, J. T. Craig and S. F. Tubbs, are residents of the State of Texas having their principal office and place of business in the City of Dallas, in said State; that the respondent J. B. Bright is a resident of the State of Oklahoma with his residence and principal place of business at Kiowa in said State; that the said respondents, Craig, Tubbs, and Bright, caused to be organized under a declaration of trust, on or about December 25, 1919, the respondent, Imperial Production Company, with an authorized capitalization of 1,000,000 shares of the par value of $1.00

each, and thereafter engaged in its promotion, and in the sale of stock therein.

PAR. 2. That in the course of the promotion and organization of said company the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, transferred to the respondent, Imperial Production Company, certain oil leases in the State of Texas and elsewhere, and in return therefor received its entire capital stock; subsequently they donated to the trustees of the respondent company 500,000 shares of said stock, it being understood and agreed by and between them as trustees thereof that an additional block of 250,000 shares was to be used from time to time as occasion or the necessity of the situation might require for the purchase of further and additional leases or other holdings for and on behalf of the respondent, Imperial Production Company.

PAR. 3. That the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, in conducting the business of promoting and organizing the said respondent, Imperial Production Company, circulated and distributed, or caused to be circulated and distributed through the mails or otherwise, large quantities of letters, circulars, and advertising matter into and through the various States and Territories of the United States, and procured subscriptions for and sold stock in said company to many persons, copartnerships, and corporations throughout the United States by means of such letters, circulars, and advertising matter, and transported or caused to be transported the stock so sold from their office and place of business, in the City of Dallas, in the State of Texas, to the purchasers thereof in and through the various States and Territories of the United States in direct competition with other persons, copartnerships, and corporations engaged in the sale and distribution of stocks and securities.

PAR. 4. That the respondents, Craig, Tubbs, and Bright, each for himself, and in conjunction with each other, deceived the public, particularly that part thereof who purchased or contracted to purchase stock in the said respondent, Imperial Production Company, by means of false and misleading advertisements, false representations, and false publications mentioned in paragraph 2 of the complaint, and by making, publishing, and advertising and circulating through the literature or advertising matter mentioned in said paragraph false and misleading reports, false statements, and false representations regarding the plan of organization, resources, business progress, good will, and prospects of the Imperial Production Company, and the standing, ability, and integrity also of respondents associated therewith in the promotion thereof, and represented, adver-

tised, published, and circulated, particularly the following statements and representations, which in whole or in part were false and misleading, and that they and each of them have sold large amounts of the stock of the said company by means thereof, to wit: That the tract of land described by respondents in their said literature as tract No. 1 was surrounded by production; that there were producing wells on all sides of tract No. 2; that tract No. 4 was a short distance southeast of Duvall, Cotton County, Oklahoma, which was across Red River north of the Burke-Waggoner pool and near several wells, and that geologists declared that the Burke-Waggoner pool crosses the Red River at this place and that there was no doubt that said tract was in this pool, meaning Burke-Waggoner pool; that tracts Nos. 6 and 7, in Hardeman and Foard Counties, in the State of Texas, were surrounded by wells in the process of drilling; that tract No. 8, consisting of 120 acres, was near wells in process of drilling; that tract No. 9, in Fisher County, Texas, was surrounded by deep tests in the process of drilling; that tract No. 16 was located in New Mexico, a State which was getting "a big play by the big oil companies"; that tract No. 20, consisting of 10 acres in Tillman County, Okla., was only a short distance across the Red River from the big wells on the northwest Burkburnette extension; that tract No. 31, consisting of 10 acres in Claiborne Parish, La., was near the famous Homer oil fields, where wells come in at 1,150 to 2,250 feet, making as high as 20,000 barrels, and that this tract lay between Homer and Bull Bayou fields; that the Imperial Production Company owned two producing wells with a settled production of 80 barrels per day, then pumping and fully equipped; that the respondent Imperial Production Company was a real producing oil company with several thousand acres of good oil leases, several of which were in the famous Burkburnette oil fields and surrounded by producing wells, and also had two producing wells in Musgraves addition to the town of Burkburnette, making at least 80 barrels per day, which would afford plenty of oil to take care of dividends for several months; that the earnings of the company averaged $5,000 per month; that with present production the respondent Imperial Production Company would be able to pay a dividend of 2% monthly; that the earnings of the Imperial Production Company were far in excess of dividend requirements: Whereas, in truth and in fact, there was no production in the vicinity of tract No. 1 and the wells sunk near said tract produced no oil; there were no producing wells on all sides of tract No. 2, and only some production to the north of said tract and small production to the south. There were no oil wells near tract No. 4, and

geological maps do not indicate that the so-called Burke-Waggoner pool crosses the Red River at any point. Likewise there were no drilling operations in the neighborhood either of tract No. 6 or of tract No. 7 in Hardeman or Foard Counties, Texas. There were no drilling operations in many miles of tract No. 8 or of tract No. 9, and only one test well drilled in the vicinity of the latter tract. There were no drilling operations in the vicinity of tract No. 16, in New Mexico, and none of the large oil companies were then giving New Mexico any particular attention as an oil producing territory. That Tillman County is considered strictly wildcat territory and no production has ever been secured within it; that tract No. 31 is neither in or near the so-called Homer or Bull Bayou field, but is situated nine miles southwest of the latter field in a district where there has never been any production; that respondent company averaged in its two alleged wells on the tract known as No. 37 not more than 14 barrels of oil per day; that the said company never owned in the Burke-Waggoner field or elsewhere any well or wells of any character or description of 1,000 barrels daily production or any production in excess of 14 barrels per day.

PAR. 5. That at no period during the time when respondents' literature, consisting of circulars, letters, and other advertising matter as aforesaid, was circulated and distributed in and through the various States of the United States in the promotion and sale of its stock, did the respondents earn directly or indirectly from production or otherwise sufficient money to justify or pay a dividend of 2% or any dividend whatever, and that such dividend or dividends as were from time to time paid by the respondent, Imperial Production Company, was falsely so called and falsely declared and the same was paid for the particular purpose of promoting the sale of stock of the said Imperial Production Company, and the so-called dividend payments were widely advertised in the soliciting of subscriptions for the stock of said company and were declared and paid out of the proceeds from the sales of such stock.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the testimony and evidence, argument of counsel having been waived, and the Commission having made its findings as to the facts, and its conclusions as to the law to the effect that the respondents, Imperial Production Company, J. T. Craig, S. F. Tubbs, and J. B. Bright have violated the provisions of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, individually, or as officers, shareholders, trustees, or agents of the respondent, Imperial Production Company, or as officers, shareholders, trustees, or agents of any other company, corporation, association, or copartnership, and the Imperial Production Company, its officers, agents, and trustees do cease and desist from

Publishing, circulating, or distributing or causing to be published, circulated, or distributed, any newspaper, pamphlet, circular, letter, or magazine advertisement, or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statements or representations to the effect that the property of such company, corporation, association, or copartnership is in the vicinity of, or surrounded by, producing oil wells, or any other false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress, or prospects of any such company, corporation, association, or partnership, and

It is further ordered, That the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, within sixty (60) days from the date of the service of this order file with the Commission a report setting forth in detail the manner and form in which they have complied with this order of the Commission herein set forth.

FEDERAL TRADE COMMISSION.

v.

NOLDE & HORST COMPANY.

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

Docket 679—November 14, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; branded, labeled, advertised and sold hosiery composed of cotton and wool as "Worsted," "Fine Wool," "Merino," "Natural Wool," and "Cashmere," thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Nolde & Horst Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

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

PAR. 3. That respondent in the course of its business as described in paragraph 2 hereof, places upon hosiery sold by it, and upon the boxes in which hosiery is packed and in which boxes the hosiery is eventually exhibited to the purchasing public by the retail dealers, certain

false and misleading labels; that upon hosiery so sold by respondent made of mixed cotton and wool, and upon the boxes containing same, respondent places or causes to be placed labels, among which are the following, viz: "Worsted," "Fine Wool," "Merino," "All Wool," "Natural Wool" and "Cashmere;" which labels are false and misleading and are calulated to and do mislead and deceive the purchasing public.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent having entered its appearance in its own proper person and filed its answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, and having made, executed, and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Nolde & Horst Company, is a corporation duly organized, and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business in the City of Reading, in said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling hosiery at wholesale, in the State of Pennsylvania and in other States of the United States, causing same to be shipped and transported from the State of Pennsylvania through and into other States of the United States pursuant to such sales,

in competition with other corporations, copartnerships and individuals engaged in similar commerce between and among the States of the United States, and that there has been and is continuously a current of trade to and from the said respondent in said hosiery among and between the States of the United States.

PAR. 3. That the respondent until it learned of this investigation by the Commission, about June 1, 1920, in the conduct of its business as described in Paragraph 2 above, sold and shipped hosiery which it knew was made of mixed cotton and wool, labeled, advertised and branded, and in packages or containers labeled, advertised and branded "Worsted," and "Fine Wool," and "Merino" and "Natural Wool" and "Cashmere." That dealers purchasing this hosiery from respondent, labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the boxes containing it were labeled, advertised or branded with any other word or words to indicate the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 4. That the word "Worsted" means primarily and popularly a yarn and fabric made wholly of wool and when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of wool. That the term "Fine Wool," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of wool. That the word "Merino" as applied to wool means primarily and popularly a fine long-staple wool which commands the highest price, and when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of a high-grade wool. That the term "Natural Wool," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of wool. That the word "Cashmere," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of a high-grade wool.

PAR. 5. That many of respondent's competitors are engaged in the sale of hosiery to persons in States other than those in which their

principal factories and places of business are located, and in causing hosiery so sold to be transported from the States in which their principal factories or places of business are located through and into other States of the United States, pursuant to such sales. That many such competitors, prior to June 1, 1920, sold and shipped and are now selling and shipping, in said commerce between the States of the United States, hosiery which is made entirely of a high-grade wool, which hosiery and the packages or containers for which are labeled, advertised and branded "Merino" and "Cashmere." That many such competitors, prior to June 1, 1920, sold and shipped and are now selling and shipping, in said commerce between the States of the United States, hosiery which is made entirely of wool, which hosiery and the packages or containers for which are labeled, advertised and branded "Worsted" and "Fine Wool" and "Natural Wool."

PAR. 6. That many of respondent's competitors, in the course of commerce between the States as described in Paragraph 5 above, prior to about June 1, 1920, sold and shipped and are now selling and shipping hosiery, which is made of mixed cotton and wool, which hosiery and the packages or containers for which are labeled, advertised and branded with no word or words descriptive of the material or materials entering into the manufacture of such hosiery. That many of respondent's competitors, prior to about June 1, 1920, sold and shipped and are now selling and shipping, in the course of commerce between the States as described in Paragraph 5 above, hosiery which is made of mixed cotton and wool, and the labels, advertisements and brands on which and the packages or containers for which contain the words "Wool and Cotton," or the words "Worsted and Cotton," or the words "Merino and Cotton."

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

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Nolde & Horst Company, and its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly:

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

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

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

IV. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the words "Natural

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

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

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

FEDERAL TRADE COMMISSION

v.

HUB HOSIERY MILLS.

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

Docket 889—November 14, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of infant's hose composed in approximately equal parts of wool and cotton, labeled, advertised and sold the same as "Infant's Australian Ribbed Merino Hose" in competition with hose composed entirely of wool and properly so labeled and described; with the capacity and tendency to mislead ultimate purchasers with reference to the composition of said goods and thereby induce the purchase thereof:

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

COMPLAINT.

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Hub Hosiery Mills, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Massachusetts, with its principal office and place of business in the city of Boston in said State. It is, and at all times hereinafter mentioned has been, engaged in the manufacture and sale of infants' hose, and in the conduct of its business causes infants' hose made and sold by it to be transported to purchasers thereof from the State of Massachusetts through and into other States of the United States. In the course of said business respondent continuously has been and now is in competition with other persons, partnerships and corporations engaged in similar business in interstate commerce.

PAR. 2. Respondent for more than two years last past has manufactured, and is now manufacturing, infants' hose composed partly

of wool and partly of cotton, the proportion of cotton therein being fifty (50%) per cent or more, and for more than two years last past has labeled or branded and is now labeling and branding the packages or containers in which said hose are delivered to jobbers and other customers "Infants' Australian Ribbed Merino Hose," and for more than two years last past has advertised, sold and shipped, and is now advertising, selling and shipping said product so labeled or branded in interstate commerce as aforesaid.

PAR. 3. The words "Australian Merino" as used by respondent in labeling its product as aforesaid, signify to and are understood by a substantial part of the purchasing public to mean wool, and to many of them, wool of the merino sheep, or of other fine quality grown in Australia; and as used in its labels by respondent as aforesaid they are false and tend to mislead the purchasing public to believe that the articles so labeled are either composed entirely of wool, or entirely of wool of the merino sheep, or of other fine quality wool grown in Australia.

PAR. 4. There are a considerable number of manufacturers who make infants' hose composed entirely of wool, and many manufacturers of infants' hose composed of cotton and wool who do not use or apply to their product the labels used by respondent as aforesaid, or otherwise indicate to the purchasing public that it is composed entirely of wool.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent having entered its appearance and filed its answer herein and having entered into a stipulation in writing, as to the facts, in which stipulation it is admitted that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth, thereupon this proceeding came on for final hear-

ing, 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.

FINDING AS TO THE FACTS.

PARAGRAPH 1. The respondent, Hub Hosiery Mills, is a corporation organized under the laws of the State of Massachusetts, with principal place of business at Boston in said State, and is engaged in the business of manufacturing and selling infants' hose, and causes hose sold by it to be transported to the purchasers thereof from the State of Massachusetts through and into other States of the United States; that in the conduct of such business respondent has been and is in direct, active competition with other corporations, persons and partnerships engaged in similar business in commerce among the States.

PAR. 2. For a number of years prior to 1922, and to a limited extent in 1922, respondent in the course of its business, as described in paragraph 1 hereof, manufactured and sold infants' hose composed of approximately equal parts of wool and cotton, which hose were packed in containers upon which were placed labels which contained the words "Infants' Australian Ribbed Merino Hose," which hose, in many instances, remained in such containers at the time they were offered for sale and sold to the public in the usual course of retail trade; that prior to 1922, respondent caused to be distributed to the trade in numerous States of the United States, circular letters and other advertising matter in which hose manufactured and sold by respondent were described as "Infants' Australian Ribbed Merino Hose." That respondent made no sales of its product to retail dealers or to the consuming public, but sold its product entirely to jobbers who resold same to retail dealers, who resold same to the public. That hose so labeled, advertised and sold by respondent were sold in due course of interstate commerce, in competition with hose made entirely of wool and properly labeled and described as "Wool," "Australian Wool," or with words of like import.

PAR. 3. The words "Australian" and "Merino" as used by respondent in labels, as set out in paragraph 2 hereof, signify to, and are understood by, a substantial part of the purchasing public, to mean wool of the merino sheep or other fine quality of wool grown in Australia; that such labels had the capacity and tendency to mislead the ultimate purchasers of the hose so produced and sold by respondent, and to cause purchasers in the usual course of retail trade to buy such hose under the mistaken belief that such hose were composed entirely of wool, or entirely of wool of the merino sheep or other fine quality of wool grown in Australia.

Order.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, the Hub Hosiery Mills, its officers, directors, agents, servants and employees, cease and desist from employing or using as labels upon infants' hose manufactured and sold by it, and not composed wholly of wool, or upon the containers in which such hose are packed and thereafter displayed to the purchasing public, which labels contain the words "Australian" or "Merino," alone, or in combination with any other word or words, unless accompanied by a word or words designating the substance, fiber or material other than wool of which the hose are composed, (e. g., Wool and Cotton) or by a word or words otherwise clearly indicating that such hose are not made wholly of wool, (e. g., part Wool).

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

FEDERAL TRADE COMMISSION

v.

SAMUEL SILVERMAN, JACOB SILVERMAN, AND HENRY GREENBLATT, PARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF WAREWELL COMPANY.

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

Docket 877—December 9, 1922.

SYLLABUS.

Where a corporation engaged in the publication and sale of a set of books which contained a carefully selected group of stories, dramas, essays and other literary productions of the world's most famous authors, and represented the expenditure of much time and money by it in experiments in materials, size, subjects, etc., designated the same the "Little Leather Library," spent large sums of money in so advertising the same, and built up a large and valuable good will therefor; and thereafter a firm, not theretofore a competitor,

(*a*) Secured from various sources (including persons connected with said Library's publication) without its consent, confidential information relating to its source of supply for materials and the mechanical processes whereby such Library could be produced at the lowest cost;

(*b*) Published first as the Famous Authors' Library Association, and later as the Classics Publishing Co. sets which simulated exactly in size, contents, and arrangement, the books in its competitor's set, using some of the latter's books as "copy" for its publications; and

(*c*) In advertising and offering the same so closely simulated in form, illustration and substance its advertisements that experienced advertising men as well as the purchasing public were deceived and misled into the belief that the advertisements were those of the publishers of the Little Leather Library;

With the result that the public was misled and deceived into believing said sets to be those of the corporation and into buying them as such:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Sam Silverman, Jacob Silverman, and Henry Greenblatt, partners doing business under the name and style of Warewell Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define

its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondents are partners who since February 1921 continuously have been and now are engaged among other things in the publishing and selling of books in interstate commerce, at some of the times hereinafter mentioned under the trade name and style of Famous Authors Association and at other such times under the trade name and style of Classics Publishing Company, with their principal office and place of business in the City of Philadelphia, State of Pennsylvania. Respondents' method of business was and is to insert advertisements in the magazines, periodicals and other publications of general circulation throughout the United States, in which advertisements respondents solicit mail orders direct from the ultimate purchaser for the books published by them. Upon receiving orders for said books from persons residing at various points in various States of the United States, respondents cause the books so ordered to be shipped from their said place of business in Philadelphia into and through various States of the United States to the purchasers thereof at their said several places of residence. In the course and conduct of their said business respondents are in competition with other persons, partnerships, and corporations engaged in publishing and thereafter selling books in interstate commerce and with the trade generally.

PAR. 2. Amongst said competitors of respondents is the Little Leather Library Corporation, hereinafter called the corporation, a corporation organized about the year 1915 under the laws of the State of New York with its office and principal place of business in the City of New York in said State. The organizers of this corporation were at that time engaged in conducting an advertising agency, hereinafter called the agency, in the City of New York, the business of said agency being to compose appropriate advertisements for merchants, business and professional men, and other persons and to cause the same to be inserted in appropriate magazines and other publications throughout the United States. In connection with said business said agency at times gave business advice to its clients. Before respondents commenced their publishing business, set out in Paragraph One hereof, they had been engaged in other forms of mail-order business and in connection therewith had become clients of the agency and remained such until embarking in aforesaid publishing business. In the course of their relation as clients to the agency, respondents received from the agency both advertising and

business advice. While the aforesaid relation of clients to the agency was in existence, the Little Leather Library Corporation produced and marketed throughout the United States a selection of stories, dramas, essays and other literary productions of famous and well-known authors, which collection it named the Little Leather Library. This collection, after sundry experiments in materials, size and selection of subjects adapted to the project, was finally issued as a set of thirty volumes, each of a size small enough to slip into the pocket and bound in an imitation of leather, which were offered as a set at the price of $2.98, and singly at ten cents the volume. Said collection is hereinafter called "the library." The corporation's method of selling the library was by causing to be inserted in magazines and other periodicals of general circulation throughout the United States advertisements of the library in which advertisements orders were solicited for the library direct from the ultimate purchaser by mail. Upon receiving orders therefor the corporation shipped the library from its said place of business in the City of New York to said purchasers at their several places of residence in the various States of the United States. The library thus advertised and sold acquired a great popularity and demand throughout the United States and the corporation built up a large and valuable good will in the sale thereof.

PAR. 3. Respondents well knowing the facts set forth in Paragraph Two hereof, and with the purpose of acquiring for themselves, and to trade upon, the popularity and demand for the library and the good will in the sale thereof enjoyed by the corporation, did, about the year 1921, the following acts and things:

(*a*) Under the pretense of securing advice from the agency and from other sources in confidential relationship with said agency, in and about the desirability of embarking in the publishing business and the sale of publications generally as a part of their original mail order business, secured from the agency and other said sources, confidential information, data and figures concerning sources of supply of materials entering into the library, the names, character and price of such materials, the name of the printing concern which printed and produced the library for the corporation, particulars of the mechanical processes whereby the library was produced at the lowest cost, and other valuable private information regarding the printing, production, advertising and sale of said library, and;

(*b*) Having thus secured the information set out under subheading (*a*), caused to be published, printed, and produced a set of books of thirty volumes, of the same size as and closely simulating in

materials and form, the volumes of the library, and containing selections from the same authors and from no others. The selections printed were in each instance the same as chosen by the Corporation and appearing in the library and no others, although there were many hundreds of selections among the writings of said authors which respondents might have made, and each volume of respondents' said books under the names of their respective authors contained the same selections in the same order in which they appeared in the volumes of the library and no others.

(*c*) Inserted advertisements in magazines and other periodicals of general circulation throughout the United States, in many of which appeared the aforesaid advertisements of the corporation, in which advertisements respondents solicited mail orders from the ultimate purchaser of said books, and upon receipt of orders therefor shipped its books from its place of business in Philadelphia to the purchasers at their various points of residence in the several States of the United States. Respondents' said advertisements closely simulated the advertisements of the corporation in form, subject matter, and the method in which books advertised were pictured.

Respondents have continuously since engaged and still engage in the foregoing practices.

PAR. 4. The above alleged acts and things done by respondent had and have the capacity and tendency to mislead and deceive the customers, and prospective customers, of the corporation and the public generally into the belief that the set of books published by respondents was and is the library published by the corporation, and therefore to cause said customers, prospective customers, and the public generally to purchase respondents' said set of books in the belief that it was and is the library.

PAR. 5. The above alleged acts and things done by respondents constitute an unfair method of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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, Samuel Silverman, Jacob Silverman, and Henry

Greenblatt, partners, doing business under the name and style of Warewell Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. The respondents, Samuel Silverman, Jacob Silverman, and Henry Greenblatt, having failed to make their appearance, and having failed to file their answer herein, hearings were had and evidence was thereupon introduced in support of the complaint, before an examiner of the Federal Trade Commission duly appointed, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents Samuel Silverman, Jacob Silverman, and Henry Greenblatt, were, at all times hereinafter mentioned, a partnership doing business under the name and style of the Warewell Company, with their principal offices and places of business at 940 Market St. and 1210 Arch St. in the city of Philadelphia, State of Pennsylvania, where they were engaged since February, 1921, among other things, in the publication and sale of books, by mail, in interstate commerce, at some of the times hereinafter mentioned, under the trade name of Classics Publishing Company, and at other such times, as Famous Authors Library Association. Respondents' method of doing business was to insert advertisements of their books in magazines, periodicals, and other publications of general circulation throughout the United States, in which advertisements respondents solicited orders direct from the ultimate purchasers, for the books published by them, causing the books so ordered to be shipped from their place of business in the city of Philadelphia, State of Pennsylvania, into and through the various States of the United States to the purchasers thereof, at their various places of residence, in direct competition with various other persons, corporations and partnerships similarly engaged.

PAR. 2. Amongst respondents' competitors was the Little Leather Library Corporation, hereinafter called the Corporation, a corporation organized in the year 1915 under the laws of the State of New York, with its principal office and place of business at 354 Fourth Ave., New York City. The president of the said Corporation, Harry Scherman, and the vice president, Max Sackheim, have been continuously since the latter part of July, 1920, conducting an advertising agency, hereinafter called the Agency, in the city of New York, State of New York, at the above address. The business of said Agency is

to secure advertising accounts, to prepare plans and advertisements which they feel will build business and good will for their clients, and to place advertisements so prepared in such periodicals as their judgment and the judgment of their clients dictate.

The said Corporation is engaged in the publishing and selling of books, by mail, in interstate commerce, which books contain a carefully selected number of stories, dramas, essays, and other literary productions of the world's most famous authors, which collection it has designated as the Little Leather Library, hereinafter referred to as the Library. Much time and money was spent by the Corporation in experiments in materials, size, and selection of the subjects to be used and incorporated in said Library. Only works of uncopyrighted authors could be used, and after said selections were determined upon, the exact number of words to go into books of pocket size editions had to be accurately determined, the original type set up, and plates made. The collection, when finally issued, contained fifteen volumes, which number was subsequently increased, on account of the Library's popularity with the purchasing public, to thirty volumes, and finally to one hundred volumes each of a size small enough to fit into the pocket and to be conveniently carried and handled. The said library was at first bound in leather, but is now bound in a flexible imitation of leather, known as Redcroft Imitation Leather, and is offered to the public in a set of thirty volumes for $2.98 the set, and singly, at ten cents the volume. The Library is mainly sold by means of advertisements inserted in magazines and other periodicals by said Agency, in which advertisements orders are solicited, and upon receipt of such orders the said library is shipped or mailed from the place of business of the said Corporation in the city of New York, to the purchasers thereof at their several places of residence in the United States and the District of Columbia. From the latter part of May, 1920, to the present time, the said Corporation has spent, according to the record herein, approximately $250,000.00 in advertising its Library and has built up a large and valuable good will for its product by such extensive advertising.

PAR. 3. Respondents, before beginning the publication and sale of books as set out in Paragraph One above, were engaged in the general mail order business at the addresses hereinbefore mentioned, and were clients for advertising purposes, of the said Agency. The said respondents, at this point of time, were engaged in advertising and selling by mail, in interstate commerce, poplin skirts, chambray skirts and dresses. Early in the year 1921 respondent, Samuel Silverman, made a trip to the office of the said Agency and

consulted with the said Agency as to the feasibility of respondents' embarking in the publishing business. Respondents at this time suggested to the officers of the Corporation that respondents sell the Library on a deferred payment plan, which offer was declined. Subsequently, respondent Silverman secured, through various other sources, without the consent of the Corporation, confidential information concerning the source of supply of materials used by the corporation in publishing its library, and by conversations with various persons, other than the officers of the said Corporation, who were connected with the production of the said Library, became well informed of the mechanical process whereby the Library could be produced at the lowest cost.

PAR. 4. Respondents, about March, 1921, caused to be published a set of books, fifteen in number, simulating in size, contents, and arrangement of contents certain of the books published and sold as aforesaid by the said Corporation. This set of books respondents advertised and sold in the manner hereinbefore set out for the sum of $1.98 the set under the trade name of the Famous Authors Library Association. Subsequently, respondents added fifteen additional books to the said set mentioned above, which said fifteen additional books simulated in size, contents, and arrangement of contents, certain other of the books published and sold by the said Corporation. The above set of thirty volumes were advertised and sold by respondents as set out in Paragraph One, for the sum of $2.49 the set, under the trade name of Classics Publishing Company. The size, the subject matter printed, the authors used, and the arrangement of the subject matter were in each of the books published and sold as set out above by the respondents the exact reproduction verbatim of certain of the books produced by the aforesaid Corporation. Certain of the books of the said Corporation were used as "copy" from which the actual typesetting incident to the publication of the books of the said respondents, was done, the only difference being the substituting of the trade names Famous Authors Library Association and Classics Publishing Company for the corporate name Little Leather Library Association and the changing of the place of publication from New York City to Philadelphia, Pa. The only additional features differentiating the books published and sold by respondents from the books published and sold by the said Corporation were the difference in color of binding and the fact that the bindings of the books of respondents were cut flush with the pages of said books while the bindings of the books published and sold by the Corporation extended slightly beyond the pages of said books.

PAR. 5. Respondents in advertising and in offering for sale their said books mentioned in Paragraph Four hereof so closely simulated in form, illustration and substance the advertisements of the Corporation, that experienced advertising men as well as the purchasing public were deceived and misled into the belief that the advertisements of respondents were the advertisements of the Corporation.

PAR. 6. That as a result of the similarity of the advertisements and books of respondents to those of the Corporation, as heretofore found, the public was misled and deceived into the belief that the books of respondents were the books of the Corporation, and did purchase and buy books of the respondents as and for the books of the Corporation.

CONCLUSION.

The practices of respondents, as set forth in the foregoing findings as to the facts are unfair methods of competition in commerce, and constitute a violation of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence submitted, the trial examiner's report upon the facts, and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the respondents have violated the provisions of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That the respondents, Samuel Silverman, Jacob Silverman, and Henry Greenblatt, partners, doing business under the firm name and style of Warewell Company, its officers, agents, and solicitors, representatives, servants and employees, cease and desist from directly or indirectly:

1. Obtaining by spying, espionage or in any manner other than from the Little Leather Library Corporation, information relative to the cost of manufacture, source of supply of materials or the marketing of the products of the Little Leather Library Corporation of New York.

2. Selling or offering for sale in interstate commerce, any books or sets of books containing stories, dramas, essays, or other literary productions, simulating in binding, size, materials, form, appearance

and arrangement of text, the books sold or offered for sale by the Little Leather Library Corporation, of New York City, New York.

3. Publishing or causing to be published or circulated in any newspaper, periodical or magazine, any advertisement simulating in form, substance and appearance the advertisements of the Little Leather Library Corporation of New York.

It is further ordered, That the said respondents, Samuel Silverman, Jacob Silverman and Henry Greenblatt, partners, doing business under the firm name and style of Warewell Company, shall, within thirty (30) days from date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

MELVIN BEHREND AND LEOPOLD BEHREND, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF BEHREND'S.

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

Docket 845—December 16, 1922.

SYLLABUS.

Where a firm engaged in retailing dry goods, notions, blankets, comforts and general wearing apparel, advertised comforts, the covers of which contained no silk, but were composed entirely of mercerized cotton, as "silkolene covered comforts," with the effect of deceiving and misleading a substantial part of the purchasing public into believing that the coverings contained some silk; to the injury of competitors dealing in comforts with coverings composed wholly of silk and in those composed partly of silk and partly of cotton, and truthfully named, advertised and labeled:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Melvin Behrend and Leopold Behrend, copartners, doing business under the firm name and style of Behrend's, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce within the District of Columbia in violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, Melvin Behrend and Leopold Behrend, are copartners, doing business under the firm name and style of Behrend's, and are now and for more than one year last past have been engaged in selling, at retail, dry goods, notions, blankets, and general wearing apparel for men and women, at their store and principal place of business located at 720–724 Seventh Street, Northwest, in the City of Washington, District of Columbia, to customers located throughout said District and territory adjacent

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

PAR. 2. That the respondents in the conduct of their business in commerce aforesaid caused to be inserted and displayed on the 28th day of January, 1921, in the "Washington Star," a newspaper of general circulation throughout the District of Columbia, an advertisement in which they held out and offered for sale to the general public certain "SILKOLINE COVERED COMFORTS" and certain blankets of "SUPERIOR WOOL FINISH"; that the material of which said comforts were made was composed wholly of a highly mercerized cotton containing no silk whatsoever and the material of which said blankets were made was composed entirely of cotton containing no wool whatsoever; that said advertisement had the capacity and tendency to and did deceive the purchasing public as to the quality and value of said comforts and blankets and to mislead them into the belief that said comforts were composed either wholly or in part of silk and that said blankets were composed either wholly or in part of wool and the further effect of such false and misleading advertising has been and is to unduly hinder and injure competitors of the respondents who advertise and sell comforts covered with a fabric composed wholly or in part of silk, and blankets made wholly or in part of wool.

PAR. 3. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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, Melvin Behrend and Leopold Behrend, copartners, doing business under the firm name and style of Behrend's, charging such respondents with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearance and filed their answer herein, hearings were had and evidence was thereupon introduced in support of the complaint and the answer before an

examiner of the Federal Trade Commission theretofore duly appointed, and the respondents having waived the presentation of oral argument and the filing of briefs, the proceeding thereupon came on for final determination by 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 respondents, Melvin Behrend and Leopold Behrend, [are] copartners, doing business under the firm name and style of Behrend's and are now and for many years prior to October 11, 1921, have been engaged in selling at retail dry goods, notions, blankets, comforts and general wearing apparel for men and women from their store and principal place of business, 720–724 Seventh Street, N. W., Washington, District of Columbia, to customers located throughout said District in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. The respondents in the conduct of their business in commerce in the District of Columbia caused to be inserted and displayed on the twenty-eighth day of January, 1921, in the Washington Star, a newspaper of general circulation throughout the District of Columbia, an advertisement in which said advertisement among other things appeared the following language:

"An exceptionally warm comfortable covering these cold nights. Beautifully colored block plaids, white, tan and gray with pink and blue borders and very heavy extra size gray blankets. All of superior wool finish and weighing from 4 to 5 pounds. Included in the lot are about 30 silkoline Covered Comforts of extra size. Regular at $5.98 but added to the lot for quick clearance. $3.98"

(Com. Ex. 1.)

PAR. 3. The blankets so advertised and offered for sale to the public were not composed of wool but were all cotton and contained no wool. The words "wool finish" as used in the advertisement are synonymous with wool nap and do not mean and are not understood to mean that the blankets contain any wool but are used to indicate simply the finish of the blankets, namely, that the short fibres on the surface resemble the surface of a wool blanket, and upon each

blanket there was a label 5 1/2 x 3 1/4 inches in plain bold clear type reading:

"NASHUA
WOOLNAP
Trade mark Reg. U. S. Pat. Off.
PURE COTTON
X X X
Made by
Nashua Mfg. Co.
Nashua, N. H.
U. S. A."

(Com. Ex. 2.)

PAR. 4. The "Silkoline Covered Comforts" advertised as hereinbefore set forth contained absolutely no silk in the covering material but said covering material was composed entirely of cotton which had been mercerized, that is, treated with caustic soda or potash so as to increase its color-absorbing qualities and impart to it a silky gloss.

"Silkoline" is a coined word which was thirty years or more ago designated and applied as the name of this particular cotton fabric by the manufacturers thereof; and for thirty years at least this particular mercerized cotton fabric has been labeled "Silkoline," sold by manufacturers to wholesalers as "Silkoline," and by wholesalers to retailers as "Silkoline" and by retailers throughout the United States advertised and sold to the purchasing public as "Silkoline"; and "Silkoline" has become and is the name of this particular mercerized fabric.

PAR. 5. The mercerized cotton fabric known as "Silkoline" is used for interior room draperies, covering for comforts and ornamental pillows and to some extent for linings and costumes for transient use such as fancy dress dances, and private theatricals; but is never used as dress goods. The fabric is made in several grades some being more highly mercerized than others and therefore bearing a greater resemblance in its appearance to silk. It is a comparatively cheap fabric selling in pre-war periods at from eight to fifteen cents and at present ranging from fifteen to thirty cents per yard.

PAR. 6. The word "Silkoline" as applied to the mercerized cotton fabric for which it has become the name is literally and palpably false. The fabric contains absolutely no silk and the use of said word in advertising and as a label or description has the capacity and tendency to mislead and deceive the purchasing public and has misled and deceived a substantial proportion of the purchasing public

into the belief that the fabric named, styled and advertised as "Silkoline" contains some silk when in truth and in fact said fabric is composed wholly of cotton.

PAR. 7. The sale of "Silkoline Covered Comforts" competes in the District of Columbia with comforts covered with all silk and comforts covered with material which contains part silk and part cotton and the advertising and sale of goods misbranded and misnamed attracts customers, and trade is thereby diverted from truthfully advertised, named and labeled goods.

CONCLUSION.

That the advertisement of the respondents in so far as the wool finished blankets are concerned was not an unfair method of competition in commerce as the label upon each of said blankets clearly and distinctly sets forth the fact that said blankets were composed of "pure cotton."

That the practice of the respondents in advertising "Silkoline Covered Comforts" was under the facts and circumstances set forth above an unfair method of competition in commerce and a violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes."

ORDER TO CEASE AND DESIST.

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

Now, therefore, it is ordered, That the respondents Melvin Behrend and Leopold Behrend, copartners, trading under the firm name and style of Behrend's, their agents and employees cease and desist from directly or indirectly:

Causing advertisements to be published in newspapers or from making use of other forms of advertising matter as a means of bringing to the attention of the purchasing public "Silkoline Covered Comforts" offered for sale or sold by said respondents in the District of Columbia without clearly and distinctly bringing to the attention of the purchasing public that the fabric termed "Silkoline" contains no silk.

From publishing or causing to be published in newspapers circulated in the District of Columbia advertisements in which a fabric composed entirely of mercerized cotton is described and offered to the purchasing public as "Silkoline" unless said word "Silkoline" is accompanied by a word or words clearly designating the substances, fiber or material of which the said fabric is composed.

And it is further ordered, That the respondents shall file with the Federal Trade Commission within sixty (60) days from the date of the service of this order its report in writing stating the manner and form in which this order has been conformed to and shall attach to said report two copies of all advertisements distributed or displayed to the public by respondents in connection with the sale of "Silkoline Covered Comforts" or mercerized cotton fabrics described or offered as "Silkoline" in commerce subsequent to the date of this order.

FEDERAL TRADE COMMISSION.

v.

JOSEPH KAHN, JACOB FRANK, AND JEROME FRANK, PARTNERS, STYLING THEMSELVES AS KAHN & FRANK.

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

Docket 682—December 19, 1922.

SYLLABUS.

Where a firm engaged in the sale at wholesale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; sold hosiery composed of cotton and of an animal or vegetable fiber, but containing no true silk, in packages or containers branded or labeled "Ladies Silk Boot Hose" or "Ladies Art Silk Hose"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Joseph Kahn, Jacob Frank and Jerome Frank, partners styling themselves Kahn & Frank, hereinafter referred to as respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

PAR. 2. That respondents in the course of their business as described in Paragraph One hereof, sell hosiery made of cotton and

artificial silk, but which contains no genuine silk, which hosiery and the boxes in which such hosiery are offered for sale to the purchasing public by the retail dealer, have placed thereon, false and deceptive labels, among which are the following: "Ladies' Silk Boot Hose" and "Ladies Art Silk Hose"; which labels are false and misleading and are calculated to and do mislead and deceive the purchasing public.

PAR. 3. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Joseph Kahn, Jacob Frank, and Jerome Frank, partners, styling themselves as Kahn & Frank, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

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

FINDINGS AS TO THE FACTS.

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

PAR. 2. That the respondents are engaged in the business of selling at wholesale in the State of New York and in other States of the United States, hosiery, and in causing the same to be shipped and

transported from the State of New York through and into other States of the United States pursuant to such sales, in competition with other individuals, copartnerships, and corporations engaged in similar commerce between and among the States of the United States, and that there has been and is continuously a current of trade to and from said respondents in said hosiery among and between the States of the United States.

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

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

PAR. 5. That the term "Silk Boot Hose" when applied to hosiery without any other word or words descriptive of the kind or grade of material, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of material derived from the cocoon of the silk worm. That the term "Art Silk Hose," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of material derived from the cocoon of the silk worm.

PAR. 6. That many of respondents' competitors, in the selling of hosiery, are engaged in interstate commerse, selling and shipping their goods from one State into another. That many such competitors sold and shipped, and now sell and ship in said commerce between the States, hosiery which is made entirely of silk, which hosiery and the packages or containers of which are labeled, advertised and branded "Ladies' Silk Boot Hose." That many such competitors sold and shipped, and now sell and ship in commerce between the States, hosiery, which hosiery is made entirely of material derived from the cocoon of the silk worm, which hosiery and the packages or containers of which are labeled, advertised and branded "Silk Hose."

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

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

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondents, Joseph Kahn, Jacob Frank and Jerome Frank, partners, styling themselves as Kahn & Frank, and their officers, agents, representatives, servants and employees, cease and desist from directly or indirectly using as labels or brands on hosiery sold by them, or on the containers thereof, or in advertisements thereof, the word "Silk" or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silk worm, or (2) unless where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

FEDERAL TRADE COMMISSION
v.
JOHN BENE & SONS, INC.

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

Docket 584—December 27, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of hydrogen peroxide sent to customers of a competitor certificates of analyses of said competitor's product which it had caused to be made together with comment thereon falsely and deceptively representing said product as injurious to the body and as a "solution of calcium hypochlorite or as it is usually known bleaching powder" and otherwise misrepresenting the same; with the result that customers of said competitor discontinued purchasing of him:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that John Bene & Sons, Inc., hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, John Bene & Sons, Inc. is and at all times hereinafter mentioned, was a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the borough of Brooklyn, City of New York, State of New York; now and for more than two years last past engaged in the compounding and sale of hydrogen peroxide and in the shipment thereof, from its place of business in the borough of Brooklyn, City of New York, State of New York, to purchasers thereof, located in other states of the United States and in the District of Columbia, in direct competition with other persons, firms and corporations engaged in the sale and shipment of similar products, in interstate commerce as aforesaid.

PAR. 2. That respondent, within two years last past in the conduct of its business of selling hydrogen peroxide as aforesaid, purchased or procured from a 5 and 10 cent chain store syndicate, a competitor's product or bottle containing said respondent's product, and submitted said competitor's product to a certain chemical laboratory located in the City of New York, State of New York, for chemical analysis thereof, and report or opinion concerning the substance and effect of said competitor's product; that respondent received from said chemical laboratory, during the month of November 1918, a chemical analysis of said competitor's product, together with report of opinion concerning the substance and effect of said competitor's product; that the substance and effect of said chemical analysis and report or opinion concerning said competitor's product was that said competitor's product is a solution of calcium hypochlorite, or as it is usually known, bleaching powder containing lime; and that the use of said competitor's product on the human body would be attended with great danger.

PAR. 3. That respondent, within two years last past, in the conduct of its business of selling hydrogen peroxide as aforesaid, purchased from a 5 and 10 cent chain store syndicate, a competitor's product or bottle, containing said competitor's product and submitted said competitor's product to a certain chemical laboratory located in the City of New York, State of New York, for chemical analysis thereof, and report or opinion concerning the substance and effect of said competitor's product; that respondent received from said chemical laboratory, during the month of December, 1918, a chemical analysis of said competitor's product, together with report or opinion concerning the substance and effect of said competitor's product; that the substance and effect of said chemical analysis and report or opinion concerning said competitor's product was that said competitor's product contained lime and was a very dilute solution of sodium hypochlorite with a very small amount of calcium hypochlorite or bleaching powder, and organic matter or compound, the nature of which could not be determined.

PAR. 4. That respondent in the conduct of its business of selling hydrogen peroxide as aforesaid, forwarded to and circulated among 5 and 10 cent chain store syndicates, customers of its said competitor—the aforesaid analyses and reports or opinions, or copies of said analyses and reports and opinions concerning said competitor's product, procured and obtained from the aforesaid chemical laboratories by respondent as aforesaid; that respondent, in the conduct of its business of selling hydrogen peroxide as aforesaid, wrote or caused to be written and forwarded to 5 and 10 cent chain store

syndicates—customers of its said competitor—letters disparaging and belittling said competitor's product and concerning and commenting upon the aforesaid analyses and reports or opinions of said chemical laboratories, procured and obtained by respondent as aforesaid.

PAR. 5. That the said chemical analyses of said competitor's product, made by the said chemical laboratories as aforesaid, and the said reports or opinions made by the said chemical laboratories concerning the substance and effect of said competitor's product as aforesaid, contain certain false and misleading statements and representations concerning said competitor's product; that among such false and misleading statements and representations are statements and representations to the effect that said competitor's product contained lime, and that the use of said competitor's product on the human body would be attended with great danger.

PAR. 6. That the said analyses and reports or opinions, or copies of said analyses and reports or opinions of said competitor's product, forwarded to and circulated among customers of said competitor, by respondent as aforesaid, and the said letters concerning, commenting upon, belittling and disparaging said competitor's product, written, published and forwarded to and circulated among customers of said competitor by respondent as aforesaid contain certain false and misleading statements and representations concerning said competitor's product and alleged injury, which the public might derive from trading with said competitor; that among such false and misleading statements and representations, are statements and representations to the effect that said competitor's product contained lime; that the use of said competitor's product on the human body would be attended with great danger; that said competitor's product was a weak solution of bleaching powder known as a disinfectant and lost its effectiveness in about 72 hours; wherein, in truth and in fact, said competitor's product does not contain lime and wherein, in truth and in fact, the use of said competitor's product on the human body would not be attended with great danger; and wherein, in truth and in fact, said competitor's product is not a weak solution of bleaching powder that loses its effectiveness in 72 hours; that in truth and in fact even though said competitor's product contained the small amount of lime as indicated in the analyses caused to be made by respondent, it would be entirely innocuous, and would be attended with no danger to the human body.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a

complaint upon the respondent, John Bene & Sons, Inc., charging it with unfair methods of competition in commerce in violation of the provisions of said Act. The respondent, John Bene & Sons, Inc., entered its appearance by its attorney W. R. Redmond, and having filed its answer herein, hearings were had, and evidence was thereupon introduced in support of the complaint and the answer before an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing and the Commission having heard argument of counsel and having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. John Bene & Sons, Inc., are a corporation existing under the laws of the State of New York, with its principal office and place of business at 437 Carlton Avenue, Brooklyn, New York, the officers of the said corporation being John Bene, President, Edward George Bene, Vice President, John Raymond Bene, Secretary.

PAR. 2. John Bene & Sons, Inc., the respondents, are now, and for 32 years have been, engaged in the manufacture and sale of hydrogen peroxide and in the shipment thereof from its place of business in the city of Brooklyn, State of New York, to purchasers thereof located in other states of the United States, in direct competition with other persons, firms and corporations engaged in the manufacture, sale and shipment of similar products.

PAR. 3. Hydrogen peroxide is sold as an antiseptic and has for more than two years last past been sold by the respondent to wholesale druggists and to chain stores commonly known as 5 and 10 cent stores, and particularly to S. S. Kresge & Company, whose principal office is located in Detroit, Michigan, operating a chain of 198 stores located in various states of the United States; also to the McCrory Stores Corporation whose principal buying office is located in the city of New York, and who operate chain stores in various states of the United States; also to S. H. Kress & Company, whose principal purchasing office is located in New York City, and who operate a chain of 148 stores in various states of the United States; and to a chain of stores commonly known as the Woolworth Stores.

PAR. 4. On or about the year 1916, Nathan Proper, under the name and style of "Proper Antiseptic laboratory, 2000 West Avenue, Cincinnati, Ohio," began the manufacture or compounding of an antiseptic preparation which was offered for sale under the name of "DAXOL," and sold and shipped from Cincinnati, Ohio, into and through various states of the United States its said preparation

"DAXOL," and in particular sold and shipped the aforesaid preparation direct from Cincinnati, Ohio, to the stores controlled and operated by S. S. Kresge and Company, McCrory Stores Corporation, S. H. Kress and Company, and Woolworth Stores, located in the various states of the United States, in direct competition with respondent's product hydrogen peroxide, and by the end of December 1918, had built up a business of between five and six thousand dollars per annum.

PAR. 5. On or about the middle of November, John Bene, the president of the respondent company caused to be purchased from one of the chain stores above set forth, a bottle of the preparation known and sold under the name of "DAXOL," which said preparation he caused to be analyzed by the Stillwell Laboratories, Inc., 76½ Pine Street, New York City, and under date of November 19, 1918, received from the said Stillwell Laboratories, Inc., a certificate of analysis reading as follows:

Certificate of analysis of a sample of disinfectant marked "Daxol" received from John Bene & Sons, Inc., 11/18/18.

Hydrogen peroxide	None.
Available chlorine	0.11%
Lime	Present.
Iodine compound	None.

This is a solution of calcium hypochlorite or what is usually known as bleaching powder. It is our opinion that its use on the human body would be attended with great danger.

THE STILLWELL LABORATORIES, INC.,
ERNEST C. MOFFETT.

Upon receipt of said certificate of analysis, the said respondent caused copies thereof to be made and mailed same to the principal offices of the four large chain stores set forth in paragraph three, and accompanied said copies of the certificate of analysis with letters, in which said letters the attention of the managers or purchasing agents of the respective chain stores was called to the fact that "Daxol" was on sale in their stores, and that an analysis of the same might be of interest to said managers or purchasing agents.

PAR. 6. The accuracy of the analysis made by the Stillwell laboratories, Inc., having been questioned, the respondent on or about December 4, 1918, caused an analysis to be made by Stillwell and Gladding, Inc., of 95–97 Front Street, New York City, and received from the said Stillwell and Gladding, Inc., a certificate of analysis reading as follows:

Certificate of analysis of a sample of "DISINFECTANT" marked "DAXOL" received from John Bene, December 4, 1918,

Reaction	Neutral.
Specific gravity at 25°C	1.001
Magnesia	Trace.
Free Chlorine	0.070%
Total solids	0.350%
Lime	0.005%
Organic matter (loss on heating)	0.262

We find that this is a very dilute solution of sodium hypochlorite, with a very small amount of calcium hypochlorite (bleaching powder), and some organic compounds, the nature of which could not be determined.

STILLWELL AND GLADDING.

Upon receipt of the above analysis, and on December 24, 1918, the respondent forwarded a copy of same to the McCrory Stores Corporation, 621 Broadway, New York City, with a letter, in which letter the respondent stated:

It appears from both the analyses that it is a very weak solution of Bleaching Powder. Solutions of bleaching powder when freshly made up have been known as a disinfectant for a good many years, but lose their effect in about 72 hours. This you can easily ascertain by asking any chemist or doctor.

PAR. 7. Upon receipt of the analyses so circulated by the respondent, the managers or purchasing agents of the aforesaid four large chain stores, withdrew from sale in their stores the preparation known as "DAXOL," and shortly thereafter ceased to purchase from the Proper Antiseptic Laboratories of Cincinnati, the preparation "DAXOL."

PAR. 8. As a direct result of the circulation by the respondent of the certificates of the aforesaid analyses, and the statements thereon, the customers of the Proper Antiseptic Laboratories were deceived and misled into the belief that the competitor's product "Daxol" contained lime; that the use of the said product on the human body would be attended with great danger; that said product was a weak solution and lost its effectiveness in about 72 hours, whereas, in truth and in fact said competitor's product "Daxol" contains either no lime or lime in such small quantities as to be entirely innocuous; and whereas in truth and in fact the use of said competitor's product "Daxol" on the human body would not be attended with great danger; and whereas in truth and in fact said competitor's product "Daxol" is not a weak solution of bleaching powder, and does not lose its effectiveness in 72 hours.

PAR. 9. The statement so circulated by the respondent of and concerning the competitive product "Daxol," "It is our opinion

that its use on the human body would be attended with great danger," is false; the further statement contained in the certificate of analysis so circulated by the respondent "this is a solution of calcium hypochlorite or as it is usually known bleaching powder," is misleading, deceptive, and a misrepresentation of a competitor's product.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleadings, and the testimony and evidence received by an examiner duly appointed by the Commission and the argument of counsel for the Commission and brief of the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof, now, therefore:

It is ordered, That the respondent, John Bene & Sons, Inc., its officers, agents, representatives and employes do cease and desist from directly or indirectly publishing, circulating, or causing to be published or circulated any false, deceptive, or misleading statements of or concerning the product of a competitor, and particularly from publishing, circulating, or causing to be published or circulated, directly or indirectly, such statements concerning the product "Daxol" manufactured by the Proper Antiseptic Laboratories of Cincinnati, Ohio, to wit:

That "This is a solution of calcium hypochlorite or as it is usually known, bleaching powder. It is our opinion that its use on the human body would be attended with great danger."

That "'Daxol' is a very weak solution of bleaching powder and loses its effect in about 72 hours."

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

FEDERAL TRADE COMMISSION

v.

ESCO HOSIERY COMPANY, INC.

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

Docket 588—December 27, 1922.

SYLLABUS.

Where a corporation engaged in the sale at wholesale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect, sold hosiery composed of cotton and silk, branded, labeled and advertised as "Ladies Pure Silk Hose," "Men's Thread Silk Half Hose" and "Men's Silk Half Hose"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Esco Hosiery Company, Incorporated, hereinafter referred to as the respondent, has been and is now using unfair methods of competition in commerce in violation of the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, and the Federal Trade Commission having determined that a complaint should issue against said Esco Hosiery Company, Incorporated, and a full and complete inquiry with respect thereof would be to the interest of the public:

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

PARAGRAPH 1. That the said Esco Hosiery Company, Incorporated, is a corporation chartered, organized, existing and doing business under and by virtue of the laws of the State of New York; that its principal office and place of business is in the city of New York, in the State of New York; that it is now, and for more than a year last past continuously has been, engaged in the purchasing and selling of hosiery as a jobber or wholesale dealer.

PAR. 2. That the said Esco Hosiery Company, Incorporated, is, and has been continuously for the year last past and for a longer period of time, engaged in commerce as defined by the act of Congress approved September 26, 1914, above mentioned, in that it is purchasing both men's and women's hosiery from manufacturers, dealers and others in the State of New York and in other States and Territories of the United States and in the District of Columbia and having the said men's and women's hosiery shipped and transported in commerce to its place of business in the city of New York and that it is likewise engaged in selling the said hosiery and transporting and shipping them in commerce through and among other States and Territories of the United States and in the District of Columbia and into foreign countries, and there is continuously, and has been at all times within the year last past and more, a constant current of trade in commerce in said hosiery among and between the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the city of New York, in the State of New York, and therefrom to and through other States of the United States and Territories thereof and the District of Columbia and into foreign countries.

PAR. 3. That the said Esco Hosiery Company, Incorporated, has [been] and is now engaged in unfair methods of competition in commerce within the meaning of the above mentioned act of Congress, approved September 26, 1914, within the year last past, in that, in the conduct of its business in buying men's and women's hosiery from manufacturers and dealers, and selling, transporting and shipping them, in commerce, [it] has labeled, advertised, stamped and branded, on the packages containing the said hosiery, bought and sold by it, certain labels, advertisements, stamps and brands as follows, to wit:

"ESCO" Warranted	1-4 Dozen LADIES' PURE SILK HOSE Full Fashioned Made in U. S. A.	

"ESCO	½ Doz. Ladies' BLACK PURE SILK AND FIBRE HOSE High Spliced Heel, Double Sole Made in U. S. A.	890/1 Size

"ESCO NO.	MEN'S THREAD SILK HALF HOSE Triple Heel and Toe Made in U. S. A.	Doz. In.

"ESCO Warranted NO.	MEN'S SILK HALF HOSE Triple Heel and Toe Made in U. S. A.	½ dozen

That such labels, advertisements, stamps and brands, on said packages of hose, represent the said hose to be silk, when, in truth and in fact, the material in said hose is not all silk, but only a portion of such materials in such hose is silk, and that such labels, advertisements, stamps and brands are false and misleading and calculated and designed to deceive, and do actually deceive, the trade and the general public into the belief that such hose are manufactured and composed wholly and entirely of silk when in truth and in fact only a portion of said hose is composed of silk and the remaining portion of said hose is composed of material of inferior quality and of less value than silk; that such acts and methods as are above set forth are unfair methods of competition in commerce and give to said respondent an unfair advantage over merchants and other dealers in hosiery, who do not so incorrectly, and in such misleading manner, advertise their hosiery.

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, Esco Hosiery Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

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

troduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Esco Hosiery Company, Inc., is a corporation organized and doing business under the laws of the State of New York with its principal place of business in the city of New York, State of New York.

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

PAR. 3. That respondent in the conduct of its business as described in paragraph 2 above, sells and ships hosiery made of material derived from the cocoon of the silkworm and cotton in varying proportions labeled, advertised and branded, and in packages or containers labeled, advertised and branded "Ladies' Pure Silk Hose" and "Men's Thread Silk Half Hose" and "Men's Silk Half Hose." That dealers purchasing this hosiery from respondent or from respondent's customers labeled, advertised and branded, or in packages or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words to indicate the character, kind or grade of material entering into the manufacture of said hosiery.

PAR. 4. That the term "Silk Hose," without any other word or words descriptive of the character, kind or grade of material or materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery made entirely of material derived from the cocoon of the silkworm. That the term "Silk Half Hose," without any other word or words descriptive of the character, kind or grade of material or materials, signifies and is understood by a

substantial part of the purchasing public to mean hosiery made entirely of material derived from the cocoon of the silkworm.

PAR. 5. That many of respondent's competitors in the selling of hosiery are engaged in interstate commerce, selling and shipping their goods from one State into another. That many such competitors sell and ship, in said commerce between the States of the United States, hosiery made entirely of material derived from the cocoon of the silkworm, which hosiery and the packages or containers for which are labeled, advertised and branded "Silk Hose." That many such competitors sell and ship, in said commerce between the States of the United States, hosiery made entirely of material derived from the cocoon of the silk worm, which hosiery and the packages or containers for which are labeled, advertised and branded "Silk Half Hose."

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

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

CONCLUSION.

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

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Esco Hosiery Company, Inc., and its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "Silk," or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silkworm, or (2) unless where the hosiery is made partly of silk it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

FEDERAL TRADE COMMISSION

v.

MORRIS KLEIN, DOING BUSINESS UNDER THE NAME AND STYLE OF RACINE TIRE SALES COMPANY.

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

Docket 874—December 27, 1922.

SYLLABUS.

Where a corporation engaged as the Racine Rubber Co. in the manufacture and sale of automobile and other tires, including a tire which it termed its "Multi-Mile Cord" tire and nationally so advertised, registered the names "Multi-Mile Cord" and "Racine" as applied to its tires, branded its tires with its corporate name, sold and extensively advertised the same thereunder, and thereby and through the reputation which came to be attached to its products as so identified, built up and acquired a valuable trade and good will under the word "Racine" which through continuous and uninterrupted use by it had come to indicate to the public tires of high quality made by it; and thereafter a competitor engaged in the business of rebuilding and repairing second hand and used tires, and in selling the same by mail order, without stating in his advertising, except in small type, that said tires were used or rebuilt;

(*a*) Adopted and used the name Racine Tire Sales Co. in the conduct of his aforesaid business; and

(*b*) Named one of the tires so repaired, rebuilt and offered by him "Multi Cord" and so advertised the same, prominently displaying in so doing the trade name adopted and used by him as above set forth;

With the capacity and tendency thereby to deceive and mislead the public into believing the tires so offered by him to be the "Multi-Mile Cord" tires of said corporation and thereby to induce the purchasing public to buy his tires as and for such tire of said corporation:

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

AMENDED COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Morris Klein, doing business under the name and style of Racine Tire Sales Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Morris Klein, is one of three partners of which his father and one brother are the other two, all three of whom, under the firm-name and style of J. Klein & Sons, are now, and for some years last past have been doing business as junk dealers in rags, rubber and metals at 1001 West 21st Street, Chicago, Illinois: That for some years previous to and until October, 1920, the respondent, at the above mentioned 1001 West 21st Street, also did business as an individual under the name of the Universal Tire and Rubber Company: That about that date and because of complaints and objections on the part of a corporation in the same city known as the Universal Tire and Repair Company, Inc., to his use of and his transaction of business under the name of the Universal Tire and Rubber Company, he abandoned the use of that name, adopted the name of the Racine Tire Sales Company, and moved the fabricating portion of his business to an old frame structure at number 2106 South Racine Avenue about three blocks from the office portion of his business at 1001 West 21st Street above mentioned where all mail is still received.

PAR. 2. That the business of the respondent, Morris Klein, under the name of the Racine Tire Sales Company, is that of rebuilding and repairing second hand and used tires and thereafter reselling said reconstructed tires to the consuming public in the manner herein set out: That he causes to be inserted in newspapers and other publications of national and State circulation advertisements in which he solicits direct from the consumer mail orders for said reconstructed tires. He also sends, throughout the various States of the Union, circulars in which he solicits the same sort of business: That in said advertisements and said circulars the respondent does not in any manner disclose, unless in small type, the fact that the tires so offered for sale by him are second hand or used tires or rebuilt or reconstructed tires as above set out: That upon receiving orders as a result of said advertisements and circulars the respondent causes the tires so purchased to be shipped from his said place of business in the city of Chicago into and through the various States of the United States to the purchasers at their several places of residence in the various States of the United States: That in the course and conduct of his said business the respondent is in competition with other persons, partnerships and corporations engaged in selling automobile tires in interstate commerce and with the trade generally.

PAR. 3. That among the aforesaid competitors of the respondent is the Racine Rubber Company, a corporation organized in March,

1910, under the laws of the State of Wisconsin, as the Kelly-Racine Rubber Company: That its name was changed to its present title on August 5, 1912: That by its charter it is empowered to manufacture, sell and distribute and it does manufacture, sell and distribute all kinds of new tires, including automobile, truck, bicycle and motorcycle tires: That its office and factory and principal place of business are located at Racine, Wisconsin: That at first its business was small but this has steadily increased until at the present time it is now one of the large manufacturers of tires in the world: That its product is sold and distributed to purchasers throughout the United States and to a large extent abroad: That the tires so sold by it are transported from its said place of business at Racine, Wisconsin, into and through the various States of the United States to said purchasers therein.

PAR. 4. That amongst the tires manufactured by the Racine Rubber Company is a tire named by said company "Multi-Mile Cord" under which name the said tire has for more than a year last past been nationally advertised and sold by the said company throughout the United States and the consuming public has come to identify it, and it does now identify the said tire with the name "Multi-Mile Cord" with the name of its manufacturer, the Racine Rubber Company.

PAR. 5. That the Racine Rubber Company has acquired a high reputation for materials, durability and workmanship: That ever since its organization the Racine Rubber Company has spent thousands of dollars yearly in nationally advertising its tires and this advertising has all been done as the advertisement of the Racine Rubber Company under that name: That by said reputation and by said advertising and by other means it has built up and established a valuable good-will and trade, and has established a wide popularity and demand for its tires amongst the consuming public throughout the United States, which popularity and demand for its products it now enjoys: That owing to this high reputation of its product this business good-will is of incalculable value.

PAR. 6. That its name, the Racine Rubber Company, was recorded in the United States Patent Office Department under the Act of Congress of 1905: That the words "Racine-Multi-Mile Cord" used in connection with tires of its manufacture were registered by said Racine Rubber Company in the United States Patent Office on August 16, 1921, and numbered by said Office No. 145,788 That the word "Racine" used in connection with tires of its manufacture was by said Racine Rubber Company registered in the United States Patent Office, on February 22, 1921, and numbered by said Office No.

139,953: That the words "Racine Country Road," used in connection with tires of its manufacture were registered by the said Racine Rubber Company, in the United States Patent Office on January 26, 1921, and by said Office numbered No. 145,181: That notice that the Racine Rubber Company is the manufacturer of its products has been given to the purchasing public by stamping its full corporate name on all tires of its manufacture: That the result and the effect upon the purchasing public of all these things and by its said advertising has been that the word and name Racine when applied to tires has by said public become identified and associated with the Racine Rubber Company: That the word Racine has been so used in commerce throughout the United States with the business of the Racine Rubber Company as to indicate not only the place, to wit, Racine, Wisconsin, of the manufacture and product, but the Racine Rubber Company itself, together with the excellence of the tires of its manufacture: That the Racine Rubber Company has made such continuous and uninterrupted use of the word "Racine," as a part, of its trade and of its corporate name, for such a long period of years, as to indicate to the public the place, character, quality and product of the Racine Rubber Company and for the general advertisement thereof.

PAR. 7. That amongst the repaired and rebuilt tires offered for sale by respondent, in the manner hereinbefore set out, was and is one which the respondent named "Multi-Cord" and in his aforesaid advertisements respondent has heretofore offered and still offers said "Multi-Cord" tires for sale under that name. In addition to the name "Multi-Cord," said advertisements prominently display the aforesaid trade name of respondent. The use of the name "Multi-Cord" by respondent in connection with the trade name, Racine Tire Sales Company and the advertising of said tires for sale in connection with said trade name, as hereinbefore set out, have the capacity and tendency to deceive and mislead the public into the belief that the rebuilt tires offered by respondent under the name "Multi-Cord" are the "Multi-Mile Cord" tires manufactured by the Racine Rubber Company, and therefore have the tendency and the capacity to induce the purchasing public to purchase respondent's said tires in the belief that the same are the aforesaid "Multi-Mile Cord" tires manufactured by said Racine Rubber Company.

PAR. 8. That the above alleged acts and things done by respondent constitute an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Morris Klein, doing business under the name and style of Racine Tire Sales Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

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

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Morris Klein, on or about October, 1920, adopted the name of Racine Tire Sales Company and conducted the fabricating portion of his business as hereinafter set forth, in an old frame structure at 2106 S. Racine Avenue, Chicago, Illinois, about three blocks from the office portion of the business of J. Klein Sons, Inc., at 1001 West 21st Street, Chicago, Illinois, where all mail is received by the respondent.

PAR. 2. That the business of the respondent, Morris Klein, under the name of the Racine Tire Sales Company, is that of rebuilding and repairing second-hand and used tires, and thereafter re-selling said reconstructed tires to the consuming public in the manner herein set out; that he causes to be inserted in newspapers and other publications of national and State circulation, advertisements in which he solicits direct from the consumer mail orders for said reconstructed tires. He also sends throughout the various States of the Union, circulars, in which he solicits the same sort of business; that in said advertisements and said circulars the respondent does not in any manner disclose, except in small type, the fact that the tires so offered for sale by him are second-hand, or used tires, or rebuilt, or reconstructed tires, as above set out. That upon receiving orders as the result of said advertisements and circulars, the respondent causes the tires so purchased to be shipped from his said place of business in the City of Chicago, into and through the various States of the United States to the purchaser at their several places of residence in the various States of the United States. That in the course and conduct of his said business, the respondent is

in competition with other persons, partnerships and corporations engaged in selling automobile tires in interstate commerce, and with the trade generally.

PAR. 3. That among the aforesaid competitors of the respondent is the Racine Rubber Company, a corporation organized in March, 1910, under the laws of the State of Wisconsin, as the Kelly-Racine Rubber Company; that its name was changed to its present title on August 5, 1912; that by its charter it is empowered to manufacture, sell and distribute, and does manufacture, sell and distribute all kinds of new tires, including automobile, truck, bicycle and motorcycle tires; that its office and factory and principal place of business are located at Racine, Wisconsin; that at first its business was small, but it has steadily increased until at the present time it is one of the large manufacturers of tires in the United States; that its product is sold and distributed to purchasers throughout the United States, and to a large extent abroad, and that the tires so sold by it are transported from its said place of business at Racine, Wisconsin, into and through the various States of the United States to said purchasers therein.

PAR. 4. That amongst the tires manufactured by the Racine Rubber Company is a tire named by said Company, "Multi-Mile Cord," under which name the said tire has been, for more than a year last past, nationally advertised and sold by the said company throughout the United States, and the consuming public has come to identify, and does now identify the said tire with the name "Multi-Mile Cord," with the name of its manufacturer, the Racine Rubber Company.

PAR. 5. That the Racine Rubber Company has acquired a high reputation for materials, durability and workmanship, and has expended a great deal in advertising its business; that by said reputation and said advertising and by other means, it has built up and established a valuable good-will and trade, and has established a wide popularity and demand for its tires among the consuming public throughout the United States, which popularity and demand for its product it now enjoys.

PAR. 6. That its name, the Racine Rubber Company, was recorded in the United States Patent Office Department under the Act of Congress of 1905; that the words "Racine Multi-Mile Cord," used in connection with tires of its manufacture were registered by said Racine Rubber Company in the United States Patent Office, on August 16, 1921, and numbered by said office No. 145,788; that the word "Racine" used in connection with tires of its manufacture was by said Racine Rubber Company registered in the United States Patent

Office on February 22, 1921, and numbered by said office, No. 139,953; that the words "Racine Country Road," used in connection with tires of its manufacture, were registered by the said Racine Rubber Company in the United States Patent Office on January 26, 1921, and by said office was numbered No. 145,181. That notice that the Racine Rubber Company is the manufacturer of its products has been given to the purchasing public by stamping its full corporate name on all tires of its manufacture. That the result and the effect upon the purchasing public of all these things, and by its said advertising, has been that the word and the name "Racine" when applied to tires, has, by said public become identified and associated with the Racine Rubber Company; that the word "Racine" has been so used in commerce throughout the United States with the business of the Racine Rubber Company as to indicate not only the place—to-wit, Racine, Wisconsin—of the manufacture and product, but the Racine Rubber Company itself, together with the excellence of the tires of its manufacture; that the Racine Rubber Company has made such continuous and uninterrupted use of the word "Racine" as a part of its trade and of its corporate name for such a long period of years as to indicate to the public the place, character, quality and product of the Racine Rubber Company and of the general advertisements thereof.

PAR. 7. That amongst the repaired and rebuilt tires offered for sale by respondent in the manner hereinbefore set out, was one which the respondent named "Multi-Cord," and in an aforesaid advertisement respondent has heretofore offered said "Multi-Cord" tires for sale under that name. In addition to the name "Multi-Cord," said advertisements prominently displayed the aforesaid trade name of respondent. The use of the name "Multi-Cord," by respondent, in connection with the trade name, Racine Tire Sales Company, and the advertising of said tires for sale in connection with said trade name as hereinbefore set out, had the capacity and tendency to deceive and mislead the public into the belief that the rebuilt tires offered by respondent under the name "Multi-Cord" are the "Multi-Mile Cord" tires manufactured by the Racine Rubber Company, and therefore had the tendency and the capacity to induce the purchasing public to purchase respondent's said tires in the belief that the same are the aforesaid "Multi-Mile Cord" tires manufactured by said Racine Rubber Company.

CONCLUSION.

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

of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Morris Klein, doing business under the name and style of Racine Tire Sales Company, his agents, representatives, servants and employees, do cease and desist from using the term "Racine Tire Sales Company."

It is further ordered, That the respondent cease and desist from branding, marking, using or advertising any of the automobile tires manufactured or sold by it under the name "Multi-Cord," or any combination of such words which would indicate to the public that the tires manufactured, repaired or sold by it are the "Multi-Mile Cord" tires manufactured by the Racine Rubber Company of Racine, Wisconsin.

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

FEDERAL TRADE COMMISSION

v.

KEATON TIRE & RUBBER COMPANY.

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

Docket 882—December 27, 1922.

SYLLABUS.

Where a corporation engaged in the distribution and sale of rim parts for demountable automobile rims; with the intent of driving its competitors from the field,

(a) Inaugurated and carried on a campaign of disparagement against competitors and their products in the course of which it characterized said competitors as "pirates" and their parts as "pirate" and "counterfeit" parts, and warned the trade and the automobile public to beware thereof, stating that their use was dangerous and would automatically destroy the rim-manufacturers' guarantee on their rim equipment; and

(*b*) Systematically collected from dealers, removed and destroyed display boards of a competitor which were attractive in appearance, were designed for the purpose of displaying and identifying said competitor's rim parts, bore said competitor's initials and registered trade mark, and constituted not only a valuable and important part of said competitor's advertising system, but also an essential part of its plan of doing business and of displaying and distributing its products, which display boards as also those of other competitors it secured in exchange for similar boards of its own bearing a guarantee, and notice warning the reader to beware of counterfeit, imitation or duplicate rim parts, as above set forth;

With the result that certain territories were practically divested of competitive boards:

Held, That such disparagement of competitors and their products, and such cutting off or restricting of competitors' access to market, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Keaton Tire & Rubber Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of California, with its principal place of business

in the City of San Francisco in that State. It also operates branch places of business in the cities of Oakland and Los Angeles in said State and in the cities of Portland, State of Oregon, and Seattle, State of Washington. At all times hereinafter mentioned respondent was and still is engaged in selling to wholesale and retail dealers in all the above-mentioned States automobile tires, rims and rim parts. It causes the merchandise so sold to be sent from its aforesaid several places of business to the purchasers at various points in said States and supervises and controls its entire business from its said principal place of business in the City of San Francisco. In the course and conduct of its said business, respondent was and is in competition with other individuals, partnerships and corporations engaged in selling similar merchandise in interstate commerce to wholesale and retail dealers, and with the trade generally.

PAR. 2. For a number of years last past, respondent has been and still is the general distributing agency for the products of a number of manufacturers of automobile tires, wheels, demountable rims and demountable rim parts in the territory in which respondent does business as hereinbefore set out. The charges of this complaint are confined to respondent's activities in connection with demountable rims and rim parts. Said demountable rims are rims adapted to be fitted to the felloes of automobile wheels which do not possess permanent rims made as a part of the wheel, and are hereinafter called rims. Said rims can be readily and easily attached to or detached from said wheels by means of certain wedges, slugs, nuts and bolts in each instance designed for and adapted to said purpose and which constitute the rim parts hereinbefore referred to, hereinafter called parts. A large proportion of well-known makes of automobiles are supplied to the trade and public with wheels having demountable rims as described above and there is a large demand throughout the United States for this type of automobile wheels. The aforementioned manufacturers whose rims and parts respondent distributes, and respondent, characterize and denominate said rims and parts as "standard" and "genuine" rims and parts and they are for the purpose of identification only, hereinafter called "standard" rims and parts. In the course of use upon automobiles, rim parts frequently become worn and defective or are lost so that it becomes necessary to replace the same, and respondent for a number of years has enjoyed and still enjoys a large and lucrative trade in supplying duplicate parts to replace those that have become defective or have been lost as above set out. Amongst the aforesaid competitors of respondent is the Thompson-Neaylon Manufacturing Company, a corporation organized under the laws of the State of

Illinois, with its principal place of business in the city of Chicago in that State, hereinafter called the Company. In the year 1919, the Company commenced the manufacture of parts, which essentially duplicate the "standard" parts, and are designed and adapted in each instance to securing the "standard" rims to the felloes of the automobile wheels whereon said rims are used. The Company's parts are substantially the same in quality and adaptability to purpose as the "standard" parts. The Company sells the parts manufactured by it to wholesale and retail dealers throughout the United States and comes into direct competition with respondent in the States of Washington, Oregon and California. It causes the parts sold by it to be transported from its said principal place of business in the City of Chicago to the purchasers at points in various States of the United States including the States of Oregon, Washington and California. In connection with the sales of its parts, the Company designs and furnishes to its dealer-vendees a display board adapted to be hung upon the wall of the dealers' places of business for the purpose of displaying said parts. Said boards are furnished with a number of pegs upon which are hung and displayed in a definite order and arrangement the said parts associated with an identification symbol, whereby the dealer and his customer can easily and readily select any specific part desired. The foregoing method of display is highly convenient and efficient as a sales medium, and largely by reason thereof, the Company has built up and now enjoys amongst the trade and the purchasing public a valuable good will and popularity for its said parts and has established a wide and keen competition with respondent in the sale of parts in the States of Washington, Oregon and California.

PAR. 3. In the year 1921, respondent with the purpose and intention of suppressing the competition of the Company with respondent and driving the Company from the competitive field, inaugurated and carried on, and still carries on, a campaign of disparagement against the Company and its parts, and of physically removing the Company's parts and display boards from the trade. In the course of said campaign respondent has done and now does, amongst others, the following acts and things:

(*a*) By means of circular letters and other communications advises its dealer-customers and its branch houses of its intention to drive the Company and similar competitors from the field, and solicits and demands the cooperation of said dealers and branches in accomplishing that purpose. In said letters respondent characterizes the Company and similar competitors as pirates and their parts as pirate and counterfeit parts;

(*b*) Puts out a display board similar to the Company's above mentioned display board, and by persuasion and intimidation seeks to obtain, and in many instances obtains from dealers, the surrender of the Company's display board in exchange for respondent's display board. In the course of its negotiations with dealers for such exchange of display boards, respondent characterizes the Company and similar competitors as pirates and characterizes and denominates the Company's parts as pirate and counterfeit parts;

(*c*) Solicits and secures the aid of its dealer-customers and its branch houses and the salesmen and agents of said customers, and branches, in securing said exchange of display boards, in the course of which said cooperators use intimidation, persuasion, and disparaging language, similar to that set out in Specification (*b*) hereof;

(*d*) Upon securing the exchange of the Company's board for its board, refuses to return the former to the dealer when requested by him so to do, and destroys the Company's board in order that by no chance the same may be used again by any person, and demands and secures a similar refusal to return said boards and the destruction thereof by its dealer-customers and branch houses and by the salesmen and agents thereof cooperating with respondent as set out in Specification (*c*) hereof;

(*e*) Represents and causes the aforesaid cooperators to represent to the trade and to the general public that the use of the Company's parts, or any other parts except "standard" parts, automatically forfeits, or renders void any guarantee which the manufacturers of the "standard" rims give to purchasers in connection with said rims;

(*f*) Places conspicuously at the top of its display boards a statement headed "warning" in which the observer is warned to beware of counterfeit or imitation parts; that the use of such rim parts is dangerous and destroys the rim factory's guarantee on the entire rim equipment; makes similar statements also conspicuously placed at the top of its display boards under the heading "guarantee."

The foregoing disparaging language used by respondent in its said campaign and conspicuously placed upon its display boards as above set out tends to discredit the Company's parts with the trade and general public, and because said language suggests that the Company's parts are illegal duplications of "standard" parts, tends to constrain and intimidate retail dealers to cease handling the parts of the Company and to deal exclusively in "standard" parts supplied by respondent and in connection therewith to surrender the Company's display boards to respondent. Respondent's aforesaid cam-

paign and the things done by respondent in the course thereof as hereinbefore set out have a dangerous tendency unduly to hinder competition in the manufacture and sale of rim parts to the trade and consuming public in interstate commerce.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Keaton Tire & Rubber Company, 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, admitting that certain of the matters and things alleged in said complaint were true in the manner and form therein set forth, and having filed a stipulation as to facts, in which it is stipulated and agreed by the respondent that the statement of facts contained therein may be taken as the facts of this proceeding and in lieu of testimony in support of the charges stated in said 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, and the Federal Trade Commission being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent was at the time and immediately prior to the issuance of said complaint, and at all times hereinafter mentioned, a corporation organized under the laws of the State of California, with its principal place of business in the City of San Francisco in that State. It also operated branch places of business in the Cities of Oakland and Los Angeles, in said State, and in the Cities of Portland, State of Oregon, and Seattle, State of Washington. At all such times respondent was engaged in selling to wholesale and retail dealers in all the above mentioned states automobile tires, rims, and rim parts in interstate commerce. It caused merchandise so sold to be

sent from its aforesaid several places of business to the purchasers at various points in said states, and supervised and controlled its entire business from its said principal place of business in the City of San Francisco. In the course and conduct of its said business, respondent was in competition with other individuals, partnerships, and corporations engaged in selling similar merchandise in interstate commerce to wholesale and retail dealers, and with the trade generally.

PAR. 2. For approximately eight years last past, respondent has been and still is the general distributing agency in the territory in which it does business as hereinbefore set out, for the products of a number of manufacturers of automobile wheels and demountable rims and of parts made by the said manufacturers for such wheels and rims and has sold and is selling said rims and parts as the product of said manufacturers. Said demountable rims are rims adapted to be fitted to the felloes of automobile wheels which do not possess permanent rims made as a part of the wheel, and are hereinafter called rims. Said rims can be readily and easily attached to or detached from said wheels by means of certain wedges, lugs, nuts, and bolts in each instance designed for and adapted to said purpose and which constitute the rim parts hereinbefore referred to, hereinafter called parts. Respondent was and is now a duly constituted and regularly appointed sales representative and distributor of the following manufacturers of rims and parts therefor:

Firestone Steel Products Co., Akron, Ohio.
Kelsey Wheel Company, Detroit, Michigan.
Standard Welding Co., Cleveland, Ohio.
Jaxon Steel Products Co., Jackson, Mich.
United Motors Service, Inc., Detroit, Mich.

A large proportion of well-known makes of automobiles are supplied to the trade and public with wheels having demountable rims as described above and there is a large demand throughout the United States for this type of automobile wheels and demountable rims. The aforementioned manufacturers whose rims and parts respondent distributes, and respondent characterize and denominate said rims and parts as "standard" and "genuine" rims and parts; and they are so extensively known and referred to in the trade and by the automobile public to distinguish them from parts not made by the rim manufacturers, and they are for the purpose of identification hereinafter called "standard" rims and parts. In the course of use upon automobiles, rim parts frequently become worn and defective or are lost, so that it becomes necessary to replace the same, and respondent, for a number of years, has enjoyed and still enjoys a large

trade in supplying "standard" parts to replace those that have become defective or have been lost, as above set out.

PAR. 3. Amongst the aforesaid competitors of respondent is the Thompson-Neaylon Manufacturing Company, a corporation organized under the laws of the State of Illinois, with its principal place of business in the City of Chicago, in that State, hereinafter referred to as the Company. In the year 1919 the Company commenced the manufacture of parts which were designed by it to accomplish the purpose of securing "standard" rims to the felloes of the automobile wheels whereon said rims are used. The Company sold and now sells aforesaid parts to wholesale dealers throughout the United States and has come into direct competition with respondent in the States of Washington, Oregon and California. It has caused the parts sold by it to be transported from its said principal place of business in the City of Chicago to the purchasers at points in various states of the United States, including the States of Washington, Oregon and California. In connection with the sales of its parts the Company designed and supplied to its dealer-vendors a display board adapted to be hung upon the walls of the dealers' places of business for the purpose of displaying said parts. Said boards were in each instance either sold or given to customers by the Company and were furnished with a number of pegs upon which were hung and displayed in a definite order and arrangement the said parts, associated with a symbol designed to aid the dealer and his customer in identifying the part desired with the original or "standard" rim part as described by the rim manufacturer. These boards, as shown by the one attached to the stipulation as an exhibit, were made entirely of metal of substantial and attractive design, and displayed the initials and registered trademark of the Thompson-Neaylon Manufacturing Company prominently at the top of the boards, and when taken in connection with the printed price list, which was attached to said boards, formed not only a valuable and important part of the advertising system of said Company, but also an essential part of its plan of doing business and of displaying and distributing its products.

PAR. 4. On or before July 1, 1921, respondent, its officers and agents formed the intention of driving its competitors, especially the Thompson-Neaylon Manufacturing Company, entirely from the competitive field, and for accomplishing this purpose the following method was adopted and to the extent hereinafter indicated carried out. A display board similar in all important features to the display board previously designed and then already being used by the Thompson-Neaylon Manufacturing Company, above referred to, was put out by the respondent and instructions and requests, of which a

circular letter dated July 1, 1921, was illustrative, were sent from its principal office in San Francisco to all its jobbers or distributors and branch houses, in which they were solicited to take an active part in the plan of removing its competitors, including said Company, entirely from the field. The plan determined upon by the respondent and carried out at least in part by it and its branch houses and jobbers, was the systematic removal of the display boards of the said Company and other competitors from the hands of the customers of such competitors and from the markets, and the substitution therefor of the respondent's display boards. The method whereby this plan was to be carried out, and in fact was carried out in part, consisted of two principal features: First, a campaign of disparagement against the competitors of respondent and their rim parts in the course of which these competitors were, in circular letters and other communications to dealers, repeatedly called "pirates," and their rim parts were called "pirate" and "counterfeit" parts, and the trade and automobile public were warned to beware of counterfeit and imitation parts, and told that the use of such parts or of any device other than the rim parts manufactured and sold by the makers of the rim was dangerous and would automatically destroy the rim factory guarantee on the entire rim equipment; and, secondly, the systematic collection for the purpose of permanent removal from the hands of all holders thereof and from the market, and the destruction thereof, of said competitors' boards, whenever dealers or others holding same could be persuaded to exchange them for a Keaton board, said Keaton boards being otherwise sold at $1.75 each f. o. b. the nearest Keaton branch.

PAR. 5. As the result of the methods above described, one salesman of respondent had, prior to July 27, 1921, removed 20 Thompson-Neaylon Manufacturing Company boards from the market, and, as appears from a letter of that date from the respondent to all branch houses, San Francisco and Oakland territories were practically cleaned of competitive boards at that time.

PAR. 6. The respondent does not contend, at least for the purpose of this case, that the rim parts manufactured by the Thompson-Neaylon Manufacturing Company or its other competitors are inferior to those distributed by it; neither is there any contention that said competitors have not the full legal right to manufacture and sell rim parts. The word "pirate," among other terms, is used extensively in the automobile trade to distinguish repair or replacement parts made by other than the manufacturer of the original article; but there is no usage of the term "pirate" as applicable to the manufacturers or distributors of such parts, nor of the word "counter-

feit" as applicable to the parts themselves. These terms, as used by respondent, were in each instance literally untrue, and calculated to deceive dealers and the public, to the injury of respondent's competitors. While a partial, secondary usage among dealers of the term "pirate" is shown as applicable to the parts, the necessary inference is, that dealers unfamiliar with such usage might have been, and were, misled by it.

PAR. 7. Respondent also printed on said parts boards issued by it and distributed to its branch houses and jobbers and intended for further distribution and display to the public, the following warning and guarantee, in which the words "counterfeit" and "imitation" were used with reference to the parts distributed by the Thompson-Neaylon Manufacturing Company and other competitors of the respondent:

"WARNING:—Beware of counterfeit, imitation, or so-called 'duplicate' rim parts. The use of any device other than the regular genuine rim parts manufactured and sold by the maker of the rim on your car is dangerous. The use of counterfeit or so-called 'duplicate' rim parts immediately destroys the rim factory guarantee on your entire rim equipment.

"GUARANTEE:—Genuine Rims and Rim parts of all makes are guaranteed by the rim factories to be free from defect in workmanship and material. All genuine rim material must come up to the standard of the guarantee or is subject to replacement on a fair adjustment basis. The use of counterfeit or so-called 'duplicate' rims or parts destroys this guarantee."

The words "No Counterfeits" also appeared prominently near the top of said boards.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and the stipulation as to the facts wherein and whereby it was agreed by said respondent that said stipulation as to the facts

should be taken by the Commission in lieu of testimony herein, and that said Commission might proceed further upon said stipulation to make its report in this proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers, and duties, and for other purposes,"

It is, therefore, ordered, That the respondent, Keaton Tire & Rubber Company, its officers, directors, agents, representatives and employees, cease and desist from directly or indirectly carrying out its plan of removing from the hands of jobbers, dealers, or others the rim parts display boards of the Thompson-Neaylon Manufacturing Company, or of any other competitor of said respondent in the automobile rim parts business; that it cease and desist from purchasing said boards or exchanging respondent's boards therefor, or in any other manner acquiring said boards or from destroying same.

It is further ordered, That the respondent cease and desist from referring to its competitors in the rim parts business, including said Thompson-Neaylon Manufacturing Company, either by circular letter or letters addressed to its dealer-trade, jobbers or others, as "pirates," and from applying to them or any of them any term of similar import; and that it cease and desist from referring in a similar manner or at all to the rim parts manufactured or distributed by the Thompson-Neaylon Manufacturing Company or other competitors of said respondent as "pirate" or "counterfeit" parts, and from applying to them or any of them any terms of similar import.

It is further ordered, That the respondent cease and desist from publishing or representing to the public or to dealers or jobbers, either by printing the same on its rim parts display boards or in any other manner, that the use of any device other than the rim parts manufactured and sold by the maker of the rim is dangerous to the rim or rim equipment, or from representing or publishing any statement to the same or similar effect.

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

FEDERAL TRADE COMMISSION

v.

PHILIP KING, HARRY KING, AND JOSEPH KING, PARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF KING'S PALACE.

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

Docket 799—January 4, 1923.

SYLLABUS.

Where a firm engaged in retailing various lines of merchandise, including blankets and hosiery,

(*a*) Advertised blankets composed entirely of cotton as "wool finished blankets";

(*b*) Advertised men's socks composed in equal parts of cotton and wool as "men's wool sport socks";

With the capacity and tendency to mislead a substantial part of the purchasing public with reference to the composition of said goods and thereby induce the purchase thereof:

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

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Philip King, Harry King, and Joseph King, partners, doing business under the name and style of King's Palace, hereinafter referred to as respondents, have been and are using an unfair method of competition in commerce in violation of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, Philip King, Harry King, and Joseph King, constitute a partnership and own and operate a department store in the City of Washington, District of Columbia, under the name and style of King's Palace, and sell merchandise and commodities at retail in the District of Columbia, and in the conduct of such business are in competition with other copartnerships, corporations, and individuals similarly engaged.

PAR. 2. That the respondents, in the course of their business as described in Paragraph 1 hereof and for the purpose of bringing

their merchandise and commodities to the attention of the purchasing public, cause advertisements of certain blankets, offered for sale and sold by them and which they know are composed entirely of cotton, to be inserted in newspapers having general circulation in the District of Columbia, describing said blankets as "Wool-Finished Blankets"; and cause advertisements of certain table cloths, offered for sale and sold by them and which they know are composed entirely of mercerized cotton, to be inserted in newspapers having general circulation in the District of Columbia, describing said table cloths as "Mercerized Satin Damask Table Cloths"; and cause advertisements of certain hosiery, offered for sale and sold by them and which they know are composed partly of wool and partly of cotton, to be inserted in newspapers having general circulation in the District of Columbia, describing said hosiery as "Men's Wool Sport Socks." That the purchasing public believes blankets described as "Wool-Finished Blankets" are composed in part, at least, of wool, and that table cloths described as "Mercerized Satin Damask Table Cloths" are composed in part, at least, of linen, and that hosiery described as "Wool Sport Socks" are composed entirely of wool. That said advertisements are false and misleading and are calculated to, and actually do, deceive and mislead the public as to the quality and value of said commodities and merchandise and are, thus, unfair to respondents' competitors and are calculated to, and actually do, injuriously affect said competitors.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Philip King, Harry King, and Joseph King, partners, doing business under the name and style of King's Palace, charging them with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearance herein and filed their answer to the complaint, evidence was thereupon introduced in support of the charges stated in the complaint and on behalf of said respondents, before an examiner for the Commission, which evidence was filed in the office of the Commission, and thereupon the matter came on for final hearing, and the Commission having considered the complaint, the answer thereto and the evidence adduced, and being fully advised in the premises and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

345 Conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Philip King, Harry King and Joseph King are partners, and carry on business under the name and style of King's Palace, and as such partners own and operate a department store in the District of Columbia in which they sell at retail various lines of merchandise, including blankets and hosiery; in the conduct of such business respondents have been and are in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondents in the conduct of their business, as described in Paragraph 1 hereof, in January, 1921, caused to be published in a newspaper of general circulation in the District of Columbia an advertisement in which various articles of merchandise were described and offered for sale to the public; that among the articles so offered for sale were blankets which were made entirely of cotton, and men's socks which were made of approximately equal parts of cotton and wool; that the blankets so offered for sale were described in said advertisement as "Wool Finished Blankets" and the men's socks so offered for sale were described in said advertisement as "Men's Wool Sport Socks."

PAR. 3. That the words "Wool Finished Blankets" as used by respondents in the advertisement described in Paragraph 2 hereof, signified to and was understood by a substantial portion of the purchasing public to mean that the blankets so described and offered for sale were composed of materials of which at least a part was wool. That the words "Men's Wool Sport Socks," as used by respondents in said advertisement, signified to and were understood by a substantial portion of the purchasing public to mean that the socks so described and offered for sale were composed entirely of wool.

PAR. 4. That the publication of the advertisement, as set out in Paragraph 2 hereof, had the capacity and tendency to mislead a substantial portion of the ultimate purchasers of the blankets and socks so offered for sale, and cause such purchasers to buy the blankets under the mistaken belief that they were composed of material at least a part of which was wool, and to buy the socks on the mistaken belief that they were composed entirely of wool.

CONCLUSION.

That the practices of the said respondents, under the conditions and circumstances described in the foregoing findings, were unfair methods of competition in interstate commerce and constituted a

violation of Section 5 of the Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondents, Philip King, Harry King, and Joseph King, partners, doing business under the name and style of King's Palace, cease and desist from:

(1) Representing to the purchasing public in advertisements or by other means that blankets offered for sale and sold by them and made wholly of cotton are "Wool Finished Blankets."

(2) Representing to the purchasing public in advertisements or by other means that socks offered for sale and sold by them and not composed wholly of wool are "Wool Socks," unless such representation includes a word or words designating the material other than wool of which the socks are composed (e. g. wool and cotton), or includes a word or words otherwise clearly indicating that such socks are not made wholly of wool (e. g. part wool).

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

FEDERAL TRADE COMMISSION
v.
AMALGAMATED TIRE STORES CORPORATION.

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

Docket 888—January 9, 1923.

SYLLABUS.

Where a corporation engaged in the distribution and sale of automobile tires, which it secured for the most part from the stocks of bankrupt and financially embarrassed concerns and from surplus tire stocks of the United States Army, and which consisted chiefly of tires known to the trade and general purchasing public as "seconds," falsely represented the same in its advertising as "firsts," "absolute firsts," "strictly firsts," and "all standard makes of firsts," and claimed that "every tire is fresh from the best known factory"; with the effect of misleading and deceiving the purchasing public:

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

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Amalgamated Tire Stores Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Delaware, with its main office and principal place of business in the city of New York, State of New York, and with retail agencies and stores in a number of cities in various States of the United States and in the District of Columbia. At all times hereinafter mentioned, respondent has been and is now engaged in the business of buying and selling and distributing automobile tires in commerce among the several States and in the District of Columbia and between the District of Columbia and States adjacent thereto in the manner more particularly hereinafter set out. In the course and conduct of its said business, respondent is in competition with individuals, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent purchases tires in wholesale quantities at various places in numerous States and in foreign countries

and concentrates its purchases at its said place of business in the city of New York. The tires thus purchased are secured by it largely from distressed stocks, the stocks of bankrupt or of financially embarrassed concerns, and from the surplus tire stocks of the United States Army. Because of the quantity and character of the stock purchased as above stated the respondent obtains its goods at substantial reductions in prices. Many of the tires bought by the respondent as stated above are "seconds" as the term is known in the automobile trade, or are those which have depreciated in value and in quality. From the stock thus assembled by the respondent at its place of business in New York City it from time to time ships and distributes quantities of tires to its various retail agencies and stores where the same are sold at retail by mail order and otherwise and thence shipped and delivered to the purchasers thereof.

PAR. 3. That in the automobile tire trade, tires are classified as "firsts" and as "seconds," and as "fresh" and "not fresh." Tires classified as "firsts" are such tires as come direct from the manufacturer thereof without substantial defect or blemish and are new or "fresh" in the sense that sufficient time has not elapsed since the date of their manufacture to allow of deterioration through age only. Tires classified in the trade as "seconds" are tires which come from the manufacturer thereof with some imperfection or defect or blemish not sufficient to impair their substantial quality and value, but which lowers their quality and value below that of "firsts," or are such tires as have suffered deterioration through age or exposure.

PAR. 4. That in connection with the sale and distribution through its retail agencies and stores of its stocks of tires the respondent, for more than one year immediately preceding the issuance of this complaint, has from time to time advertised in newspapers and by placards and otherwise, that these tires so advertised were "firsts" or were "absolutely firsts," or were "strictly firsts" and that "every tire is fresh from the best-known factories" or are "guaranteed firsts in original factory wrappings," or were "all standard makes of firsts"; that the tires so advertised or offered for sale were sold by the respondent in and through its said retail agencies and stores at prices substantially below the retail prices generally prevalent for "firsts" and for fresh tires of the same makes in the trade and in the territories of the respondent's retail agencies and stores; that in fact many of the tires so advertised and offered for sale and sold by the respondent were not "firsts" but were "seconds" and were not "fresh" but were, on the contrary, tires more than one year old and deteriorated through age or other cause.

PAR. 5. That the said representations and each and all of them appearing in the said advertisements of the respondent were at all times, and now are, false and untrue; that the said representations had the capacity and tendency to deceive and mislead the purchasing public as to the quality and value of said articles and to induce the said public to purchase the same in the belief that the tires so offered and so advertised for sale by the respondent were actually new, fresh stock and had come direct to the respondent from the factory and were what are known in the trade as " firsts " or " strictly firsts," thereby inducing the public to believe that tires of the advertised quality were being sold by respondent at greatly reduced prices.

PAR. 6. That the above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Amalgamated Tire Stores Corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered its appearance and filed its answer herein, and having entered into a stipulation in writing as to the facts, in which stipulation it is admitted that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth, thereupon this proceeding came on for final hearing; and the Commission, being fully advised in the premises and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation created and existing under the laws of the State of Delaware, with its principal office and place of business in the city of New York, State of New York, and with retail agencies in the various States of the United States and in the District of Columbia. Respondent has been and is now engaged in the business of buying, selling, and distributing automobile tires in interstate commerce, and in the course and conduct of its

said business is in competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Respondent purchases tires in wholesale quantities from various sources in numerous States of the United States and in foreign countries and concentrates its purchases at its principal place of business in New York City. Such tires purchased in the manner described above are for the most part secured from the stocks of bankrupt or financially embarrassed concerns, and have been in the past purchased from the surplus tire stocks of the United States Army. In purchasing tire stocks in the manner set out above respondent obtains and has obtained such stocks at substantial reduction from the general wholesale price of said tires. A great portion of the tires so bought by respondent are tires known to the automotive tire trade and general purchasing public as "seconds." Respondent, after having assembled such tires at its principal place of business in New York City, ships same from time to time to its various retail agencies at their different places of residence in the various States of the United States and the District of Columbia. Upon receipt of said tires by the retail agencies of respondent such tires are sold and offered for sale to the general purchasing public.

PAR. 3. Tires are graded in two classes by the manufacturers thereof and by the automotive tire trade, and through continued use of the terms of grading have come to be understood by the general purchasing public as belonging to either one or the other of the said two grades. These grades are made with respect to the quality of the tire. The grade known as "firsts" is that grade of tire which is understood by the automotive tire trade and general purchasing public to be tires without substantial defect or blemish and fresh in the sense that sufficient time has not elapsed since the date of their manufacture to allow deterioration from age. Tires designated and classed as "seconds" by the automotive tire trade and general purchasing public are understood to be tires in which there exists some imperfection or blemish not of sufficient importance to substantially impair the quality or value of said tire or tires, or which have, through age, exposure, or for other causes, deteriorated until they are not equal in quality to those tires designated as "firsts."

PAR. 4. Respondent, in the course and conduct of its business, has sold and offered for sale at various times tires which it knew to be "seconds," which tires it advertised as "firsts" in newspapers and by placards and otherwise. In such advertisements respondent used the following terms in the description of said tires, alleging that they were "firsts," or were "absolutely firsts," or were "strictly

firsts," and that "every tire is fresh from the best-known factories," or were "all standard makes of firsts."

PAR. 5. Said advertisements as set out next above and used with respect to "seconds" were false and misleading and did mislead and deceive the purchasing public into the belief that by purchasing the said tires sold and offered for sale in the manner above described it was obtaining a tire of first quality, when in truth and in fact it was obtaining a tire of "second" quality.

CONCLUSION.

The above 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, the answer of respondent and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress, 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, Amalgamated Tire Stores Corporation, its officers, agents, representatives, servants, and employees, do cease and desist from directly or indirectly advertising, selling, or offering for sale in interstate commerce automobile tires as "firsts," or "absolutely firsts," or "strictly firsts," or "every tire is fresh from the best-known factories," or "all standard makes of firsts," unless said tires are in truth and in fact correctly and properly so described.

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

FEDERAL TRADE COMMISSION

v.

R. C. RUSSELL, L. C. HAMBLET, R. D. HAMBLET, MRS. M. H. MERRELL AND FIRST NATIONAL OIL COMPANY.

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

Docket 866—January 10, 1923.

SYLLABUS.

Where a corporation, and individuals instrumental in, and responsible for, its organization, in promoting the sale of said corporation's stock made false and misleading statements, in their advertisements, regarding the assets, resources, business progress, production, payment of dividends, and prospects of said corporation, and were thereby enabled to sell much of said stock:

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

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that R. C. Russell, L. C. Hamblet, R. D. Hamblet, Mrs. M. H. Merrell, and the First National Oil Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect, upon information and belief as follows:

PARAGRAPH 1. The respondents, R. C. Russell, L. C. Hamblet, R. D. Hamblet, and Mrs. M. H. Merrell are residents of the State of Texas, each having its principal office and place of business in the City of Houston in said State;

That respondents, R. C. Russell, L. C. Hamblet, R. D. Hamblet, and Mrs. M. H. Merrell in the month of February, 1920, promoted and organized the respondent, First National Oil Company which was and is a corporation organized and existing under and by virtue of the laws of the State of Texas with a capitalization of $350,000 (35,000,000 shares of par value of 1 cent each).

That in the course of the promotion and organization of said company, the respondent, L. C. Hamblet transferred to it certain oil

leases in the state of Texas and in return therefor received its entire capital stock.

That subsequently respondent, L. C. Hamblet, donated to the treasury of the respondent, the First National Oil Company 4,000,000 shares of said stock upon an agreement by the terms of which he was to be paid one-third of the gross amount received by said company from its sale, and the respondent, R. C. Russell, the sum of $34,000 for the leases transferred by him to the respondent, L. C. Hamblet, and thereafter conveyed by the latter to respondent, First National Oil Company.

PAR. 2. That the respondents, R. C. Russell, L. C. Hamblet, R. D. Hamblet, and Mrs. M. H. Merrell, in conducting the business of promoting and organizing the said respondent, First National Oil Company, transported or caused to be transported through the mail and otherwise, large quantities of letters, circulars, and advertising matter into and through the various states and territories of the United States, and have procured subscriptions for and sold stock in said company to many persons, copartnerships and corporations throughout the United States and have each and all transported or caused to be transported the said stock sold as aforesaid from the City of Houston in said State of Texas to purchasers thereof in and through the various states of the United States, in direct competition with other persons, copartnerships and corporations engaged in the sale and distribution of stock and securities.

PAR. 3. That the respondents, R. C. Russell, L. C. Hamblet, R. D. Hamblet and Mrs. M. H. Merrell, each for himself and in conjunction with each other and on behalf of and under the direction of respondent, R. C. Russell, have deceived and defrauded the public, particularly that part thereof, who have purchased or contracted to purchase stock in the said respondent, First National Oil Company by means of false and misleading advertisements, false representations and false pretenses and by making, publishing, advertising and circulating false and misleading reports, false statements and false representations regarding the plan of organization, assets, resources, business progress, good-will and prospects of the First National Oil Company and of the standing and ability, and integrity of the respondents associated therewith in the promotion thereof and for that purpose respondents have represented, advertised, published, and circulated particularly the following statements and representations all of which, in whole or in part were false and misleading, by means of which they and each of them have sold much of the stock of the said respondent, First National Oil Company, to wit:

That the First National Oil Company had had its holdings appraised and inspected by the Secretary of State at the full amount of its authorized capital stock and that as a result of said inspection and appraisal subscribers to the stock were insured against investments in "Blue Sky" and the drilling of "Wild Cat" wells;

That the Breckenridge tract of the First National Oil Company was good for 1,000 barrels per day, with a drill 1 foot in the sand and would be good for several thousand barrels per day when drilled;

That the so-called second well of the First National Oil Company had a capacity of 1,500 barrels daily.

PAR. 4. That in truth and in fact the said Secretary of the State of Texas uniformly approves the valuation placed on holdings of corporations by their promoters and witnesses in accordance with certain forms prescribed by the laws of said state and the said approval did not insure or guarantee the value either of the First National Oil Company's holdings or of its stock nor was it any assurance or protection against wild cat drilling on the part of said company.

That in fact all of the holdings of the First National Oil Company were situated in so-called wild cat territory except its interest in the Breckenridge lease;

That the said respondent, First National Oil Company failed to disclose to the public until after many of its shares had been sold that it only had a one-third interest in the said Breckenridge lease and that the well on said tract in the Breckenridge district in November, 1920, produced a daily average of only 215 barrels and after an approximate production of 8,700 barrels, in the aggregate, this well was abandoned and that the so-called second well instead of producing 1,500 barrels daily averaged less than 600 initial production.

PAR. 5. That the probable and natural tendency of each and all of the said representations so made to the public by respondent, in procuring subscriptions for and selling stock in said company was, and they and each of them were calculated to induce subscriptions for and purchase of said stock, and many persons in various states of the United States to whom such representations were so made by respondents believed them to be true, or some one or more of them, and relying thereon and because thereof purchased a considerable amount of stock in the said First National Oil Company.

PAR. 6. That by reason of the facts recited the respondents and each and all of them, have been and are using unfair methods of com-

petition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, R. C. Russell, L. C. Hamblet, R. D. Hamblet, Mrs. M. H. Merrell and First National Oil Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having filed their answers and entered their appearance by their attorney, C. A. Teagle, hearing was had before an Examiner of the Commission theretofore duly appointed and testimony having been introduced in support of the allegations of the complaint and no testimony having been introduced by the respondents, the Commission makes this its report, stating its findings as to the facts and conclusion:

PARAGRAPH 1. The respondents, R. C. Russell, L. C. Hamblet, R. D. Hamblet and Mrs. M. H. Merrell, are residents of the State of Texas, each having his or her principal office and place of business in the City of Houston, in said State.

That respondents L. C. Hamblet, and R. D. Hamblet, in the month of February, 1920, promoted and organized the respondent, First National Oil Company, which was and is a corporation organized and existing under and by virtue of the laws of the State of Texas with a capitalization of $350,000 (35,000,000 shares of par value of 1 cent each).

That in the course of the promotion and organization of said company, the respondent L. C. Hamblet transferred to it certain oil leases in the State of Texas and in return therefor received its entire capital stock.

That subsequently respondent, L. C. Hamblet donated to the treasury of the respondent, First National Oil Company 4,000,000 shares of said stock for development purposes upon the small consideration of the sum of $5, the balance of said stock, namely, 31,000,000 shares, Hamblet donated to the company upon an agreement that he was to be paid one-third of the gross amount received by said company from the sale of said stock and that respondent R. C. Russell was to receive 16⅔ per cent of the gross amount of said sales, which latter sum was to be applied to L. C. Hamblet's indebtedness of

$34,000 to R. C. Russell for the lease transferred by him to the respondent Hamblet and thereafter conveyed by Hamblet to the respondent company, until the said indebtedness to Russell was discharged.

PAR. 2. That respondents, L. C. Hamblet and R. D. Hamblet in conducting the business of promoting and organizing the said respondent, First National Oil Company, transmitted or caused to be transported through the mail and otherwise, large quantities of letters, circulars and advertising matter into and through the various States and Territories of the United States and have procured subscriptions for and sold stock in said company to many persons, copartnerships and corporations throughout the United States and have each and all transported or caused to be transported the said stock sold as aforesaid from the City of Houston, in said State of Texas, to purchasers thereof in and through the various States of the United States in direct competition with other persons, copartnerships and corporations engaged in the sale and distribution of stock and like securities.

PAR. 3. That the respondents L. C. Hamblet and R. D. Hamblet, each for himself and in conjunction with each other, have deceived and defrauded the public, particularly that part thereof who have purchased or contracted to purchase stock in the respondent company by means of false and misleading advertisements, and false representations by making, publishing, advertising and circulating false and misleading reports regarding the assets, resources, business progress and prospects of the First National Oil Company, and for that purpose the said respondents advertised, published, and circulated the following representations which were in whole or in part false and misleading and by means of which much of the stock of the said respondent company was sold, to wit:

1. That the tract known as the Breckenridge tract of the first National Oil Company was good for 1,000 barrels per day "with a drill one foot in the sand" and would be good for several thousand barrels per day when drilled, whereas in truth the said well on the said Breckenridge tract produced but 6,000 barrels for the first 24 days of its activity and for the whole period of its existence, namely four months, produced only 8,372 barrels, of which amount respondent company received only one-third, which was its rightful interest.

2. That the so-called second well of the First National Oil Company had a capacity of 1,500 barrels daily, whereas said well produced only 10,130 barrels during the first 20 days of its production

and the First National Oil Company was entitled to only one-third of eleven-sixteenths of the production therefrom.

3. That about 10,000 barrels of oil have been delivered to the Prairie Pipe Line Company (November 29, 1920) from the well of the First National Oil Company on Block 37, Breckenridge field, whereas at that time only 5,147.39 barrels had been delivered to the said Pipe Line Company and respondent was entitled to only one-third of this amount.

4. That on February 15, 1921, respondent company paid a 10% so-called dividend on all stock sold to the public up to that time, when in fact respondent was in no financial condition to pay a genuine dividend of the said amount or any other amount, that at this time the respondent was indebted to R. C. Russell in the sum of $19,000 for its leases and had other unpaid obligations due to its officers and promoters.

PAR. 4. That respondent R. C. Russell was a brother-in-law of respondents L. C. Hamblet and R. D. Hamblet and frequently gave them advice as to the organization and promotion of respondent First National Oil Company and acted for some time as trustee of said respondent in conducting some drilling operations of the company, also sold the Hamblets certain leases for the sum of $34,000, of which amount $19,000 was never paid him but which would have been paid him had he (Russell) requested it, but at no time did respondent R. C. Russell sell or attempt to sell any of the stock of the said company or aid or assist others in selling same nor was he at any time an officer of the respondent company.

That Mrs. M. H. Merrell was only an employee of the respondent, First National Oil Company receiving about $100 per month for her services and was not concerned in any way with the management of the respondent company or the sale of its stock.

PAR. 5. That from the time of the organization of the respondent company, March 1, 1920, date of organization of the company, to March 1, 1921, the sum of $134,000 was received from the sale of stock, $7,500 of which amount was appropriated by Hamblet, under his contract giving him one-third of the proceeds of the sale of the said stock. The sum of $52,523.12 was used to pay expenses of stock selling, salaries of officers, and other overhead, leaving a balance of approximately $70,000 used in the development of the company's properties. Following this period to April, 1922, the respondent company continued its stock selling and also the development of its properties, collecting about $66,000, but it does not appear to what purposes it was applied or in what proportion, by the respondent company.

CONCLUSION.

That the practices of the respondents, except R. C. Russell and Mrs. M. H. Merrell, under the conditions and circumstances described in the foregoing findings of fact, are unfair methods of competition in interstate commerce and constitute a violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleadings and the testimony and evidence received by an Examiner of the Commission and the Commission having made its findings as to the facts and its conclusion that respondents L. C. Hamblet, R. D. Hamblet and the First National Oil Company 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 L. C. Hamblet and R. D. Hamblet as officers, shareholders or agents of the respondent First National Oil Company and as officers, shareholders or agents of any other corporation, association or partnership and respondents L. C. Hamblet and R. D. Hamblet and the said respondent First National Oil Company, its officers, agents or trustees do cease and desist from directly or indirectly,

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

2. *It is ordered*, That this proceeding against Mrs. M. H. Merrell and R. C. Russell, be dismissed.

It is further ordered, That respondents L. C. Hamblet and R. D. Hamblet shall within sixty (60) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which they have complied with the Order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

THE GUARANTY FUND OIL COMPANY, E. M. THOMASSON, N. V. S. MALLORY, AND JOHN G. MENKE, INDIVIDUALLY AND AS TRUSTEES AND OFFICERS OF THE GUARANTY FUND OIL COMPANY.

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

Docket 864—January 16, 1923.

SYLLABUS.

Where two concerns, and individuals instrumental in, and responsible for their organization; for the purpose of aiding in the sale of said concerns' shares, and with a capacity and tendency so to do,

(a) Caused to be distributed letters, circulars, maps and other literature, containing numerous essentially false and misleading assertions concerning the properties, assets, oil production, earnings, and prospects of said concerns, which had the capacity and tendency to deceive purchasers and prospective purchasers into believing them to be firmly established producing enterprises whose shares offered a safe and profitable investment;

(b) Misrepresented alleged income from production available for dividends or interest, the fact being that at the time of said representations said concerns had no production;

(c) Paid so-called dividends, not derived from earnings but provided by said individuals, upon outstanding shares at the rate advertised and represented, thereby rendering more plausible and credible the foregoing misrepresentations;

With the result that they were thereby aided in selling a large number of shares, to the injury of competitors:

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

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that The Guaranty Fund Oil Company; E. M. Thomasson, N. V. S. Mallory and John G. Menke, individually and as Trustees and Officers of said company have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this com-

plaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. The Guaranty Fund Oil Company is an unincorporated voluntary association operating under certain Articles of Association and a declaration of trust whereby E. M. Thomasson, N. V. S. Mallory and John G. Menke are made trustees to hold and administer the properties and assets of the Association. They also purport to act as President, Secretary and Treasurer, and Vice President, respectively, of the Guaranty Fund Oil Company. The said Articles of Association and declaration of trust were executed about the first day of September, 1921, and recorded in Stephens County, State of Texas. The principal office of said Association is in the City of Denver, State of Colorado.

PAR. 2. Ever since the formation of said Association the respondents Thomasson, Mallory and Menke, and each of them, acting for themselves as beneficially interested in said trust and acting for said Association as trustees and officers thereof, have been and are now, engaged in soliciting orders for and selling shares of beneficial interest in the properties, assets and business of said Association. In soliciting such orders said respondents have made and still make use of letters, circulars, maps and other literature setting forth information and representations concerning the oil leases, properties, assets and prospects of said Association, which said respondents send from the City of Denver, State of Colorado, to numerous prospective purchasers at their several places of residence in various States of the United States. Upon receiving orders for aforesaid shares as a result of such solicitation, said respondents fill the same by sending certificates for the shares so purchased, from said City of Denver to the purchasers of said shares at their several places of residence in various States of the United States.

PAR. 3. The aforesaid letters, circulars, maps, and other literature used in solicitation as above set out contain numerous false and misleading assertions concerning the properties, assets, oil production and prospects of said Association, among which are assertions to the effect that purchasers of shares will receive four per centum quarterly interest on the par value of the shares purchased, that the payment of such interest is guaranteed, that the Association owns producing oil wells or interests therein and is producing oil in sufficient quantities, and thus making sufficient earnings, to cover the payment of said four per centum interest out of earnings, that the Association is drilling for oil amidst wells producing great quanti-

ties of oil and is shortly to start drilling wells in such territory, and that the existing earnings from producing wells and the exceptionally good prospects of finding large quantities of oil in the near future through drilling operations assures an income to the owners of such shares and reasonably assures not only a big annual return on an investment in such shares but a possible return of many thousand per cent; whereas in truth and in fact the Association never has and does not now own any producing oil well or any interest therein, never was and is not now producing any oil, never has made and is not now making any earnings whatsoever and the only monies out of which the Association ever could or can now pay dividends or interest on its said shares are monies derived from the sales of such shares, never has and is not now engaged in drilling operations and has no present intention to commence such operations, and the payment of said four per centum quarterly interest is not guaranteed.

PAR. 4. That aforesaid false and misleading assertions and representations have the capacity and tendency to mislead and deceive the public into the belief that the purchase of the aforesaid shares is a safe and profitable investment, that a return of four per centum quarterly on the par value thereof is guaranteed, that the Association owns producing oil wells or interests therein from which it derives profits and earnings more than sufficient to pay, and out of which are and will be paid, the said four per centum quarterly return upon all the said shares sold or to be sold and sufficient to provide further returns on such shares, and that the Association is now drilling and intends in the near future to commence drilling oil wells in territory and under conditions which practically assure the additional production of large quantities of oil and consequently the payment of large additional profits and return to the holders of said shares.

PAR. 5. In marketing the shares of beneficial interest in the properties, assets and business of said Association, the respondents and each of them are in competition with other persons, partnerships and corporations engaged in marketing the capital stocks and shares of beneficial interest in oil companies and enterprises, including such companies and enterprises when engaged in marketing their own stocks and shares of beneficial interest.

PAR. 6. That the above alleged acts and things done by respondents, and by each of them, constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon respondent, The Guaranty Fund Oil Company, an unincorporated voluntary association operating under certain articles of association and a declaration of trust, and upon E. M. Thomasson, N. V. S. Mallory, John G. Menke, individually and as trustees and officers of said The Guaranty Fund Oil Company, charging them and each of them with unfair methods of competition in commerce in violation of the provisions of said Act.

Said respondents having entered their appearance by their attorney and filed their answer herein, hearings were held before Commissioner Huston Thompson, a Commissioner of the Federal Trade Commission theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answer of respondents, which evidence was duly received, duly certified and duly forwarded to the Commission.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The Guaranty Fund Oil Company is an unincorporated voluntary association, existing and operating under and by virtue of a certain declaration of trust wherein respondents, E. M. Thomasson, N. V. S. Mallory and John G. Menke, are named as trustees to administer the property of said association or trust. Respondent, The Guaranty Fund Oil Company, holds itself out to be a common law trust of which E. M. Thomasson is president, N. V. S. Mallory, secretary and treasurer, and John G. Menke is vice-president. Said declaration of trust was executed on or about September 1, 1921, and was recorded in Stephens County, Texas. The principal office of said trust or association is in the City of Denver, State of Colorado. Respondent, The Guaranty Fund Oil Company, holds itself out as the successor, and is in fact the successor, to the Guaranty Fund Syndicate which was organized by individual respondents herein, in March, 1921. A very limited reorganization, principally a modification of the name and a declaration of trust changed the Guaranty Fund Syndicate into the Guaranty Fund Oil Company. Both have had the same organizers and officers, and shareholders of

the former, by reason of the fact of being such shareholders, became shareholders of the latter concern. The assets and liabilities of the former were taken over by the latter concern.

PAR. 2. Ever since the organization of respondent, The Guaranty Fund Oil Company, and of its predecessor, The Guaranty Fund Syndicate, said respondents, Thomasson, Mallory and Menke, and each of them acting for themselves as beneficially interested in said respondent, The Guaranty Fund Oil Company, and its predecessor, The Guaranty Fund Syndicate, and acting for said respondent and its predecessor as trustees and officers thereof, have been and are engaged in soliciting orders for and selling shares of stock of beneficial interest in the properties, assets and business of said respondent, The Guaranty Fund Oil Company and its said predecessor. In soliciting such orders respondents have made, and at the time of the testimony above referred to, still made use of letters, circulars, maps and other matter to set forth information and representations concerning the oil leases, properties, assets and prospects of said respondent The Guaranty Fund Oil Company and its predecessor, The Guaranty Fund Syndicate, which said respondents have sent, and send from the City of Denver, State of Colorado, to purchasers and prospective purchasers, shareholders and prospective shareholders of said respondent and its said predecessor, at their several places of residence in the various states of the United States, and upon receiving orders for shares as aforesaid as a result of such solicitation, said respondents filled the same by sending certificates or other evidences of ownership for the shares so purchased, from said City of Denver to the purchasers of said shares at their several places of residence in the various states of the United States.

PAR. 3. The aforesaid letters, circulars, maps and other literature used in solicitation of purchasers and prospective purchasers of shares as above set forth, contained numerous assertions concerning the properties, assets, oil production and prospects of said respondent, The Guaranty Fund Oil Company and its predecessor, The Guaranty Fund Syndicate, which are essentially false and misleading, and which have the capacity and tendency to deceive such purchasers and prospective purchasers into the belief that said respondent company and its said predecessor were firmly established oil-producing concerns and that shares of said company and its said predecessor were a safe and profitable investment; and said false and misleading representations were made with the intent and for the purpose of aiding respondents in the sale of said shares, and had a capacity and tendency so to aid.

PAR. 4. In a circular letter dated September 9, 1921, addressed to stockholders of the Thomasson, Mallory Production Company, and circulated from the City of Denver, State of Colorado, among persons outside the State of Colorado in the various states of the United States, who were solicited as purchasers or prospective purchasers of the shares of beneficial interest of said respondent, The Guaranty Fund Oil Company, the following assertions were made as to properties of said respondent, The Guaranty Fund Oil Company:

* * * * * * *

"We have acquired a half interest for The Guaranty Fund Oil Company, in a well in the townsite of Breckenridge. I can not tell you exactly what it will produce until it is put on the pump. It did produce 175 barrels a day when it quit flowing."

"It is this production that will pay the four per cent quarterly interest on the outstanding stock of The Guaranty Fund Oil Company, and of course the receipts from the sale of the shares we are now offering, will be used to acquire more production and complete the drilling of our own well at Breckenridge. * * *"

"Let me repeat my figures:

"25 bbls. daily at $1.25 equals $937.50 a month; deducting $200 a month operating expenses leaves $737.50 or $2,212.50 a quarter.

"Suppose we have outstanding 3,000 shares or a total of $30,000 worth of the stock of The Guaranty Fund Oil Company; to pay four per cent quarterly interest on the $30,000 requires $1,200, which, out of an income of $2,212.50 quarterly leaves $1,012.50 per quarter for additional interest, unexpected expenses, or sinking fund to buy more production, on only 25 bbls. daily production.

"We have set aside 2,000 shares to be sold, and have 1,000 shares already sold, making a total of 3,000 shares on which we will pay four per cent quarterly, or sixteen per cent annually, and as much more as possible."

(a) By context and implication said statements quoted in this paragraph give the impression that Guaranty Fund Oil Company has acquired a half interest in a well in the townsite of Breckenridge, which is producing a net revenue to said respondent company of $2,212.50 a quarter, and that said revenue is sufficient to pay four per cent quarterly dividends or "interest" on 3,000 shares of beneficial interest in said company, leaving a surplus of $1,012.50 per quarter, and will be used for the purpose of paying such dividends or "interest."

(b) In truth and in fact, at the time of issuing and circulating the statements in said circular as hereinbefore in this paragraph set

forth, respondent, The Guaranty Fund Oil Company, had no oil well, nor had it an interest in any oil well from which it received production amounting to 25 barrels a day, or any other amount. It had merely a claim to one-quarter of the production from a well whose total production was from three and one-half to twelve barrels a day, and no part of said production was in fact ever actually secured by said respondent, The Guaranty Fund Oil Company. Neither at that time nor at any time prior thereto had respondent, The Guaranty Fund Oil Company, paid dividends or interest from the proceeds of oil production, upon its outstanding shares.

(c) Its statements in said circular hereinbefore in this paragraph set forth, are false and misleading and have the capacity and tendency to deceive persons solicited as purchasers or prospective purchasers of said shares, into the belief that respondent, The Guaranty Fund Oil Company, was then a firmly established concern with production sufficient to pay large net returns upon its shares, and that its shares were a safe and profitable investment. Said false and misleading representations were made with the object and for the purpose of aiding in the sale of said shares, and had the capacity and tendency so to aid.

PAR. 5. In a circular issued and circulated by respondents to persons solicited as purchasers or prospective purchasers of shares, from the City of Denver, State of Colorado, in and to the various states of the United States no later than October, 1921, these statements were incorporated.

"Our producing well, in which we own a half operating interest should give us sufficient income to pay 4% quarterly interest on our outstanding shares and what we are offering for sale. Proceeds from the sale of shares now offered will purchase more production and drill our own well. We are playing the game in a safe way by building up our own production returns while we drill our own well. Speculation with a good oil company drilling in the midst of big producing wells and the shares earning at least 4% quarterly on the par value thereof, or equal to 26⅔% annually on your actual investment, is an ideal way to put your money to work. We offer you all the possibilities of speculation with an assured income while you are waiting for the results of our drilling."

* * * * * * *

"We have production now from which to pay 4% quarterly interest on the par value of our shares."

(a) In truth and in fact, at the time that said circulars were issued and circulated, incorporating said statements as hereinbefore

set forth in this paragraph, the portion of production of the well which must have been referred to—the Bateman well—claimed by respondents, would not have been sufficient, if secured, to pay 4% quarterly dividends or "interest" on outstanding shares of respondent, the Guaranty Fund Oil Company, and as a matter of fact no production whatever from said well or any other well had been, up to that time, secured by respondent.

(b) The representations made by said respondents as hereinbefore set forth in this paragraph, were false and misleading and had the tendency and capacity to mislead and to deceive persons solicited as purchasers or prospective purchasers of the shares of the respondent, The Guaranty Fund Oil Company, into the belief that said respondent, The Guaranty Fund Oil Company, was a firmly established concern, and had sufficient production to pay a large net return upon the outstanding shares of said company. Said false and misleading representations were for the purpose and with the object of aiding in the sale of said shares.

PAR. 6. In a circular issued by said respondents, and circulated to persons solicited as purchasers or prospective purchasers of shares of beneficial interest, said Guaranty Fund Syndicate, predecessor to respondent, The Guaranty Fund Oil Company, on or about April 15, 1921, soliciting investment in said shares, the following representations are incorporated in a statement under this headline:

"What you will get by investing $100 in the Guaranty Fund Syndicate. * * *"

"(5) Oil production trust note guaranteeing 4% quarterly, or 16% annual dividends on the full par value of your certificate of ownership in the Guaranty Fund Syndicate, and secured by trust mortgage on oil production income. We issue these notes for one year periods."

* * * * * * *

"FACTS IN BRIEF."

"You are * * * guaranteed at least 16% yearly dividend on the full par value of your certificate of ownership in the Guaranty Fund Syndicate for at least two years, payable quarterly, and secured by trust mortgage on oil production income", * * *

"In addition to the 16% yearly dividend guaranteed, your share of the enormous profits from our syndicate's oil wells in the Breckenridge district."

* * * * * * *

(a) In truth and in fact at the time the representations were made as hereinbefore set forth in this paragraph, the Guaranty Fund

Syndicate, predecessor to respondent company, had no oil production income to mortgage for any purpose whatever, nor had it profits enormous or otherwise from "our syndicate's oil wells in the famous Breckenridge district."

(b) Said representations by respondents as herein above set forth in this paragraph were, and are, false and misleading and have had, and have a capacity and tendency to mislead and to deceive persons solicited as purchasers or prospective purchasers of said shares, into the belief that said Guaranty Fund Syndicate, predecessor to respondent, Guaranty Fund Oil Company, was a firmly established concern with large profits from oil production, and capable of paying high net returns upon its shares.

(c) Such false and misleading representations had the object and purpose, as well as the capacity and tendency to aid respondents in the sale of said shares.

PAR. 7. In a circular issued by respondents and circulated by them from the City of Denver, State of Colorado, among persons solicited as purchasers or prospective purchasers of the shares of said Guaranty Fund Syndicate, predecessor to the Guaranty Fund Oil Company, in the various states of the United States, under date of April 14, 1921, the following representations were incorporated among others:

"You will note from the enclosed printed matter that we have added another feature to the Guaranty Fund Syndicate—that of guaranteeing 4% quarterly or 16% annually for a period of not less than two years. These dividends will be paid from oil production set aside for that particular purpose."

* * * * * * *

(a) In truth and in fact, at the time that the representations in said circular as herein above set forth in this paragraph were made and circulated, The Guaranty Fund Syndicate, predecessor of The Guaranty Fund Oil Company, had received no oil production, and respondents had not, up to that time, nor did they afterward, pay such dividends or "interest" upon said shares, from the proceeds of oil production.

(b) Said representations by respondent in said circular as hereinabove set forth in this paragraph, are false and misleading and have the capacity and tendency to mislead and to deceive persons solicited as purchasers or prospective purchasers of said shares, into the belief that said Guaranty Fund Syndicate, predecessor to The Guaranty Fund Oil Company, was a firmly established concern capable of paying from oil production, high net returns upon its shares.

(c) Such false and misleading representations had the object and purpose as well as the capacity and tendency to aid respondents in the sale of oil shares.

PAR. 8. Individual respondents, Thomasson, Mallory and Menke, did actually pay at times at the rate of 4% quarterly or 16% annually upon outstanding shares of beneficial interest in respondent, The Guaranty Fund Oil Company and its predecessor, The Guaranty Fund Syndicate, but no part of said payment was made from oil production or other earnings of said concerns prior to October, 1921. Said payments had the effect of aiding in making plausible and worthy of belief by purchasers and prospective purchasers of oil shares, the false and misleading statements incorporated in circulars in paragraphs 3 to 7 inclusive herein, to the effect that production was sufficient to make such payments.

PAR. 9. Through such circulars and by other means, respondents sold, prior to July 1, 1922, to persons residing in various states of the United States, and in Canada, 8,395 shares of respondent's, The Guaranty Fund Oil Company's shares of a par value of $83,950, for which they received $60,230.67, and said respondents delivered to said purchasers, through the mails or by other means in interstate commerce evidences of ownership of said shares to purchasers in various states outside the State of Colorado. Such sales and such deliveries were made in the States of California, Illinois, Ohio, Oregon, Washington, Connecticut, Pennsylvania, Massachusetts, Missouri and other states and in the Dominion of Canada.

PAR. 10. In marketing said shares of beneficial interest in the properties, assets and business of said respondent, The Guaranty Fund Oil Company and its predecessor, The Guaranty Fund Syndicate, the individual respondents, and each of them, have been in active competition with other persons, partnerships and corporations engaged in selling the capital stock and shares of beneficial interest in other oil companies and enterprises.

CONCLUSION.

The acts, practices and activities of respondents and each of them, under the conditions and in the circumstances set forth in the foregoing findings as to the facts, are unfair methods of competition in commerce, and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled: "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony and documentary evidence offered and received, and the arguments of counsel for the respective parties hereto, and the Commission having made its findings as to the facts and its conclusion that the respondent, The Guaranty Fund Oil Company, 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 respondents, The Guaranty Fund Oil Company and E. M. Thomasson, N. V. S. Mallory and John C. Menke, individually and as trustees and officers of The Guaranty Fund Oil Company, an unincorporated, voluntary association operating under a declaration of trust, and the officers, directors, agents, servants and employees of respondent, The Guaranty Fund Oil Company, do cease and desist from representing to persons solicited as purchasers or prospective purchasers of shares of beneficial interest in The Guaranty Fund Oil Company, by means of circulars or otherwise, in substance that said company has production from oil wells or has other earnings sufficient to pay large net returns upon outstanding shares, when in truth and in fact it did not have such production nor earnings; or

From representing to persons solicited as purchasers or prospective purchasers of shares of beneficial interest in respondent, The Guaranty Fund Oil Company, by circulars or otherwise, that said company has enormous profits from oil production, or other sources, when it has no such profits, or that it has profits other or greater than are actually enjoyed, and

From guaranteeing dividends, interest or other returns to shareholders when said respondent has not the funds out of which such dividends, interest or other returns are to be paid.

It is further ordered, That respondent, within sixty days from and after the date of the service upon it of this order, file with the Commission a reply setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth, to which report shall be attached copies of all circulars, circular letters or like literature issued by respondents in the making of sales or the soliciting of purchasers or prospective purchasers of the shares of respondent, The Guaranty Fund Oil Company.

FEDERAL TRADE COMMISSION

v.

HARRY FREEDMAN, TRADING UNDER THE NAME AND STYLE OF REX HOSIERY COMPANY.

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

Docket 676—January 17, 1923.

SYLLABUS.

Where an individual engaged in the sale at wholesale of hosiery in competition with concerns who either correctly branded, labeled and advertised their products with reference to composition, or failed to brand, label and advertise the same at all in that respect; sold hosiery composed entirely of mercerized cotton labeled, advertised and branded "American Silk"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Harry Freedman, trading under the name and style of Rex Hosiery Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Harry Freedman, trading under the name and style of Rex Hosiery Company, is engaged at Cleveland, Ohio, in the business of selling hosiery at wholesale and causes hosiery sold by him to be transported to the purchasers thereof from the State of Ohio, through and into other States of the United States, and in carrying on such business is in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent in the course of his business, as described in paragraph 1 hereof, places or causes to be placed upon hosiery sold by him, and upon the boxes containing same, false and deceptive labels, in that such labels are calculated to and do create in the minds of the purchasing public the mistaken belief that such

hosiery is made of materials of better and more expensive grades or qualities than those of which such hosiery is in fact made; that among such false and deceptive labels, so used by respondent, are labels containing the words "American Silk," which labels are placed upon hosiery which contains no genuine silk and upon the boxes containing such hosiery.

PAR. 3. That by reason of the facts recited the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Harry Freedman, trading under the name and style of Rex Hosiery Company, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having entered his appearance in his own proper person and filed his answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, and having made, executed, and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS OF FACT.

PARAGRAPH 1. That the respondent, Harry Freedman, is engaged in the business of selling hosiery at wholesale at Cleveland, Ohio, under the firm name and style of Rex Hosiery Company.

PAR. 2. That the respondent is engaged in the business of selling, in the State of Ohio and in other States of the United States, hosiery, and is causing same to be shipped and transported from the State of Ohio through and into other States of the United States pursuant to such sales in competition with other copartnerships, corporations, and individuals engaged in similar commerce between and among

the States of the United States, and that there has been and is continuously a current of trade to and from the said respondent in said hosiery among and between the States of the United States.

PAR. 3. That prior to April 1, 1920, the respondent in the conduct of his business, as described in paragraph 2 above, sold hosiery made entirely of mercerized cotton, labeled, advertised and branded, and distributed in packages or containers labeled, advertised, and branded "American Silk." That dealers purchasing this hosiery from respondent or respondent's customers, labeled, advertised, and branded, and in packages or containers labeled, advertised, and branded as aforesaid, offer and sell it so labeled to the general purchasing public. That neither the said hosiery, nor the boxes nor packages containing it, are labeled, advertised, or branded with any other word or words to indicate the kind or grade of materials entering into the manufacture of said hosiery.

PAR. 4. That the term "American Silk," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery which contains materials derived from the cocoon of the silkworm.

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

PAR. 6. That a number of respondent's competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made entirely of mercerized cotton, which hosiery and the packages or containers in which it is packed which are not labeled, advertised, or branded with any word or words descriptive of the material entering into the manufacture of said hosiery. That a number of respondent's competitors, in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery made entirely of mercerized cotton, which hosiery and the packages or containers in which it is packed are labeled, advertised, and branded with a word or words descriptive of the material of which the hosiery is made, such as "Cotton" or "Mercerized Cotton."

PAR. 7. The labels or brands under which the respondent sells hosiery, as set forth in the foregoing findings, tend to and do mislead and deceive a substantial part of the purchasing public as to

the composition of materials of said hosiery; said labels or brands as so used by respondent cause said hosiery to compete unfairly with goods of his competitors in interstate commerce, who, as set forth in paragraphs 5 and 6 above, sell hosiery made entirely of silk or mercerized cotton, or hosiery made wholly or in part of other materials than those named, labeled, and branded, so as to indicate the true composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Harry Freedman, trading under the name and style of Rex Hosiery Company, his officers, agents, representatives, servants and employees, cease and desist from directly or indirectly:

I. Using as labels or brands on hosiery sold by him, or on the containers thereof, or in advertisements thereof, the word "Silk," or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silkworm, or (2) unless, where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

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

FEDERAL TRADE COMMISSION
v.
THE STANDARD ELECTRIC MANUFACTURING COMPANY.

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

Docket 747—January 17, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of electrical appliances consisting chiefly of rotary snap and push button switches sold under the trade names of "national" and "standard," respectively.

I.

(*a*) Used contracts in the sale of said switches by which the distributor agreed not to solicit orders for or to sell goods of any kind or character that would conflict or compete with its goods; with the result that competition in the distribution of products of said corporation and of other manufacturers in the territories involved might be substantially lessened thereby;

Held, That the use of such contracts, under the circumstances set forth, constitued a violation of Section 3 of the Act of Oct. 15, 1914, and of Section 5 of the Act of Sept. 26, 1914.

II.

(*b*) Entered into contracts and agreements with wholesale distributors under which said distributors agreed to maintain in their respective territories the resale prices fixed by it;

(*c*) Made known to all jobbers, wholesalers and retailers dealing in its products its wish and request that said prices be strictly observed, notified customer dealers that it would refuse further supplies to price cutters, invited them to report the names of price cutting competitors, refused to sell to those of its dealer customers who themselves supplied price cutters, resumed dealings with price cutters only on the condition that they would thereafter maintain prices, and through the foregoing and other methods sought and secured the assistance of the trade in bringing about the elimination in price competition in its products;

With the result that it was thereby enabled to prevent wholesale and retail dealers in its products from selling the same at prices and profits commensurate with their varying efficiency and cost of doing business, and succeeded in eliminating practically all competition in the prices paid by the various classes of trade and by the ultimate consumer for its goods:

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

COMPLAINT.

I.

Acting in the public interest pursuant to the provisions of an Act of Congress approved October 15, 1914, (the Clayton Act), entitled,

"An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission, having reason to believe that The Standard Electric Manufacturing Company, hereinafter called the respondent, is and has been violating the provisions of Section 3 of said Act of Congress, states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, The Standard Electric Manufacturing Company, 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 that State. It is, and at all times hereinafter mentioned has been, engaged in the manufacture of electrical appliances, principally rotary snap switches and push button switches and the sale thereof to jobbers and wholesale and retail dealers throughout the United States. In the course and conduct of its said business, respondent continuously has been and now is in competition with other persons, partnerships and corporations similarly engaged in the sale of various electrical apparatus in interstate commerce, and with the trade generally.

PAR. 2. That a considerable portion of respondent's business is confined to the manufacture and sale of rotary snap switches, to which it has adopted and applied the trade name of "National" and push button switches, to which it has applied the trade name of "Standard," and within the two years last past the respondent, in commerce aforesaid, has made and entered into contracts for the sale of such switches with dealers, to be used or resold within the United States, containing certain conditions and agreements, as follows:

The party of the second part (purchaser) agrees not to solicit orders for or to sell goods of any kind or character that will conflict with, or in competition with, the goods of the first party (respondent).

PAR. 3. The above alleged acts constitute a violation of Section 3 of the Act of October 15, 1914, being a sale or contract for sale of goods and merchandise on the condition and agreement that the purchaser thereof shall not deal in the goods or merchandise of competitors of the seller, and the effect of such sale or contract for sale and agreement may be to substantially lessen competition or tend to create a monopoly in commerce.

II.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that The Standard Electric Manufacturing Company, hereinafter referred to as the respondent,

has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. The paragraph numbered one of Count I of this amended complaint is hereby made a part of Count II as if the same were repeated here.

PAR. 2. In the course of its sales of its products, the respondent has adopted and enforced, and still enforces, a system of fixing and maintaining certain specified standard prices at which the articles manufactured and sold by it shall be resold by jobbers, wholesalers and retailers to the consuming public, and in pursuance of this purpose it has adopted and pursued the following practices:

PAR. 3. It has entered into contracts, and agreements, express and implied, with jobbers, wholesalers and retailers by which they have bound themselves to resell the respondent's products only at the resale prices fixed by it; and that the respondent has refused to sell its products to jobbers, wholesalers and retailers unless they would enter into such agreements and contracts, and has ceased to sell to such jobbers, wholesalers and retailers who have not entered into such agreements and contracts, or who have failed to observe and maintain its resale prices.

PAR. 4. Respondent has cooperated with jobbers, wholesalers and retailers and has sought their cooperation to carry into effect its system of maintaining its resale prices fixed by it, by the following means, by which respondent and its distributors, customers and agents have undertaken to prevent others from obtaining the respondent's products at less than the prices designated by it:

(*a*) Invited reports from customers and dealers, wholesale and retail, of competitors who cut its resale prices;

(*b*) Used the information in such reports to cut off sales to jobbers, wholesalers and retailers reported as not maintaining its resale prices;

(*c*) Required monthly reports as to the resale prices at which its customers, jobbers, wholesalers and retailers have sold the respondent's products;

(*d*) Employed salesmen or agents to assist in such scheme of resale-price maintenance by reporting dealers who do not observe its resale prices; and

(e) Other equivalent cooperative means to maintain its resale prices.

PAR. 5. The acts of respondent alleged in the two last preceding paragraphs tend to constrain all jobbers, wholesalers and retailers handling the respondent's products and merchandise to sell the same uniformly at the prices fixed by respondent to retailers and to the public and to prevent them from selling such products and merchandise at such lower prices as they deem to be adequate and warranted and are adequate and warranted by their respective selling costs and efficiency and thus tend to suppress competition in the sale of such products and unduly to hinder and obstruct the free and natural flow of commerce in the channels of interstate trade.

PAR. 6. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served an amended complaint upon the respondent, The Standard Electric Manufacturing Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act of Congress approved September 26, 1914, and with a violation of the provisions of Section 3 of said Act of Congress approved October 15, 1914.

The respondent having entered its appearance by its attorney, Harry D. Irwin, and filed its amended answer herein, and the attorneys for both parties having thereafter signed and filed an agreed statement of facts, with the exhibits thereto attached, and having stipulated that the same should be taken in lieu of testimony before the Commission in support of the charges stated in the complaint and in opposition thereto, and that the said Commission might proceed further upon said stipulation of facts to make its report in said proceeding, stating its findings as to the facts and entering its order disposing of the proceeding, and the attorney for the respondent hav-

ing waived the submission of briefs and argument as to the law and the facts in said proceeding, and the Commission having duly considered the record, and being fully advised in the premises, now makes this its report as to the findings of facts, and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the 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 that state. It is, and at all times hereinafter mentioned has been, engaged in the manufacture of electrical appliances, consisting, for the most part, of rotary snap switches, to which it has applied the trade name of "National," and push-button switches, to which it has applied the trade name of "Standard"; and the sale thereof to jobbers and wholesale and retail dealers throughout the United States. In the course and conduct of its said business said respondent is now and has been for several years last past in competition with other persons, partnerships, and corporations, likewise engaged in the manufacture and sale of similar products in interstate commerce.

PAR. 2. That respondent on various occasions has made and entered into contracts with certain herein named dealers, to-wit: Brown & Hall Supply Co. of St. Louis, Great Lakes Electric Co. of Detroit, Mich., and Peerless Light Co. of Chicago, Ill., for the sale and distribution of its products. The above-mentioned contracts are herein identified as Exhibit "1" and made a part hereof as though the several contracts were set out verbatim. By the terms of the aforesaid contracts it is mutually agreed that the therein-named distributors, in consideration of bona fide orders to be placed by them calling for specific quantities of respondent's products per month, that they (the aforesaid distributors) would be given certain exclusive selling territories, as follows: Brown & Hall Supply Co. was given the territory which included the states of Missouri, Arkansas, Kansas, Oklahoma, and Texas; Great Lakes Electric Co. was given the state of Michigan; Peerless Light Co. was given the territory which included the states of Illinois, Indiana, and Wisconsin. That said distributors are engaged in competition in their respective territories with the distributors of manufacturers competing with the respondent. That the said contracts further provide that in consideration of the quantity purchased the therein-named distributors were allowed certain mentioned discounts from the standard lists; that the said contracts further provide that—

The party of the second part (distributor) agrees not to solicit orders for or to sell goods of any kind or character that will conflict with or in competition with the goods manufactured by the party of the first part (respondent).

PAR. 3. That in the said contracts goods and merchandise are bought and sold upon the agreement that the therein-named distributors shall not deal in the goods or merchandise of a competitor of said respondent; and that the effect of said contracts may be to substantially lessen competition in the distribution of products of respondent and other manufacturers among the several states specified in the respective contracts.

PAR. 4. That in the course of selling and distributing its products, respondent has adopted and for several years last past has enforced and still enforces a policy and system of fixing and maintaining certain specified standard prices at which the articles manufactured by respondent shall be resold by jobbers, wholesalers, and retailers, and in pursuance of this policy, respondent has adopted and carried out the following methods:

(*a*) Respondent has entered into contracts and agreements with the wholesale distributors described in paragraph 2, under which contracts said distributors agree to maintain in their respective territories "such regular prices for 'National' snap switches and 'Standard' push button switches * * * as may be in accordance with the list to be furnished" by the respondent.

(*b*) Respondent has indicated and made known to all jobbers, wholesalers, and retailers purchasing and selling its products, its wish and request that certain specified prices be strictly observed in the resale of said products.

(*c*) Respondent has required all dealers handling its products to furnish monthly reports showing the prices at which they have been selling respondent's products.

(*d*) Respondent has warned and threatened dealers suspected or accused of not maintaining respondent's resale prices that continued refusals to maintain same would be followed by respondent's refusal to sell them.

(*e*) Respondent has informed its wholesale and retail dealers that those among them who do not maintain respondent's specified resale prices would be refused further supplies of respondent's goods.

(*f*) Respondent has invited its customers, both wholesale and retail dealers, to report their competitors who fail to adhere to respondent's fixed schedule of resale prices.

(*g*) Respondent has used the information secured from competitors of dealers who do not maintain respondent's specified resale prices as the basis for refusing to sell said dealers.

(*h*) Respondent has refused to sell wholesale and retail dealers who have failed or refused to maintain respondent's fixed schedule of resale prices.

(*i*) Respondent has refused to sell those of its distributors and dealers who in turn sell to other distributors and dealers who fail or refuse to maintain respondent's fixed schedule of resale prices.

(*j*) Respondent has continued or resumed sales to wholesale and retail dealers suspected or accused of price cutting on the condition and understanding that the resale prices specified by respondent should be maintained in the future.

(*k*) Respondent has sought and secured the assistance of the trade in bringing about the elimination of price competition on respondent's products by the use of the foregoing and other equivalent cooperative methods.

PAR. 5. That as the result of the foregoing methods, policies, and practices, respondent has been enabled to prevent wholesale and retail dealers handling its products from selling same at prices and profits commensurate with their varying efficiency and cost of doing business, and has succeeded in eliminating practically all competition in the prices paid by the various classes of trade and by the ultimate consumer for goods of respondent's manufacture.

CONCLUSION.

That the methods of competition described in the foregoing Findings of Fact in paragraphs 2, 3, 4, and 5 constitute under the circumstances set forth therein unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

That the contracts described in paragraphs 2 and 3 of the foregoing Findings of Fact constitute under the circumstances set forth therein a violation of the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the amended answer of the respondent, and a stipulation as to the facts, with exhibits thereto attached, wherein and whereby it was agreed

that said stipulation as to the facts and exhibits attached thereto should be taken by the Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such stipulation and exhibits to enter its report and findings as to the facts and its order disposing of this proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusion that respondent has violated Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that respondent has violated Section 3 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,"

Now, therefore, it is ordered, That the respondent, The Standard Electric Manufacturing Co., its officers, directors, agents, servants and employees, cease and desist from carrying into effect a policy of fixing and maintaining uniform prices at which the articles manufactured by it shall be resold by its distributors and dealers, by cooperative methods in which the respondent and its distributors, dealers and agents undertake to prevent others from obtaining respondent's products at less than the prices designated by it—by

1. Entering into contracts, agreements or understandings with distributors or dealers, requiring or providing for the maintenance of specified resale prices on goods manufactured by the respondent.

2. Attaching any condition express or implied to purchases made by distributors or dealers to the effect that such distributors or dealers shall maintain resale prices specified by respondent, or require others to maintain such prices.

3. Requesting distributors to report dealers who do not observe the resale prices suggested by respondent, or acting on reports so obtained by refusing, or threatening to refuse to sell to dealers so reported.

4. Requiring promises or assurances as to the maintenance of resale prices by distributors or dealers previously cut off as a condition of reinstatement.

5. Utilizing any other equivalent cooperative means of accomplishing the maintenance of uniform resale prices.

It is further ordered, That the respondent, The Standard Electric Manufacturing Co., its officers, directors, agents, servants and employees, cease and desist from entering into contracts, agreements or understandings, or making sales subject to the condition, agreement or understanding that the purchaser of respondent's goods

shall not deal in the goods, wares or merchandise of any competitor of respondent; and

It is further ordered, That the respondent, The Standard Electric Manufacturing Co., shall file with the Commission, within ninety (90) days after the service upon it of a copy of this order, its report in writing stating in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION
v.
PREMIER ELECTRIC COMPANY.

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

Docket 921—January 18, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of telephone instruments and accessories, a substantial part of which it fabricated by assembling new parts with old, used, or second-hand parts, advertised and offered in its catalogues some but not all of its rebuilt equipment as the product of its "rebuilt equipment department," and thereby misled and deceived the purchasing public into believing that the products of its main department, so offered without disclosure of their true character and at prices substantially below those of competitors for new equipment, were made of new parts only, and thus gained for itself a good will to which it was not entitled:

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

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Premier Electric Company, hereinafter referred to as Respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the City of Chicago, in said State. For more than one year last past it has been and still is engaged in the manufacture of telephone instruments and telephone accessories and the sale thereof in interstate commerce, as hereinafter more fully set out. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture of telephone instruments and accessories and/or the sale thereof in interstate commerce.

PAR. 2. Respondent's method of marketing its said commodities is as follows: It issues catalogs, circulars and other advertising matter,

pictorially representing and otherwise describing its said telephone instruments and accessories and setting forth the prices thereof, which said catalogs, circulars and other advertising matter it sends to customers and prospective customers at points in various States of the United States. Upon receiving orders for said commodities by said means, respondent fills the same by causing the telephone instruments and accessories so purchased to be transported from its said principal place of business in the City of Chicago into and through other States of the United States to said purchasers.

PAR. 3. A substantial number of the telephone instruments manufactured by respondent are not made of entirely new parts, but are constructed by respondent by assembling some new parts with some old, used and secondhand parts secured by respondent by dismantling used and secondhand telephone instruments purchased by it for that purpose, or secured from other manufacturers or dealers who have dismantled used and secondhand telephone instruments and from whom respondent purchases such parts of said dismantled instruments as respondent desires to use, and uses, in the assembling of the telephone instruments made partly of new and partly of used and secondhand parts as hereinbefore set out.

PAR 4. In its catalogs, circulars and other advertising matter described in Paragraph Two hereof, respondent pictures, lists and offers for sale the said telephone instruments assembled by it from new and secondhand parts at prices substantially below the prices fixed by respondent's said competitors for new telephone instruments made entirely of new parts and of the same general class and kind as the said telephone instruments offered by respondent in said advertising matter. In picturing, describing and offering for sale its said telephone instruments assembled from new and secondhand parts, respondent wholly fails to disclose that its said telephone instruments contain old, used and secondhand parts. Aforesaid picturing, describing and offering for sale of said telephone instruments by respondent in its said catalogs, circulars and other advertising matter, has the capacity and tendency to mislead and deceive the public, including aforesaid customers and prospective customers, into the belief that said telephone instruments are new instruments, composed of entirely new parts, as is customarily the case with merchandise similarly advertised and offered by manufacturers and dealers in the ordinary course of trade, and, by reason of aforesaid advantage in price, to induce the purchase of respondent's said telephone instruments in aforesaid belief, in preference to

aforesaid new telephone instruments of similar class and kind offered by respondent's competitors.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent having filed its answer admitting the allegations of the complaint in each count, and having made, executed and filed an agreed stipulation as to the facts in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such stipulation as to the facts in this case in lieu of testimony, and proceed forthwith upon such stipulation as to the 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 presenting of argument in support of same.

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

PARAGRAPH 1. Respondent is a corporation, created and existing under the laws of the State of Illinois, with its principal office and place of business in the City of Chicago, in said State, where it is engaged in the manufacture of telephone instruments and telephone accessories, and the sale thereof in interstate commerce. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations engaged in the manufacture of telephone instruments and telephone accessories, and/or the sale thereof in interstate commerce.

PAR. 2. Respondent markets its said commodities by issuing catalogues, circulars and other advertising matter, pictorially representing and otherwise describing its telephone instruments and

telephone accessories, and setting forth the prices thereof, which said catalogues, circulars and other advertising matter it sends to customers and proposed customers in the various States of the United States, and upon receiving orders for said commodities through said means, respondent ships the telephone instruments and telephone accessories sold, ordered or purchased, from its principal place of business in the City of Chicago, through and into other States of the United States to said purchasers.

PAR. 3. In the course and conduct of its said business respondent maintains two separate and distinct departments, one of which departments it designates as "Rebuilt Equipment Department," from which department it sells and offers to sell "rebuilt" telephone equipment and accessories originally manufactured and sold by other manufacturers of telephone equipment and accessories, which said department is the smaller part of respondent's business. In advertising the products of said "rebuilt" equipment department above described, respondent, in its said catalogues, circulars and other advertising matter, lists specially the products of this said department.

The second and main department of its said business respondent uses to manufacture those said telephone instruments and accessories advertised in the manner described in Paragraph Two hereof, and not designated as the products of the "Rebuilt" equipment department.

PAR. 4. A substantial number of the telephone instruments and accessories manufactured and sold by respondent, in the manner described in Paragraph Two, are not fabricated entirely of new parts, but are fabricated by respondent by assembling some new parts with certain old, used and second-hand parts secured by respondent by dismantling used and second-hand telephone instruments purchased by it for that purpose, or secured from other manufacturers or dealers who have dismantled used and second-hand telephone instruments, and from whom respondent purchases such parts of said dismantled instruments as respondent desires to use and uses in the assembling of the telephone instruments and telephone accessories made partly of new and partly of used, second-hand parts, as hereinbefore set out.

PAR. 5. In its catalogues, circulars and other advertising matter described in Paragraph Two hereof, respondent pictures, lists and offers for sale the said telephone instruments and telephone accessories assembled by it in its said main department, from new and second-hand parts, at prices substantially below the prices at which re-

spondent's competitors sell and offer for sale to the general public new telephone instruments made entirely of new parts, and of the same class and kind as the said telephone instruments and accessories offered and sold by respondent as aforesaid. In picturing, describing and offering for sale its said telephone instruments and accessories fabricated in its said main department from new and second-hand parts, respondent wholly fails to disclose that such telephone instruments and telephone accessories contain old, used and second-hand parts; and in picturing, describing and offering for sale the products of its said "rebuilt" department, respondent discloses that such parts are from old, used, and second-hand parts. The non-disclosure by respondent in picturing, describing and offering for sale its telephone instruments and telephone accessories assembled from new and second-hand parts, of the fact that said telephone instruments and telephone accessories are manufactured of new and second-hand parts, and the picturing, describing and offering for sale of the products of said respondent's "rebuilt" department describing the said products of said "rebuilt" department as "rebuilt" products, has the tendency and capacity to mislead and deceive, and does mislead and deceive the purchasing public into the belief that the products of respondent's main department are fabricated entirely of new and unused parts, and that the offering of said products at prices below those at which similar articles fabricated entirely of new parts are offered by respondent's competitors, gain for respondent an unfair good-will which should accrue to the competitors of respondent.

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 commerce and constitute a violation of the Act of Congress approved September 26, 1914.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusions that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal

Trade Commission, to define its powers and duties, and for other purposes";

It is now ordered, That the respondent, Premier Electric Company (a Corporation), and its officers, directors, representatives, agents, servants and employees, cease and desist from directly or indirectly advertising, selling or offering for sale telephone instruments, equipment and accessories composed of or containing used or second-hand parts, without distinctly, definitely and clearly stating and disclosing that said instruments, equipment, and accessories are composed of or do contain used or second-hand parts.

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

FEDERAL TRADE COMMISSION

v.

L. C. ORRELL & COMPANY.

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

Docket 885—January 23, 1923.

SYLLABUS.

Where a firm engaged in the distribution and sale of ready mixed paints, painting materials, and painters' supplies, in advertising its "Painters' Pure Paint Brand," falsely set forth in its catalogues, pamphlets, circulars and other literature, and on the labels thereof, that said paint was "100% pure" and that the only ingredients were pure carbonate of lead, turpentine, pure zinc oxide, pure linseed oil, and japan dryer; the fact being that said paint contained a substantial quantity of inferior siliceous matter, and lead sulphate and mineral spirits, respectively, in lieu of the two ingredients first above named:

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

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that L. C. Orrell & Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style L. C. Orrell & Company, with his principal place of business in the city of Chicago, State of Illinois. He is engaged in selling paints and painters' supplies to painting contractors and painters throughout the United States. His method of doing business is as follows: He sends catalogues, pamphlets, and other literature describing and setting forth the prices fixed by him for the paints in which he deals to customers and prospective customers throughout the United States. Upon receiving orders for paints through said means, respondent causes the paints so ordered to be shipped from his said place of business in the city of Chicago to said purchasers at points in various States of the United States. In the course and conduct of his said business respondent is in

competition with other individuals, partnerships, and corporations similarly engaged in selling paints in interstate commerce and with the trade generally.

PAR. 2. For more than one year last past respondent has caused and still causes to be inserted in his aforesaid catalogues, pamphlets, and other literature false and misleading assertions concerning the nature, quality, and ingredients of his aforesaid paints, among which are statements to the effect that the paints comprised in one of respondent's brands, named "Painter's Pure Paint," contain pure lead, pure zinc oxide, pure raw linseed oil, pure turpentine and japan drier, and that the paints comprising said brand are the best and cheapest paints for the painter to use; are equaled by a few other paints but surpassed by none, and that the user is guaranteed 100 per cent quality, service, and value. The truth and fact is that the paints supplied in respondent's said brand contain no turpentine whatsoever, but in lieu thereof contain mineral spirits.

PAR. 3. Aforesaid false and misleading assertions had and have the capacity and tendency of misleading the aforesaid purchasers into the belief that the paints comprised in respondent's aforesaid "Painters' Pure Paint" brand contain japan drier and turpentine and to purchase said paints in that belief.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, L. C. Orrell & Company, 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 by L. C. Orrell, a member of respondent firm, and filed its answer herein, a statement of facts was agreed upon by and between W. H. Fuller, chief counsel for the Federal Trade Commission, and respondent company, and its members, L. C. Orrell and Fredericka B. Orrell, in which it is stipulated and agreed by the respondent and said L. C. Orrell and said Fredericka B. Orrell that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and

in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony, and the Federal Trade Commission, having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, L. C. Orrell & Company, is the firm name and style adopted and used by said L. C. Orrell and his wife, said Fredericka B. Orrell, in conducting as partners the business of selling and distributing ready-mixed paints, painting materials, and painters' supplies to painters, painting contractors, and dealers throughout the United States, as hereinafter set forth. Said L. C. Orrell is the managing partner of said business, conducted under the firm name and style of respondent L. C. Orrell & Company, and said Fredericka B. Orrell is the only other member of said partnership. The said partnership of said L. C. Orrell and Fredericka B. Orrell was organized in the year 1895, and the said business is, and has been continuously from that time, conducted as hereinafter set forth, with its principal office and place of business in the city of Chicago and State of Illinois. Said L. C. Orrell and Fredericka B. Orrell in conducting the business of respondent company as aforesaid, advertise, sell, and distribute said ready-mixed paints under brand names owned by them as copartners and ship and distribute said ready-mixed paints to their customers in tin containers, which are of assorted sizes, bearing labels on which are printed the brand name of the paint so labeled. The principal brand of said ready-mixed paint dealt in as aforesaid is "Painters' Pure Paint" brand. In carrying on and conducting the aforesaid business of respondent, said L. C. Orrell and Fredericka B. Orrell solicit and obtain orders for said ready-mixed paints through catalogues, pamphlets, circulars, and other literature which they cause to be sent by mail from the aforesaid place of business in Chicago, Ill., to customers and prospective customers throughout the United States. In said catalogues, pamphlets, circulars, and other literature said ready-mixed paints are advertised and described, and the brand names and prices of said paints are therein set forth. Upon receiving orders for said ready-mixed paints said L. C. Orrell and Fredericka B. Orrell, in conducting the aforesaid business of respondent company, cause the paint so ordered to be shipped in interstate commerce from the city of Chicago, Ill., through and into the various

other States of the United States and the District of Columbia to the purchasers thereof, and in carrying on said business, as aforesaid, they are in direct, active competition with other persons, partnerships, and corporations similarly engaged in interstate commerce and with the trade generally.

PAR. 2. That in carrying on and conducting the business of respondent company, as aforesaid, said L. C. Orrell and Fredericka B. Orrell, for more than one year last past, caused to be inserted and printed conspicuously in said catalogues, pamphlets, circulars and other literature, and on the aforesaid labels, statements and representations that the paint comprised in said "Painters' Pure Paint" brand is "100% pure," and that all the ingredients of said paint are, and the same is, composed of pure carbonate of lead, pure zinc oxide, pure linseed oil, turpentine, and japan drier; whereas, the truth and facts are that the paint comprised in said "Painters' Pure Paint" brand so advertised and represented does not contain any carbonate of lead or turpentine, but contains lead sulphate in lieu of said pure carbonate of lead, and contains mineral spirits in lieu of said turpentine, and that said paint also contains siliceous matter to the extent of approximately 9 per cent of the volume of said paint, which siliceous matter is inert pigment and is inferior in quality and value to carbonate of lead, lead sulphate or zinc oxide.

PAR. 3. That the aforesaid statements and representations are false and misleading and have and had the capacity and tendency to mislead and deceive the purchasers of the paint comprised in said "Painters' Pure Paint" brand, and the public, into the mistaken belief that said paint so advertised and represented does not contain siliceous matter, lead sulphate or mineral spirits, and that it does contain pure carbonate of lead as its principal solid ingredient and turpentine as its principal volatile ingredient, and to cause said purchasers to purchase said paint in that belief, and thereby securing among the purchasing public an undue preference for said paint over similar paints of competitors which are truthfully marked and advertised.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission on complaint of the Commission, the answer of the respondent, a statement of facts agreed on by counsel for the Commission and respondent L. C. Orrell & Company and L. C. Orrell and Fredericka B. Orrell, members of respondent company, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, L. C. Orrell & Company, its members, officers, agents, representatives, servants, and employees do cease and desist from directly or indirectly:

1. Making or causing to be made in catalogues, pamphlets, circulars, or otherwise, in connection with the sale, or offering for sale, of paints by respondent in interstate commerce, representations, statements, or assertions to the effect that the paint comprised in respondent's "Painters' Pure Paint" brand, or any other paint so offered and sold,

(*a*) Contains carbonate of lead as its principal solid ingredient,

(*b*) Contains turpentine as its principal volatile ingredient,

(*c*) Does not contain siliceous matter or lead sulphate or mineral spirits,

when such representations, statements, or assertions are not true in fact.

2. Making or causing to be made any other false or misleading representation of similar import or effect in connection with the sale of said paint in interstate commerce.

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

FEDERAL TRADE COMMISSION

v.

CHICAGO PORTRAIT COMPANY.

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

Docket 840—January 26, 1923.

SYLLABUS.

Where a corporation engaged in the sale of portraits which it made from photographs, for the purpose and with the effect of aiding in the sale thereof, falsely represented to prospective customers whose business it solicited at its usual and customary prices, that said prices were much lower than those usually charged by it, greatly overstated the latter, and gave plausibility to its claim of unusual price concessions by the methods, among others, of permitting a desired customer to draw or otherwise secure a check "worth $10.00" in trade, offering the portrait at twice the usual figure for single portraits with a second one "absolutely free" (the prospect being asked in consideration thereof to tell, "neighbors and friends who made the work"), misleadingly describing the same as "hand made," and falsely asserting that it did not advertise in farm journals, etc., as other concerns, but "decided to come right among the people and give them the benefit of the advertising money":

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Chicago Portrait Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

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

PAR. 2. That the respondent is engaged in the business of making portraits from photographs, and selling such portraits, either with frames or without frames, and causing such portraits and frames to

be transported to the purchasers thereof, from the State of Illinois, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged. In the course of such business respondent employs about 1,300 agents who solicit orders for and sell about 600,000 such portraits annually.

PAR. 3. That respondent in the course of its business as described in paragraph 2 hereof and as an inducement to prospective customers to purchase its portraits, represents the actual values of said portraits to be much greater than they in fact are and represents the usual prices to be far in excess of the prices at which said portraits actually sell, and then offers said prospective customers pretended special prices, which are usually much less than the represented actual values and usual prices of said portraits; that such pretended special prices are made upon the claimed consideration that such prospective customers will recommend the portraits and advertise the business of respondent in the respective communities in which they live, or by inducing prospective customers to participate in a drawing for a so-called "lucky envelope" from a number of envelopes carried by agents of respondent for that purpose, the greater number of which envelopes contain coupons or trade checks which purport to entitle those drawing same to discounts from the represented usual prices of portraits sold by respondent, and such drawings are so manipulated by agents of respondent that each prospective customer receives one of said "lucky envelopes"; that the prices represented by the respondent to be the actual values and usual prices of its portraits do not indicate the true value nor actual or usual prices for said portraits; that there are portraits on the market whose actual values and usual prices are approximately the same as the pretended special prices at which respondent sells its portraits; that the prices represented by the respondent to be the usual prices of its portraits are fictitious and misleading and are calculated to and actually do mislead and deceive purchasers as to the values of said portraits and their usual selling prices and mislead and deceive them into the belief that they are obtaining said portraits at prices substantially below their usual selling prices and below their true values or worth when they buy at the pretended special prices offered by the respondent. That as a further inducement to prospective customers, respondent represents its portraits to be hand paintings, whereas in truth and in fact such portraits are not hand paintings.

PAR. 4. That respondent further, in the course of its said business, causes its agents to call on prospective customers and falsely repre-

sent that they have not called to sell anything but to give to such prospective customers so-called tritone paintings which are represented by said agents to be of the value of $20, or of other fictitious values, whereupon such agents request such prospective customers to furnish two photographs and upon the receipt of same, such agents give to such customers what purports to be a trade check, which they offer to accept at its pretended face value, in lieu of one-half of the pretended purchase price, in part payment for the so-called tritone painting to be made by respondent from one of the photographs so furnished, and said agents further offer to make one of said tritone paintings from the other photograph furnished as aforesaid without charge to the customer so that the whole cost to the customer of the reproductions from the two photographs would be, as represented by said agents, only one-half of the usual and customary price that respondent receives for one of said pictures, whereas the amount to be so paid by the customer is no less than the usual and customary amount respondent receives for two of such pictures, whereby customers are misled and deceived and thereby induced to give respondent an order for two of the so-called tritone paintings upon the mistaken belief that same are being offered at a greatly reduced price.

PAR. 5. That respondent, further in the course of its said business, fraudulently induces persons to whom it furnishes reproductions of photographs, to sign a contract to purchase such reproductions upon the false representation that said contract is merely a receipt for the photographs obtained from the customer, with a memorandum of credits for trade checks or the drawing of a lucky envelope and a provision for a free picture or other like provision, which instrument is first signed by the agent for respondent, who is falsely described in such contract as an "advertising salesman," and which contract contains numerous provisions and recitals of a binding nature on the customer, which are not explained to or understood by said customer, among which are provisions to the effect that such contract can not be countermanded and that verbal agreements are not recognized.

PAR. 6. That the agents of respondent in soliciting orders in the course of its said business, exhibit to prospective customers a portrait in a frame with glass, in such manner as to create the false impression in the minds of such customers, that the prices at which respondent offers to make reproductions of photographs, cover the cost of the portraits, together with the frames and glass in which they are delivered, and though the contract which the customer is induced to sign, as set out in paragraph 5 hereof, contains a provision to the

effect that the price mentioned does not include frames or glass, this provision is not called to the attention of the customer, but the representation is made by such agents that the portrait ordered will be delivered in a suitable frame, without acquainting the customer with that portion of the contract, which provides that the customer must pay a " reasonable price " for the frame in addition to the cost of the portrait; that thereafter the portrait ordered is delivered to the customer in a frame, by an agent of the respondent other than the one which secured the order, the compensation of which delivery agent is dependent on commissions from the sale of frames; and such delivery agent sells the frame to the customer at a price greatly in excess of its true value or worth or refuses to leave the frame and delivers only the portrait. Other representations of a false or misleading nature similar to those described in the above paragraphs are made by agents of respondent in the course of its said business as a means of effecting sales of portraits and frames as aforesaid.

PAR. 7. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Chicago Portrait Company, a corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered its appearance by its attorneys, and filed its answer herein, hearings were had before an Examiner of the Federal Trade Commission, theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answer of respondent, which evidence was duly recorded, duly certified and duly forwarded to the Commission.

And thereupon this proceeding came on for final hearing upon the testimony and documentary evidence so offered and received, and the Commission, having duly considered the record and the argument of opposing counsel herein, and being fully advised in the premises, makes its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized under and existing by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago in said State. It was incorporated in 1893 with a capital stock of $2,500, which was increased in 1895 to $50,000 and in 1897 to $100,000; in 1902 to $500,000, and decreased in 1915 to $300,000, the present amount of respondent's capital stock.

PAR. 2. Respondent is engaged in the business of soliciting and taking orders for portraits to be made from photographs, and making such portraits from photographs, and in selling such portraits either with frames or without frames, and in causing such portraits and frames to be transported to the purchasers thereof, from the State of Illinois through and into other States of the United States, and also to foreign countries, namely, Mexico and Canada, and respondent carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

(*a*) In the course of such business respondent employs from 1,000 to 2,000 agents to solicit by house-to-house canvass, orders for, and to sell, from about 250,000 to 500,000 portraits annually, and an approximately equal number of frames for such portraits. Respondent had about 150,000 customers in 1921; about 300,000 in 1920, and more than 300,000 in 1919, the number of customers being about 60 per cent of the number of portraits sold. The respondent's total sales in 1921 amounted to $2,493,813; in 1920, to $3,870,057; in 1919, to $4,166,897. The respondent's profits in 1919 were $6\frac{4}{10}$ per cent of its sales or about $275,000; in 1920, $3\frac{4}{10}$ per cent of its sales, or about $131,000; in 1921, $1\frac{2}{10}$ per cent of its sales or about $29,925. Respondent paid dividends of 35 per cent upon its capital stock in 1919; of 25 per cent upon its capital stock in 1920; of 10 per cent upon its capital stock in 1921.

(*b*) Respondent is the largest concern in the United States in its field of activity, and it was estimated by one of its board of managers, under oath, that it transacts about one-third of the business done in this class of portraits in the United States. Among its competitors are the Syracuse Portrait Company, of Syracuse, New York, and the Roman Oil Portrait Company, the Commercial Portrait Company, the Aetna Copying Company, and the Pacific Portrait Company, all of Chicago, two or more of which do similar business along similar lines in the various States of the United States.

PAR. 3. Up to about 1895 or 1896 respondent made portraits of many sizes from 14 inches by 17 inches up. They were made in crayon or black and white and in pastel. A standard-size crayon portrait was sold by respondent at that time for $1.98. Respondent found certain sizes most popular and developed an "Opal" portrait, 16 inches by 20 inches, and its salesmen carried no other portrait for some time. Later, portraits of this class were "convexed" or given a convex surface by means of a machine, and these portraits continued the standard portraits of the company for several years. After respondent had sold this "Opal" portrait for several years, its customers became pretty well supplied with this portrait, and the "Tritone," or three-tone, portrait was developed to take its place, its size being changed to 14 inches by 20 inches, instead of 16 inches by 20 inches, which had been the size of the "Opal" portrait. This was sold as a standard portrait by respondent for several years. Then the "Auratone" was developed, giving more color and mellowness and finally, the "C–P tone," which is now a standard portrait made by respondent, having as a trade-mark or label the initials of respondent company. These portraits are also 14 inches by 20 inches and are a standard line made and sold by respondent. Respondent, however, still sells the other standard styles of portrait mentioned in this paragraph. While respondent makes portraits of other sizes and styles, the great bulk of its business is and has been done in the styles and sizes set forth in this paragraph.

PAR. 4. In the years 1919, 1920, and 1921, respondent, in the course of its business, through its agents, being its salesmen, made representations to customers and prospective customers substantially as follows:

"I [the salesman or agent] am advertising some new art work. Mrs. Brown and Mrs. Sims say it is the finest they have ever seen. * * * All concerns advertise in one way or another, but instead of our company paying the money for advertising in newspapers, magazines and farm journals, we decided to come right among the people and give them the benefit of the advertising money."

(*a*) In fact, at the time the representations set forth in this paragraph were being made by respondent's sales agents at the instance of respondent, respondent was actually advertising its portraits in farm journals. Such false representations as set forth in this paragraph made in sales talks by its sales agents at the instance of respondent, served to give plausibility to the other false representations of said agents made in the same sales talks to customers and

prospective customers, that the usual price of the standard portraits of respondent were far in excess of the prices then being asked of the customer or prospective customer being solicited and such false representations were made for the purpose of aiding in making sales of respondent's portraits.

PAR. 5. Respondent, through its said agents, in the course of its business as described in paragraph 2 hereof, as an inducement to prospective customers to give orders for, and to purchase, its portraits, has, in the years 1919, 1920, and 1921, and for some time prior thereto, represented the actual value and usual selling prices of said portraits to be much greater than they actually were, and has offered prospective customers pretended special prices represented to be much less than the actual values or usual prices of said portraits, such special prices having been made on the announced consideration that the prospective customers would recommend the portraits and advertise the business of respondent.

(*a*) Respondent, through its said agents, in the course of its business, when soliciting orders for its "Tritone Portraits," made representations to prospective customers, including statements substantially as follows:

"We make paintings like these for schools, colleges and other institutions, only instead of selling them for $50 or $100 we are selling them for $20, but if you get a check it is worth $10 to you."

After the prospective customer had been permitted to secure a trade check from the agent, through a so-called "drawing" of envelopes, and after the agent had secured photographs, this representation, in substance, was added:

"You get this one of your father in this $20 work for $10, and we are going to make you a $20 painting of your mother absolutely free. $40 worth of work for $10. But we are going to ask one favor of you, that you will tell your neighbors and friends who made the work. You will certainly do that, won't you?"

(*b*) At the time that the above-quoted representations were being made by respondent's agents at the instance of respondent, to customers and prospective customers, $10 was the ordinary and usual price secured for said "Tritone" portrait thus represented as selling for $20, and with each such "Tritone" so sold at $10, another similar "Tritone," often of a different subject or from a different photograph, was given free, so that both together were sold for $10 or for $5 each. Thousands of such portraits were sold at two for $10, or one for $10 with a like portrait free, and no such portrait was sold for $20 by respondent.

(*c*) Respondent, in the course of its business, at times in 1920 and 1921, did sell such "Tritone" portraits and a like standard portrait known as the "Auratone," for from $12.50 to $15, giving in each instance a similar portrait, often of a different subject or from a different photograph, free with each portrait so sold, so that the actual price at which each such portrait was sold was at no time greater than $6.25 to $7.50. Such standard portraits made up 75 per cent of the entire sales of portraits by respondent.

(*d*) Such false representations as to price, as set forth in this paragraph, made by respondents's sales agents at the instance of respondent, in the course of sales talks to customers and prospective customers, served the purpose of aiding in selling the standard portraits made by respondent, and such representations were capable of deceiving customers and prospective customers into the belief that they would receive much greater value for the price asked than in fact they did receive, in case they purchased respondent's portraits. Not only were the prices at which respondent actually sold standard portraits to customers to which had been made the false representations set forth in this paragraph, the usual prices obtained by respondent for such portraits, but respondent's competitors ordinarily and usually sold similar portraits for similar prices.

PAR. 6. Subsequent to 1914 respondent, in the course of its business, through its said agents, made other representations to prospective customers substantially as follows:

(*a*)

"I am doing some demonstrating and have but a few minutes to spare in each home. I am advertising the Chicago Portrait Company's new 'Tritone' painting and want your opinion of it.

* * * * * * *

"I did not come here to sell you anything but here is what I am going to do. I am giving away 25 of these beautiful paintings in this district and I want you to show me right quick the two photographs you think the most of—the ones you are most interested in—and I will show you what I am going to make you a present of. Now get them right quick as I have only a few minutes to spare.

* * * * * * *

"Now here is what I am going to do for you. As I told you in the beginning, I did not come here to sell you anything, but I am sure you have decided this is an expensive painting. You are absolutely right and when we sell this work we get $20 for each painting, but here is what I am going to do for you. I am going to make this one of your mother in our $20 'Tritone' painting, and I am going to

give you a $10 trade check which pays $10, or one-half, on Mother's painting, which is a wonderful present in itself, but here is the real big present. I am going to make this one of your father in our $20 'Tritone' painting absolutely free, that is, on condition that you tell your friends and neighbors who made the work, and you will do that."

(*b*) At the time that the above representations were made, $10 was the ordinary and usual price received for said "Tritone" thus represented as selling for $20, and with each said "Tritone" so sold at $10 a similar portrait, often of a different subject or from a different photograph, was given free, so that both together were sold for $10 or for $5 each. Thousands of such portraits were sold at the price of two for $10 or $10 for one with one free, and no such portrait was sold for $20 by respondent in the ordinary course of its business. Respondent, in the course of its business, at times in 1920 and 1921, did sell such "Tritone" portraits and like standard portraits known as the "Auratone," for $12.50 or for $15, in each case giving with the portrait so sold another similar portrait free, so that the actual prices at which such portraits were sold were at no time greater than $6.50 or $7.50 each. Such standard portraits made up 75 per cent of the sales of respondent's portraits.

(*c*) Such false representations, as set forth in this paragraph, made by its sales agents at the instance of respondent, in the course of sales talks to customers and prospective customers, served the purpose of aiding in selling the portraits made by respondent.

(*d*) "Checks" or trade checks mentioned herein were printed slips issued by respondent and countersigned by its sales agents, purporting to represent $10 or $15, as shown by the face of the check, in payment for the standard portraits sold by respondent. Whether placed in the hands of prospective customers through the device of "drawing" from the salesman, as was sometimes done, or given directly to the prospective customer by the salesman, every prospective customer for standard portraits thought desirable to do business with was given such a check. This check was merely a device for getting the attention of the customer and thus aiding in making the sale. It was also, in effect, an additional means of giving plausibility to the statements made in the same sales talks that the usual prices of standard portraits sold by respondent were far in excess of the prices at which the sale was being made to the prospective customer. No money was paid by any customer for such trade check, whether secured by drawing or given directly by the salesman. In fact no money for its portraits was ever collected by respondent until such portraits were actually delivered to the customer.

PAR. 7. In the course of its business respondent, through its said sales agents, made additional representations, among others, in substance as follows:

(*a*)

"There are many things which make this painting beautiful. You will notice that it is oval with a raise in the center showing a natural rounded forehead and chest. Notice how the artist has brought out the features. Notice how the hair is painted. You can see every stroke of the artist's brush, with just enough color in the face to give it life and warmth. The background is taken from our famous sepia paintings. It seems to set the person right out into space. This wonderful painting is our special hand-made "Tritone.'"

(*b*) In fact, such portrait was not strictly hand-made, but was made in the following manner:

1. The photograph of the subject of the prospective portrait was secured and instructions as to whether the portrait was to be full-length or bust were written out.

2. The photograph was sent to the print plant of respondent, where was made from the photograph what was known as a print. This print was a photographic copy of the photograph, or an enlargement of the photograph by photographic process.

3. The print was mounted on a portrait mount or Bristol. It was "convexed" on a "convexing machine," when damp and under pressure, and was dried in the machine so as to give the print a permanent convex surface.

4. The print thus convexed was assigned by the head artist to one of his assistants, who proceeded to finish the portrait in the "medium" or style which had been ordered. The photographic enlargement served to cut down the cost of making the portrait.

5. The portrait was completed by hand, an important instrument in the completion being a mechanical device known as the "air brush." The above was and is and has been for several years the usual method used by respondent of making its standard portraits.

(*c*) The unqualified representation by respondent's sales agents, at the instance of respondent, that the portrait was hand-made served to give plausibility to other representations made in the same sales talks, namely, that the usual price of the standard portrait of respondent was far in excess of the price asked for such portrait of the prospective customer then being solicited, and thus said representations served to aid in the sale of said portrait.

PAR. 8. Respondent, in the course of its business, developed uniform methods of selling and required all its agents to adopt such methods. This has been the practice of respondent for many years,

20 or more. Respondent at one time offered prizes for the best sales talks, indicating the best description of the portrait, the best method of approach to the home, the best method of securing the confidence of the prospective customer, the best method of arousing the prospective customer's interest, the best method of creating a desire for the painting, and the best method of closing. Respondent found that its best salesmen had similar methods, and took steps to make the sales method as uniform as it could so that respondent could pass it along to other salesmen. Out of that grew a uniform selling method.

(*a*) All details of method and conduct were worked out carefully, incorporated in printed "Sales Talks," sent its sales agents by respondent, drilled into its sales agents in room drills and conventions.

(*b*) While the "Sales Talks" were modified from time to time, they were generally in use by its salesmen at direction of respondent for many years prior to November, 1921, when the "Sales Talk" known in this record as Commission's Exhibit No. 1 was discontinued, and January, 1922, when the "Sales Talk" known in this record as Commission's Exhibit No. 2 was discontinued.

(*c*) Uniform sales methods were further promoted by minute organization of respondent's selling forces. Respondent has general road managers in charge of one or several States. Under the general road managers are road managers; under the road managers, district managers; and under the district managers, crew foremen, each of whom directs the work of a crew or group of respondent's salesmen. Respondent had, prior to the discontinuance of "Sales Talks" known in this record as Commission's Exhibits Nos. 1 and 2, instructed all agents to use one or the other in making sales.

(*d*) Respondent, in the course of its business, takes orders for portraits from its customers, in writing, by a contract stipulating that the order cannot be countermanded and that verbal agreements are not recognized.

(*e*) In the course of its business respondent delivers its portraits to its customers by delivery men other than persons who have taken the orders, and the delivery man makes collections for the portraits and sells and collects for frames for such portraits.

(*f*) Sales agents of respondent are given 25 per cent commission on their sales of portraits which have been delivered and collected for, and this commission is in full remuneration for their services. Other sales expenses swell the selling costs of respondent to 50 per cent of its sales receipts.

(*g*) Delivery men get as their remuneration for their services the difference between the invoice prices for frames and the prices at

which they sell the frames to customers who have purchased portraits. Such difference between invoice price and sales price varies between $2.75 and $3.25, as an average, for each frame. The frames ordinarily sell for $7.50 or $8.50 and the average price is about $7.

(*h*) Both sales agents and delivery men are employed by respondents under written contracts giving respondent full control of the business activities of the sales agents and delivery men while in respondent's employ.

PAR. 9. The representations made by respondent's sales agents in sales talks to respondent's customers and prospective customers, at the instance of respondent, as hereinbefore set forth in paragraphs 4, 5, 6, and 7 of these findings, to the effect: (*a*) that respondent did not advertise in magazines or farm journals but gave the people the benefit of the advertising money, (*b*) that respondent ordinarily and usually sold its standard portraits for $20 each, and (*c*) that its standard portraits were handmade were false representations deliberately made for the purpose of deceiving and misleading such customers and prospective customers, and had a capacity and tendency to mislead and deceive, and did mislead and deceive, such customers and prospective customers into the belief that the prices then being asked for such standard portraits were far less than the usual prices obtained by respondent for such portraits, and far less than the usual and actual selling or market values of such portraits; and such false representations were intended to serve, and did serve, to aid respondent in the sale of such standard portraits to such customers and prospective customers.

PAR. 10. Respondent has made it plain to customers or prospective customers that the prices paid for the portraits do not include payment for the frames, but that while the portrait will be delivered in a frame, an extra charge will be made for the frame, and it is within the right of the customer to refuse to accept the frame but rather to accept the portrait without frame and to pay for such portrait the price agreed upon for the portrait only.

CONCLUSION.

Tht the practices and activities of respondent, under the conditions and in the circumstances set forth in the foregoing findings as to the facts, are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of the respondent, the testimony and documentary evidence offered and received, and the arguments of counsel for the respective parties hereto, and the Commission having made its Findings as to the Facts and 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," therefore,

It is now ordered, That the respondent, Chicago Portrait Company, a corporation organized under and existing by virtue of the laws of the State of Illinois, its officers and directors, agents, servants and employees, do cease and desist:

From representing to customers or prospective customers that the usual prices which it receives, or has received for its portraits, are greater than the prices at which similar portraits are offered, to such customers or prospective customers, when such is not the fact.

From using any trade check or other device, in such a way as to directly or indirectly represent to customers or prospective customers that portraits offered by respondent have greater selling prices than the prices at which same are offered, when such is not the fact.

It is further ordered, That respondent, within sixty (60) days after the date of the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth, to which report shall be attached copies of all "Sales Talks" or like literature issued by respondent to its sales agents to be used in making sales to customers or prospective customers.

MEMORANDUM OF DISSENT.

Commissioner Van Fleet voted against the issuance of an order to cease and desist in this case and filed the following memorandum of dissent:

I cannot agree that an order should issue in this case. There is no proof that in a single instance any customer of respondent's was deceived or defrauded. The selling talk and trade certificate were perhaps calculated to make the customer believe he was getting a good bargain and to enhance the value in his eyes, but the fact remains that the portraits sold were well worth the money received. Great care was exercised in making the contract that the customer understood the same. There was nothing unfair in the contract

and there is not a single witness testifying to any dissatisfaction on the part of a customer. I call attention to the fact that if there had been such a customer among the thousands respondent has had, the attorneys for the Commission would no doubt have produced such testimony. The presumption is that there was none to be produced. Concerning the contention that a representation of value may be a representation of fact, I concede it may be in some cases as where the article has a market value. But the article in question had no market value. It was an article of respondent's sole manufacture and depended for its value on its artistic merit and worth nothing to anyone except the purchaser. It is the duty of the Commission to protect the public. In this case there is not a particle of evidence that anyone ever suffered from the acts of respondent, but rather the evidence shows that respondent's customers received full value for their money and that all the contracts of respondent were fulfilled though in many cases respondent's customers did not perform their part. To my mind there is no public interest to be protected by this order and its only effect will be to injure the respondent without any benefit to anyone.

FEDERAL TRADE COMMISSION

v.

AMERICAN TURPENTINE COMPANY TRADING UNDER THE NAME AND STYLE OF NORTH AMERICAN FIBRE PRODUCTS COMPANY.

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

Docket 938—February 1, 1923.

SYLLABUS.

Where a corporation engaged as the North American Fibre Products Company in the sale of varnishes and similar products which it purchased from manufacturers,

(*a*) Sold products branded and labeled by the manufacturer, at its request, with such legends as "Manufactured Exclusively by the North American Fibre Products Company," "Sole Manufacturers, North American Fibre Products Company";

(*b*) Used similar statements in its circulars, pamphlets, letters and other advertising;

(*c*) Claimed in its circulars etc., that it had factories in a number of large cities, the fact being that the factories specified were those of one of the manufacturers from whom it purchased its products;

With the result that purchasers were misled into dealing with it in the belief that they were buying directly from a manufacturer and thereby saving all intermediate profits:

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

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the American Turpentine Company, trading under the name and style of North American Fibre Products Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The North American Fibre Products Company is a trade name of the respondent, American Turpentine Company, which is a corporation organized under the laws of the State of Ohio, with a capitalization of $100,000, with its principal office and place of

business in Cleveland, in said State. Said respondent, American Turpentine Company, is now and at all times hereinafter mentioned has been engaged in jobbing and wholesaling varnishes, paints, roofing material and similar products, and in the conduct of its business utilizes the trade name North American Fibre Products Company in the sale of said products which were and are purchased by the said respondent, American Turpentine Company, under its own name, and said products, when so purchased by said respondent, American Turpentine Company and sold under the name North American Fibre Products Company, are transported from the factories of the manufacturers thereof in the State of Ohio and other states to the purchasers thereof in the several states of the United States, and are transported from the said factories through and into the various states of the United States. In the course of the conduct of respondent's business as aforesaid, the said respondent comes in competition with other individuals, partnerships and corporations engaged in the wholesaling and jobbing of similar commodities.

PAR. 2. The said respondent, American Turpentine Company, in the course of its business, as aforesaid, causes the manufacturers of the products which it deals in to brand and label them as though the said products were manufactured by the said North American Fibre Products Company using such terms as "Manufactured only by the North American Fibre Products Company" or "Manufactured by the North American Fibre Products Company." Said respondent, American Turpentine Company, in the course of its business, issues and causes to be issued circulars, pamphlets, letters and other literature containing the statements "Manufactured by North American Fibre Products Company" and indicating that the North American Fibre Products Company are "Originators and sole manufacturers." Said respondent, American Turpentine Company, also prints on its said circulars, pamphlets, letters and other literature the statement that it has factories in the cities of Cleveland, Ohio; Chicago, Ill.; New Orleans, La.; Reading, Pa.; St. Louis, Mo.; St. Paul, Minn.; San Francisco, Cal.; Brooklyn, N. Y.; and Cincinnati, Ohio. The said respondent does not own or operate any factories whatever.

PAR. 3. The words "Manufactured by North American Fibre Products Company" and "Originator and sole manufacturer," and similar expressions, used by respondent in the sale of its said products, on its labels and brands, and on its letterheads, pamphlets, circulars and other literature as aforesaid, signify to and are understood by a substantial part of the purchasing public to mean that the

said respondent, trading under the name of North American Fibre Products Company, is the manufacturer of said products when in truth and in fact the said respondent is not a manufacturer of the products which it sells, but purchases all of said products from others who manufacture the same. The practice of respondent of using the words set forth above, which falsely represent it to be a manufacturer, and the use of such list of cities in which factories are falsely alleged to be located, have the tendency and capacity to deceive and mislead, and do deceive and mislead the purchasing public into the belief that the products so labeled, branded and described are actually manufactured by the said respondent, trading under the name of North American Fibre Products Company, and that the factories so listed in different cities are factories owned and operated in those cities by said respondent trading under the name of North American Fibre Products Company, and induced many among the retail trade and purchasing public to purchase said products sold by the said respondent, as aforesaid, in that belief, and in the further belief that they were purchasing directly from the manufacturers of said products and saving all intermediate profits.

PAR. 4. There are a considerable number of manufacturers who manufacture paints, varnishes and roofing materials nad sell the same to the wholesale and retail trade and the consuming public in competition with respondent. There are also many wholesalers and jobbers of paints, varnishes and roofing materials who do not brand, label or advertise their said products to be manufactured by themselves.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, American Turpentine Company trading under the name and style of North American Fibre Products Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having entered its appearance in its own proper person and filed its answer herein, admitting all the allegations of

the complaint and each count and paragraph thereof, and having made, executed and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, American Turpentine Company, is a corporation organized and existing under the laws of the State of Ohio, with a capitalization of $100,000, with its principal office and place of business in Cleveland in said State. In the conduct of its business said corporation utilizes the trade name North American Fibre Products Company in the sale of its products, which were and are purchased by the said respondent, American Turpentine Company, under its own name.

PAR. 2. The said respondent, American Turpentine Company, is now and at all times hereinafter mentioned has been, engaged in jobbing and wholesaling varnishes, paints, roofing material and similar products, and said products when purchased by said respondent, American Turpentine Company, and sold under the trade name, North American Fibre Products Company, are transferred from the factories of the manufacturers thereof in the State of Ohio and other States, to the purchasers thereof in the several states of the United States, and are transported from the said factories through and into the various states of the United States. In the course of respondent's business, as aforesaid, the said respondent comes in competition with other individuals, partnerships and corporations engaged in the wholesaling and jobbing of similar commodities.

PAR. 3. The respondent American Turpentine Company, under the trade name, North American Fibre Products Company, sells its various kinds of paints, varnishes, enamel, roofing material and other products under the brand "Horneblende." The products so sold by respondent as aforesaid are manufactured for it by various manufacturers, who label the said products in accordance with instructions from the respondent. The principal product sold by respondent under the name North American Fibre Products Company, is

"Horneblende" Asphalt Fibre Liquid Roofing Cement, which is manufactured for it by Cleveland paint and varnish concerns according to formulae supplied by said respondent. All the products other than said roofing cement are manufactured for the said respondent by other manufacturers of paint and varnish located throughout the United States.

PAR. 4. In the course of its business, as aforesaid, the respondent, American Turpentine Company, causes the manufacturers of the products which it deals in to brand and label them with the following terms, "Manufactured Exclusively by the North American Fibre Products Company," "Manufactured only by the North American Fibre Products Company," "Manufactured by North American Fibre Products Company," "Manufactured and Guaranteed by North American Fibre Products Company," and "Sole Manufacturers, North American Fibre Products Company." Said respondent, American Turpentine Company, trading under the name and style North American Fibre Products Company, in the course of its business issues and distributes circulars, pamphlets, letters and other advertising literature to further the sale of its product, in which literature occur the aforesaid statements, indicating that the North American Fibre Products Company is the manufacturer of said products and is "Originators and Sole Manufacturers" thereof. The American Turpentine Company neither under its own name nor under the trade name North American Fibre Products Company manufactures anything, but all of the products which it deals in are purchased from the manufacturers thereof and labeled, and branded as aforesaid in accordance with instructions given and formulae furnished by said respondent.

PAR. 5. Said respondent, American Turpentine Company, prints on its said circulars, pamphlets, letters and other advertising literature the statement that North American Fibre Products Company has factories in the cities of Cleveland, Ohio; Chicago, Ill.; New Orleans, La.; Reading, Pa.; St. Louis, Mo.; St. Paul, Minn.; San Francisco, Calif.; Brooklyn, N. Y.; and Cincinnati, Ohio. The factories in the cities listed are not the factories of respondent, but are factories owned and operated by the Glidden Varnish Company, from which company respondent purchases all the products which it sells other than Asbestos Fibre Liquid Roofing cement. Respondent is not a manufacturer and does not own or operate any factories in any city whatsoever.

PAR. 6. The statements "Manufactured by North American Fibre Products Company" and "Originator and Sole Manufacturer" and

"Manufactured only by the North American Fibre Products Company" and similar expressions used on its labels and brands, and on its letterheads, pamphlets, circulars and other literature by respondent as aforesaid in the sale of its said products, and the use of the list of cities in which factories are falsely alleged to be located, signify to and are understood by a substantial part of the purchasing public to mean that the said respondent, trading under the name of North American Fibre Products Company, is the manufacturer of said products.

PAR. 7. The purchasing public believes that when it buys goods direct from the manufacturer it thereby saves all intermediate profits, and many of the purchasing public, therefore, prefer to buy direct from a manufacturer. By the practice of using the statements set forth in Paragraph 4, and the list of factories as shown in Paragraph 5, respondent was enabled to mislead purchasers into the belief that they were buying direct from a manufacturer.

PAR. 8. There are many manufacturers who manufacture paints, varnishes and roofing materials and sell the same to the wholesale and retail trade and to the consuming public in competition with respondent. There are also many wholesalers and jobbers of paints, varnishes and roofing materials who do not brand, label or advertise the products which they sell so as to indicate that they are manufacturers thereof.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, American Turpentine Company, trading under the name and style of North American Fibre Products Company, and its officers, directors, agents, representatives, servants and employees, cease and desist from:

(1) Using words, statements, or phrases on its letterheads, or in circulars, pamphlets or other advertising literature distributed by it in which the claim is made that it is a manufacturer, or that it manufactures the products which it sells, unless and until such respondent actually owns or operates a factory in which the products sold by it are manufactured.

(2) Distributing or circulating in commerce, among the several states of the United States, on its letterheads, or in circulars, pamphlets or other advertising literature used by it, a list of cities in which it claims to own and operate factories, unless and until such respondent actually owns or operates a factory in said city or cities, in which the products sold by it are manufactured.

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

FEDERAL TRADE COMMISSION

v.

WESTERN MEAT COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF SECTION 7 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 456—February 2, 1923.

SYLLABUS.

Where a corporation engaged in the purchase of live stock and in the manufacture, distribution, and sale of meat and meat products as a subsidiary of packing companies occupying a strong position in the industry, purchased all the outstanding stock of a competitor and assumed the operation and management thereof; with the result that competition between the two concerns in the purchase of live stock and in the sale of meat and meat products was entirely eliminated and commerce in the section or community was restrained:

Held, That such acquisition of stock, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the Act of September 26, 1914, and a violation of section 7 of the Act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Western Meat Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Western Meat Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at the city of San Francisco, in said State, and is now and at all times hereinafter mentioned engaged in the business of slaughtering live stock, and of producing

and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, said products and by-products being sold by respondent in the various States of the United States, the Territories thereof, and the District of Columbia, and when sold respondent causes same to be transported from the State of California through and into other States and Territories of the United States and the District of Columbia.

PAR. 2. That the Nevada Packing Co. is a corporation organized and existing under and by virtue of the laws of the State of Nevada, with principal place of business at Reno, in said State, having a capital stock of $353,000, and is engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products and by-products to be transported, when sold, from the State of Nevada through and into other States of the United States and the Territories thereof, and prior to December 30, 1916, said Nevada Packing Company was in direct competition with the respondent and other persons, partnerships, and corporations similarly engaged.

PAR. 3. That on December 30, 1916, respondent acquired all of the capital stock of said Nevada Packing Company and still owns and controls the same. That as a result of the acquisition of said stock respondent took over the business of said Nevada Packing Company and has since operated and controlled same, and competition which theretofore existed between respondent and the said Nevada Packing Company was completely eliminated, and interstate commerce in products and by-products arising from the slaughtering of live stock was thereby restrained, and respondent was enabled by the acquisition of said stock to acquire, and did acquire, a monopoly in the said sale of such products in the sections and communities adjacent to Reno, Nev.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Western Meat Company, herein referred to as respondent, has been and is violating the provisions of Section 7 of an Act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. As grounds for said complaint, said Commission relies upon the matters and things set out in paragraphs 1, 2, and 3

of count I of this complaint to the same extent as though the allegations thereof were set out at length herein, and said paragraphs 1, 2, and 3 are incorporated herein by reference and adopted as a part of the allegations of this count.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein wherein it is alleged that it had reason to believe that the above-named respondent, Western Meat Co., has been and now is using unfair methods of competition in interstate commerce in violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that said respondent Western Meat Co. has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and that a proceeding by it as to such alleged violation of Section 5 of the Act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and respondent having entered its appearance by its attorneys, Sullivan & Sullivan and Theodore J. Roche, of San Francisco, Calif., and having duly filed its answer admitting certain of the allegations of said complaint and denying others, and hearings in said proceedings having taken place before an examiner of the Commission, and the Commission having offered evidence in support of the charges of said complaint, and respondent having offered evidence in its own defense, and both parties to this proceeding having rested, and attorneys for both parties having presented said issues herein to the Commission for final consideration and determination, and the Commission having duly considered the record herein and being fully advised in the premises, now makes its report and findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Western Meat Company, is a corporation organized, xisting, and doing business u..der and by virtue of the laws of the State of California, with its principal office and place of business in the city and county of San Francisco, in said State, now, and at all times herein mentioned, engaged in the business of purchasing live cattle, calves, hogs, sheep, and lambs in various States and Territories of the United States, and transporting same and causing same to be transported from such States to respondent's

packing plant situated in the State of California, and after the slaughtering of said cattle, calves, hogs, sheep, and lambs in said plant, has shipped the meat and meat products resulting therefrom from such packing plant to and through various distributing branches situated in the State of California and other States of the United States, to the purchasers of said products in such various States and Territories of the United States, including the States of California and Nevada. On December 30, 1916, the outstanding capital stock of said Western Meat Company consisted of 12,500 shares of common stock of the par value of $100 each, and the said concern at that time had assets of approximately $5,000,000 in value.

PAR. 2. The Nevada Packing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its principal office and place of business in the city of Reno, in said State, now, and at all times herein mentioned, engaged in the business of purchasing live cattle, calves, hogs, sheep, and lambs in various States and Territories of the United States, and in transporting same and causing same to be transported from such States to its packing plant situated in the State of Nevada, and after the slaughtering of said cattle, calves, hogs, sheep, and lambs in said plant has shipped the meat and meat products resulting therefrom from such packing plant to the purchasers of said products in various States and Territories of the United States, including the States of Nevada and California.

PAR. 3. On December 30, 1916, respondent, Western Meat Company, acquired all of the issued and outstanding capital stock of the Nevada Packing Company, which consisted of 3,530 shares of common stock of the par value of $100 each. At the time of said acquisition Louis F. Swift, president of Swift & Company, meat packers, and other stockholders of Swift & Company, owned approximately 45 per cent of the stock of the Western Meat Company, and officers of Armour & Company, Morris & Company, and Cudahy Packing Company owned in the aggregate 30 per cent of said stock. Louis F. Swift was instrumental in causing said acquisition of said stock to be made by respondent, and said acquisition was made only after assurance of no objection on the part of Armour & Company.

PAR. 4. In January, 1914, Louis F. Swift was president and director of the Western Meat Co., and he resigned during that month at the annual meeting of the stockholders and F. L. Washburn was made president and director of the company. The following letter from Louis F. Swift to E. B. Shugert, treasurer of the Western Meat

Co., dated January 6, 1914, is indicative of the Swift control of the Western Meat Co.:

Please have it understood with Mr. Washburn that it may be that we will want to change back again later on to the present officers, and I do not want him to feel hurt if such should prove to be the case. In the meantime want him to understand that there is to be no change in the manner of conducting the business from the present, viz, it will be directed from Chicago, as heretofore.

The said letter of instructions was received and accepted by the interested parties. Shortly after the stock of the Nevada Packing Co. was purchased by the Western Meat Co. with the approval of Louis F. Swift, president of Swift & Co., a letter was sent to F. L. Washburn, president of respondent, by Louis F. Swift, under date of January 31, 1917, as follows:

I would suggest that you arrange that matters between the Nevada Packing Company, Reno, and Chicago, be handled similarly to those between the Western Meat Company and Chicago, viz:

On all matters of policy, etc., communications should be addressed to Louis F. Swift, Chicago.

On sales and trading between the companies, satisfactory to address the departments interested.

Will you please arrange?

Kindly acknowledge receipt.

The instructions of said Swift as set forth in the foregoing letter were carried out and from that date the business policy of respondent was controlled by said Swift, president of Swift & Company.

PAR. 5. At the date of the acquisition of the capital stock of the Nevada Packing Company by the Western Meat Company, competition existed between said Nevada Packing Company and the Western Meat Company, particularly in the States of Nevada and California in the purchase of live stock and in the sale and shipment of meat products; buyers of live stock for the Nevada Packing Company and the Western Meat Company endeavored to purchase live stock from the same producers in the States of Nevada and California and other States; and salesmen of both the Nevada Packing Company and the Western Meat Company solicited orders for meat and meat products from the same trade in the States of Nevada and California and other States in competition with each other.

PAR. 6. From December 30, 1916, to the date of the taking of testimony in this case in June, 1920, respondent Western Meat Company has operated the packing plant of the Nevada Packing Company, and, connected with the business of such operation, has continuously purchased and shipped to said plant from various points in the States of Nevada and California and adjacent States live

cattle, calves, hogs, sheep, and lambs, and after slaughtering same, sold and shipped the meat and meat products resulting therefrom to various purchasers in the States of Nevada and California and elsewhere, and still continues so to do, and as a part of its said business respondent serves substantially all of the trade that was served by Nevada Packing Company while it was in business in competition with respondent as hereinbefore set out.

PAR. 7. The effect of the acquisition by respondent of the capital stock of the Nevada Packing Company, and the control and operation of the Nevada Packing Company's plant and business by respondent which followed said acquisition, and still exists, was and is the entire elimination and suppression of the competition which had theretofore existed between respondent, Western Meat Company, and said Nevada Packing Company in the buying of live stock and in the sale of meats and meat products, resulting from the slaughtering thereof, throughout the States of Nevada and California, and was and is to restrain commerce in the purchase and sale of meat and meat products commonly known as the meat-packing industry in the States of Nevada and California.

CONCLUSION.

The acquisition and continued control and ownership of the capital stock of the said Nevada Packing Co., a corporation, by respondent, and the total suppression of competition between the said Nevada Packing Co. and the respondent resulting from such control and operation by respondent under the conditions and circumstances set forth in the foregoing findings as to the facts, were and are unfair methods of competition within the meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and were and are in violation of the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER.

The Federal Trade Commission, having issued and served its complaint herein, and respondent, Western Meat Company, having entered its appearance by its attorneys, Messrs. Sullivan & Sullivan and Theodore J. Roche, of San Francisco, Calif., duly authorized and empowered to act in the premises, and having filed its answer; and thereafter hearings in this proceeding having taken place before an examiner of the Commission and evidence having been presented before said examiner on behalf of the Commission and on behalf

of respondent; and the presentation of such evidence having been closed, respectively, by the attorneys for the Commission and by the attorneys for the respondent, and thereafter the attorneys for the Commission and attorneys for respondent having duly filed their briefs in this proceeding with the Commission and having submitted said issues for consideration and determination, and the Commission having fully considered the record and having been fully advised in the premises as heretofore, has made and entered its findings as to the facts and its conclusion that respondent has violated the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of Section 7 of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report and findings are hereby referred to and made a part hereof:

Now, therefore, it is ordered, That the respondent, Western Meat Company, shall forthwith cease and desist from violating the provisions of Section 5 of said Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of Section 7 of said Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and particularly to so divest itself absolutely of all capital stock of the Nevada Packing Company as to include in such divestment the Nevada Packing Company's plant and all property necessary to the conduct and operation thereof as a complete, going packing plant and organization, and so as to neither directly or indirectly retain any of the fruits of the acquisition of the capital stock of said Nevada Packing Company, a corporation.

It is further ordered, That in such divestment no stock or property above mentioned to be divested shall be sold or transferred, directly or indirectly, to any stockholder, officer, director, employee, or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of, respondent or any of its officers, directors, or stockholders, or the officers, directors, or stockholders of any of respondent's subsidiaries or affiliated companies.

It is further ordered, That respondent, Western Meat Company, shall within six months from the service of this order submit in writing its report showing how this order has been carried out, including the names of the purchasers of said capital stock and the amount of money received or to be received therefor.

FEDERAL TRADE COMMISSION

v.

B. H. STINEMETZ & SON COMPANY.

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

Docket 858—February 5, 1923.

SYLLABUS.

Where a retail clothing establishment located in a high grade retail district, and theretofore enjoying an enviable reputation as an old concern of integrity and high standing dealing in high grade goods exclusively, and being at the time neither insolvent nor threatened with forced action by its creditors, nor contemplating the discontinuance of its business; in announcing and holding a special sale of its goods,

(*a*) Published large and sensational advertisements, both prior to and during said sale, in the daily papers and in its show windows, so worded and displayed as to be calculated to induce the purchasing public to believe that it was compelled by unusual circumstances beyond its control to sacrifice its regular stock of goods regardless of cost;

(*b*) Mingled with said regular stock large quantities of inferior stock bought especially for said sale;

(*c*) Marked its stock, as thus composed, with fictitious cancelled figures purporting to represent the regular or usual selling prices, and with other lower figures equal to, and often largely in excess of, the market value thereof, representing the prices at which offered; and

(*d*) Placarded the store with similar matter announcing other pretended bargains;

With the result that large numbers of the purchasing public were thereby misled and induced to purchase articles so advertised, tagged and placarded, in the mistaken belief that they were securing goods of high quality from its regular stock at prices lower than ordinarily available and lower than their prevailing market value:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the B. H. Stinemetz & Son Company, hereinafter referred to as respondent, has been using unfair methods of competition in commerce within the District of Columbia in violation of the provisions of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof

would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent is a corporation organized and doing business under and by virtue of the laws of the District of Columbia, and conducts a retail business in ladies' garments and furs in the City of Washington, District of Columbia, at the premises known as 1201 F Street Northwest, in said City and District, and at the time of the doing by respondent of the acts and things hereinafter alleged, conducted a retail business in gentlemen's furnishings at said premises in addition to its said business in ladies' garments and furs.

PAR. 2. That on or about the 9th day of January, 1921, respondent caused to be published in various newspapers of general circulation throughout said District and the territory adjacent thereto, certain advertisements which contained statements regarding a special sale of merchandise shortly thereafter to be had and conducted by respondent, substantially to the effect that respondent had turned its entire stock over to financial adjusters who had orders and unlimited authority and power to convert said stock into cash as soon as possible; that to accomplish such purpose said adjusters would, without reservation, offer for immediate sale respondent's entire well-known high quality stock of merchandise at any sacrifice in prices necessary to convert the same into cash in the shortest possible time; that the public would receive most sensational bargains in high grade merchandise at said sale and that the good repute which respondent had enjoyed for over fifty years was a guarantee to the public that all the foregoing statements were true, honest, and free from fictitious exaggeration; that said advertisements and placards were calculated to create, and had the capacity and tendency of creating in the minds of the purchasing public the belief that the goods, wares, and merchandise to be offered and sold at such sale were the stock of respondent's store and of the same quality and standard as the stock habitually carried and sold by respondent and that the prices obtaining at said sale would be lower and more advantageous to the purchaser than the prices usually fixed by respondent in the ordinary course of its business, and that this was to be accounted for by pressure of necessity or unusual conditions requiring of respondent an abnormal sacrifice of values in its commodities; that from time to time after the publication of said advertisements, and preceding and during the course of said sale, respondent caused advertisements of similar import and to similar effect to be published in newspapers of general

circulation in the District of Columbia and further displayed upon the windows of its aforesaid place of business large placards and signs containing statements and assertions similar to the statements and assertions contained in said advertisements; that all said advertisements were published and said placards and signs displayed by respondent with the intention and purpose of misleading and deceiving the public, and had the capacity and tendency to mislead the public, into the belief that respondent, impelled by necessity or the force of unusual conditions requiring such action, had turned over and surrendered its entire stock of merchandise to financial adjusters, who would sell the same at greatly reduced prices and prices far below the fair market value thereof and that said merchandise was all of the same high grade, quality, and value as the merchandise which respondent had, for many years prior to said sale, carried in stock and offered for sale as hereinafter set out. .

PAR. 3. That for many years prior to the publication of said advertisements and the holding of said sale as hereinafter set out, respondent had habitually dealt in merchandise of high quality and value, all of which was well known to the general public in the District of Columbia and elsewhere and respondent had for many years, prior to said advertising and sale, enjoyed a good reputation for probity, fair dealing and reliability among the general public in said District and elsewhere, which reputation respondent still enjoyed at the time of said advertising and sale.

PAR. 4. That for the purposes of its said proposed sale respondent purchased large quantities of merchandise, consisting of gentlemen's furnishings and ladies' garments and furs, hereinafter called sale stock, which said merchandise was inferior in quality and value to the merchandise habitually dealt in by respondent as hereinbefore set out, hereinafter called regular stock; that in preparation for said proposed sale and with the intention of misleading and deceiving the public into the belief that said sale stock was part and parcel of said regular stock and of the same quality and value, respondent intermingled said sale stock with said regular stock and placed the two stocks so intermingled upon counters and tables in its aforesaid place of business and in furtherance of such intended deception respondent attached to the several items of said sale stock, price tags bearing fictitious regular prices in excess of the fair market value of the articles so tagged, which fictitious regular prices were stricken out by means of a line drawn therethrough in such a manner as to leave said price legible, and bearing thereunder a sale price, at which the item so tagged was to be offered at aforesaid proposed

sale, which said sale price was a substantial reduction in amount from said fictitious price, but was in each instance equal to and in many instances largely in excess of the fair market value of the item so tagged; that respondent also in furtherance of aforesaid intended deception attached to its regular stock, which was intermingled with its sale stock as above set out, tags similarly bearing fictitious regular prices, which were higher than the actual regular prices of such stock, stricken out and bearing sale prices thereunder which were substantial reductions from said fictitious prices but substantially equal to the prices at which respondent has theretofore habitually sold said regular stock, and further placed signs and placards over all said merchandise, which signs and placards bore fictitious regular prices stricken out and sale prices opposite thereto in a manner similar to aforesaid price tags.

PAR. 5. That after having done the acts and things in preparation for said proposed sale set out in paragraph 4 hereof, respondent, on or about the 12th day of January, 1921, opened a special sale at its aforesaid place of business and conducted the same continuously for a period of about ten days; that respondent, during said time held out and represented said sale to the general public as a commercial adjustment sale in all respects conforming to the statements and representations made by respondent in its advertising and window posters as hereinbefore set out; that the merchandise offered at said sale consisted of respondent's aforesaid sale-stock and regular stock, intermingled, displayed and price-marked as hereinbefore set out and respondent sold to the general public residing in the District of Columbia and the territory adjacent thereto, large quantities of its aforesaid sale-stock, so intermingled and price-marked as above set out, as and for its aforesaid regular stock, at prices substantially in excess of the fair market value of said sale stock, and further sold large quantities of its said regular stock at aforesaid sale prices purporting to be substantial reductions from the prices usually demanded by respondent for said regular stock, but in fact equal to such usual prices and equal to the fair market value of said regular stock; that large numbers of persons residing in and about the District of Columbia were induced by the misleading statements and representations appearing in aforesaid advertisements and window posters and by the belief thereby created as hereinbefore set out, to attend aforesaid sale and to purchase large quantities of merchandise thereat and said persons so attending said sale were, by the intermingling and deceptive tagging and price marking of the merchandise offered at said sale as hereinbe-

fore set out, induced to purchase and did purchase large quantities of aforesaid sale stock in the belief that said sale stock was part and parcel of, and of equal value with, aforesaid regular stock and sold at a substantial reduction in price, and said persons were similarly induced to purchase and did purchase large quantities of said regular stock in the belief that the prices paid therefor were substantially below the prices at which said regular stock was by respondent usually and habitually sold.

PAR. 6. That the above alleged acts and things done by respondent constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, B. H. Stinemetz & Son Company, 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 by its attorneys and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Examiners of the Federal Trade Commission theretofore duly appointed. And respondent by its attorneys, having taken part in said hearings and cross-examining the witnesses offered in support of the allegations of said complaint and having been given the opportunity to introduce evidence in its defense, rested without the introduction of any evidence in chief on its behalf.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, B. H. Stinemetz & Son Company, is a corporation organized in the year 1902 under and by virtue of the laws of the District of Columbia, and is the successor to the original firm of B. H. Stinemetz & Son, which firm first commenced business in the City of Washington, District of Columbia, in the year 1856. Respondent conducts and has conducted continuously for

many years last past a retail business in the City of Washington, in the District of Columbia, at premises known as 1201 F Street NW., in said city, selling and offering for sale to the purchasing public ladies' garments and furs, and during the period beginning in the year 1914 to the latter part of June in the year 1921, respondent conducted a retail business at the same premises in men's furnishings in addition to its business in ladies' garments and furs. Respondent's business in said women's wear has always been the principal and greater part thereof. In the year 1903 respondent moved to its present location at 1201 F Street NW., in said City of Washington, District of Columbia, in which premises it has conducted its business continuously since that time. These premises are situated in one of the most favorable localities in the city for a business of the kind conducted by respondent, in a business district given over largely to retailers of ladies' and men's ready-to-wear merchandise of high quality and value, and which business district is so known and recognized by the purchasing public of the District of Columbia and territory adjacent thereto. For many years prior to the holding of the special sale in January, 1921, hereinafter set forth, the respondent in the course of its business habitually dealt in ladies' garments, furs and men's furnishings of high quality and value and was well known to the general public in the District of Columbia and territory adjacent thereto as a concern which dealt exclusively in high quality merchandise and the name "Stinemetz" had enjoyed a good reputation for fair dealing and reliability which had become an asset to respondent and which had been enjoyed by said respondent for many years up to the commencement of the said special sale in January, 1921, hereinafter set forth.

PAR. 2. Respondent in the conduct of its business is, and has been at all times herein mentioned, in direct competition with many persons, partnerships and corporations engaged in similar businesses, in the District of Columbia and territory adjacent thereto; and is, and has been for many years last past, in direct competition with many other persons, partnerships and corporations selling similar goods, wares and merchandise direct to the purchasing public in the District of Columbia, and vicinity and who cause such goods, wares and merchandise to be transported from their said places of business in various States of the United States, particularly in the States of New York and Pennsylvania, in and through various other States of the United States and the District of Columbia to the purchasers thereof in said District of Columbia and territory adjacent thereto. Respondent in the course of its business accepts and

fills C. O. D. orders for its goods, wares and merchandise of reliable purchasers who place such C. O. D. orders at respondent's store. Respondent causes such merchandise when so ordered by the purchaser to be transported from its said place of business in the District of Columbia to, and delivered C. O. D. at points outside of the District of Columbia, principally in the States of Maryland and Virginia.

PAR. 3. Respondent as of January 9, 1921, and January 10, 1921, caused to be published in various daily newspapers of general circulation in, and widely read by the people of the City of Washington, District of Columbia, and near territory, certain large, conspicuous advertisements, which were calculated and had the capacity and tendency to, and did, mislead and deceive the purchasing public into the belief that respondent was forced out of business by unusual conditions and financial difficulties beyond its control; and that so-called mercantile adjusters who had been appointed with unlimited authority and positive orders to convert respondent's entire and complete stock of ladies' garments, furs and men's furnishings into cash at once, would sell same at a special sale to be held shortly thereafter, commencing January 12, 1921.

PAR. 4. In addition to the advertisements hereinbefore mentioned, and others hereinafter referred to, respondent caused to be displayed prior to and during the holding of said proposed special sale other large advertisements in all the show windows of its store at aforesaid premises. Said advertisements completely covered the windows of respondent's said store and were conspicuous and sensational, and were calculated, and had the capacity and tendency to, and did, mislead and deceive the purchasing public of the District of Columbia and territory adjacent thereto into the belief that through pressure of unusual conditions and forces beyond respondent's control, and after sixty-four years of successful business, the contents of its old established store were taken out of respondent's control and would be converted into cash at once, and for any price it would bring; that the entire stock of its said store, represented in said advertisements as "Washington's oldest and most reliable store," would be absolutely sacrificed; that every dollar's worth of its stock of goods, wares and merchandise would be placed on sale at prices lower than the cost to manufacturer, which action was necessary to satisfy creditors and wind up its business.

PAR. 5. Respondent caused to be published in all the leading daily newspapers of general circulation in, and widely read by the people of Washington, District of Columbia, and territory adjacent thereto,

immediately prior to and during the holding of said special sale hereinafter set forth, various other large, conspicuous advertisements concerning said special sale, which advertisements were calculated, had the capacity and tendency to, and did, mislead and deceive the aforesaid purchasing public into the belief that the entire and complete stock would be sold by so-called adjusters for cash at once, regardless of cost, and at a mere fraction of its actual commercial worth and value; that every article in said offering was of the highest quality and standard, and was part and parcel of the well known high-grade stock habitually carried and handled by respondent in the regular course of its business; that the public would receive most sensational, startling and astounding bargains; that all representations made by respondent were genuine and bona fide, and that respondent's good reputation and its years of square dealing were a guaranty to the public against any fictitious exaggeration or deception in any representations by respondent pertaining to said special sale.

PAR. 6. The stock of goods, wares and merchandise customarily carried and dealt in by respondent at its aforesaid place of business prior, and up, to the time of the planning and holding of aforesaid special sale was very much depleted and to a large extent out of fashion. Said stock so customarily carried and dealt in by respondent will be hereinafter referred to as "regular stock." Respondent, a few days prior to and during the circulation and exhibition of the advertisements hereinbefore referred to, and others and for the purpose of the said special sale announced in said advertisements, purchased from various manufacturers and business houses in the City of New York, State of New York, and elsewhere, other large quantities of goods, wares and merchandise exceeding in cost to respondent the sum of $20,000, and consisting of men's furnishings and ladies' garments and furs, which additional stock so purchased will be hereinafter referred to as "sale stock."

PAR. 7. The greater part of the said sales stock was received at said place of business of respondent within a few days prior to the opening, and from time to time during the holding, of said special sale. Respondent in preparation for said special sale caused to be attached to the various articles of said sale stock price tags bearing high, fictitious regular prices which were greatly in excess of the fair value of the article so tagged, and which fictitious regular prices were stricken out by means of a pencil mark in such a manner as to leave the altered price mark legible, and bearing thereunder sale prices at which said articles were offered for sale and sold at said special sale. Said sale prices were a large reduction in amount

from said fictitious regular prices, and were as great as, and in many instances largely in excess of the fair market value of the articles so tagged. A like plan of marking and remarking of respondent's regular stock was carried out in preparation for said special sale. In further preparation for said special sale, respondent mixed and intermingled said sale stock with said regular stock and placed the two stocks so intermingled, mixed and tagged, as aforesaid, upon counters and tables in its aforesaid place of business. And in still further preparation for said special sale, respondent placarded its said store from end to end with conspicuous tags and signs bearing high, fictitious prices as regular prices and also sale prices which had the tendency to and did falsely purport to the public to be large reductions from prices respondent had theretofore in the regular course of its business asked for its merchandise. And in preparation for said sale, respondent also closed its place of business for three days prior to the opening thereof, and increased the number of its employees by engaging the services of Lynch Sales Company, Daniel V. Lynch, President and General Manager thereof, and additional sales people, wrappers and doorkeepers to the number of fifty. Theretofore and prior to said special sale, respondent's employees numbered fifteen.

PAR. 8. The exhibition of the aforesaid placards, conspicuous signs and tags and the arrangement and display of the said sales stock and regular stock, tagged, mixed and intermingled as aforesaid, in conjunction, and contemporaneous, with the publication of the newspaper advertisements hereinbefore mentioned, were calculated, had the capacity and tendency to, and did, mislead and deceive the purchasing public of the District of Columbia and territory adjacent thereto into the belief that aforesaid intermingled merchandise was all of the said regular stock of respondent's store and of the same high quality and standard; that said sales prices were a great reduction, were lower and more advantageous to the purchaser than the prices usually fixed by respondent in the regular course of its business and were far below the prevailing market price thereof, and were below the cost of manufacturer and a sacrifice to respondent; that this was to be accounted for by respondent's having been compelled, by necessity and the force of unusual conditions beyond its control, in order to satisfy creditors and wind up its business, to surrender its entire stock, consisting exclusively of high-grade merchandise, to financial adjusters for conversion into cash at once.

PAR. 9. Respondent opened said special sale at its aforesaid place of business on the morning of January 12, 1921, and conducted the

same continuously, displayed, advertised and represented as hereinbefore set forth for an indefinite period of at least ten days and continued to conduct its said business without interruption in both men's and women's departments until the latter part of June, 1921, at which time it discontinued its men's furnishing department by sale in bulk of its entire stock of men's furnishings then on hand and thereafter continued and devoted its entire business activity to women's wear. Large numbers of the purchasing public in the City of Washington, District of Columbia, and adjacent territory were induced to attend said sale by the aforesaid false, misleading and deceptive representations made by respondent in its said newspaper advertisements, window posters, etc. During said sale respondent's regular stock and sale stock were advertised and represented as aforesaid and were on exhibition, mixed and intermingled, tagged and placarded and priced as aforesaid and large numbers of persons were induced by the aforesaid false, misleading and deceptive advertising displaying, placarding, marking and representations of respondent to purchase large quantities of aforesaid sales stock at aforesaid sale prices and said persons were similarly induced to purchase large quantities of said regular stock at aforesaid sale prices. Said purchases combined amounted during the first ten days of said special sale to the sum of $33,216.51.

PAR. 10. Respondent was not at the time of said advertisements and sale insolvent, or bankrupt and forced action was not threatened or taken against respondent by any of its creditors and its business stock of goods, wares and merchandise was not out of its control or possession and respondent did not intend or contemplate the discontinuance of its business or the winding up of its affairs at said sale; that the goods, wares and merchandise offered and sold at the said sale did not consist entirely of respondent's regular stock but the greater part of said goods, wares and merchandise offered and sold at said sale, consisted of sale stock much inferior in quality and value to said regular stock and was displayed, marked and represented to the public as said regular stock and of the same quality and value; that the advertised and purported reduction in selling price of the various articles of said goods, wares and merchandise offered and sold at said sale were reductions from fictitious prices as hereinbefore found and that the sale prices attached to the various articles so offered and sold were equal to the regular market value of the articles and in a great many instances were in excess of the market value of the articles so tagged.

CONCLUSION.

The actions, conduct and practices of respondent, as set forth in the foregoing findings as to the facts 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 submitted, the Trial Examiner's Report upon the Facts and the Exceptions thereto, and the Commission having made its Findings as to the Facts with its Conclusion that 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, B. H. Stinemetz & Son Company, a corporation, its officers, agents, solicitors, representatives, servants and employees, cease and desist from:

(1) Representing that any specially advertised sale is made under conditions or circumstances compelling reductions in selling prices below levels which would be established in the uncontrolled exercise of voluntary discretion, when such representations are not true in fact.

(2) Representing that goods offered in any specially advertised sale at reduced prices are its regular stock or a part thereof, when such representation is not true in fact.

(3) Representing that goods offered in any specially advertised sale are reduced in price when the alleged reduction is in truth no more than a reduction from a fictitious price created for the purpose of presenting an appearance of reduction.

It is further ordered, That the respondent, B. H. Stinemetz & Son Company, a corporation, shall within sixty (60) days after the service upon it of a copy of this order file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

CLIFFORD SMITH, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF CLIFFORD SMITH COMPANY.

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

Docket 919—February 5, 1923.

SYLLABUS.

Where an individual engaged in the sale of paints, turpentine, and allied products, advertised a turpentine substitute as "Argentine turpentine," and sold and offered the same in barrels or containers bearing the words "Argentine turpentine sub." or "Arg. turp. sub."; with a capacity and tendency to mislead and deceive consumers and the public into believing said substitute to be turpentine, and thereby cause the purchase thereof:

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

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Clifford Smith, doing business under the trade name and style Clifford Smith Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style Clifford Smith Company, with his place of business in the city of Richmond, State of Virginia. At all times hereinafter mentioned respondent has been and now is engaged in selling paints, oils, varnishes, turpentine and allied products to retail dealers, painters and painting contractors located at points in various States of the United States. He delivers said commodities when so sold by causing the same to be transported from his said place of business in the city of Richmond to said purchasers at points in various States of the United States. In the course and conduct of his said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the sale of similar commodities in interstate commerce, and with the trade generally.

PAR. 2. Amongst the commodities dealt in by respondent as hereinbefore set out is a commodity named by respondent "Argentine turpentine," and for more than five years last past respondent has sold and still sells the same to his aforesaid trade under the name "Argentine turpentine," and in connection therewith sends to his aforesaid trade, letters, post cards, price lists, booklets and other literature advertising, describing, and giving prices for the commodities dealt in by him, in which said advertising respondent lists the said product under the name "Argentine turpentine." Upon the barrels in which said commodity is sold respondent causes the name "Argentine turpentine" to be stenciled. The truth and fact is that said commodity is not turpentine but is a substitute therefor, consisting of a mixture of mineral oil and destructively distilled wood turpentine, the proportions of said ingredients being about three-fourths mineral oil and one-fourth destructively distilled wood turpentine.

PAR. 3. The above alleged use of the name "Argentine turpentine" by respondent, and the sale of said commodity under the said name as hereinbefore set out, had and has the capacity and tendency to mislead and deceive the aforesaid retail-dealer purchasers, and through them the consuming public, into the belief that said commodity is turpentine and to buy the same in that belief, and to mislead and deceive aforesaid painters and painting-contractor customers that said commodity is turpentine and to use said commodity in that belief in painting work done under specifications calling for paint containing turpentine.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent, having entered his appearance and filed his answer herein, stipulated in writing that a certain statement of facts executed by the chief counsel for the Federal Trade Commission

and by the respondent, subject to approval by the Commission, may be taken and considered by the Federal Trade Commission as the facts in this proceeding, in lieu of testimony before the Commission, and that the Federal Trade Commission may proceed upon said statement of facts to make its report in this proceeding, stating its findings as to the facts and conclusion, and enter such orders herein as said stipulation and the law may warrant, and in said stipulation the respondent waived the right to offer testimony, file brief and make oral argument; thereupon this proceeding came on for final hearing, and the Federal Trade Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Clifford Smith, is an individual doing business under the trade name and style of Clifford Smith Company, and has his principal place of business in the city of Richmond, Va. At the time of and immediately prior to the issuance of the complaint herein, the respondent was engaged in the business of selling paints, oils, varnishes, turpentine, and allied products to retail dealers, painters, and paint contractors located at points in various States of the United States. The respondent delivered said commodities when sold by causing them to be transported from his place of business in the city of Richmond, Va., to purchasers at points in various States of the United States, and in the course and conduct of said business the respondent is and was engaged in interstate commerce, in competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Among the articles or commodities dealt in by the respondent is an article or commodity named by the respondent "Argentine turpentine," and for more than five years last past the respondent has sold said commodity and offered the same for sale to his trade under the said name. In connection with the sale of said article or commodity, the respondent sends post cards and price lists to his customers and prospective customers advertising, describing, and quoting prices for the commodities dealt in by him, and in said post cards and price lists the respondent has listed the said commodity under the name of "Argentine turpentine." Upon the barrels or containers in which said commodity is sold and offered for sale the respondent caused the words "Argentine turpentine sub.," or the abbreviations "Arg. Turp. Sub." to be stenciled. The said commodity so named, sold, and offered for sale by the respondent, as aforesaid, is not turpentine, but is a substitute therefor.

PAR. 3. The use by the respondent of the name "Argentine turpentine," and the sale by him of said commodity under the name of "Argentine turpentine," as hereinbefore described, had and has the capacity and tendency to mislead and deceive consumers and the public into the belief that said commodity was turpentine and to cause them to buy said commodity in that belief.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in paragraphs 1, 2, and 3 of the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is ordered, That the respondent, Clifford Smith, doing business under the trade name and style of Clifford Smith Company, cease and desist—

1. From using the words "Argentine turpentine" in the sale or offer for sale of a commodity which is not turpentine and which does not originate in the Argentine Republic.

2. From using the word "turpentine" in the sale or offer for sale of a commodity which is not turpentine unless accompanied by the word "substitute" as a part of the trade name or brand by which such commodity is sold, the word "substitute" to be as prominently displayed as the word turpentine.

It is further ordered, That the respondent, within thirty (30) days after the service on 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 and is complying with this order.

FEDERAL TRADE COMMISSION

v.

UNITED STATES HOFFMAN MACHINERY CORPORATION ET AL.

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

Docket 923—February 6, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of 85 per cent of the garment-pressing machines made in the United States; in continuing through the same officers the competitive methods of its predecessor,

(*a*) Caused its employees to keep a check upon salesmen and employees of competitors in order to secure the names of concerns to whom said competitors had sold machines; and

(*b*) For the purpose of inducing purchasers of competitors' machines on the installment plan to violate their contracts and to install and use its own machines in place of said competitors';

(1) Offered to, and did, allow purchasers to apply on the purchase price of its machines such sums as had theretofore been paid by them on such competing machines;

(2) Agreed to, and did, furnish purchasers with the services of attorneys to defend suits brought or anticipated on account of breaches of contract which it induced;

(3) Offered to, and did, furnish legal advice to purchasers as to ways in which their contracts might be rescinded or evaded; and

(4) Offered to, and did, frame for purchasers letters to competitors rescinding their installment contracts;

Held, That such spying on the business of competitors, and such inducing of the breach of contract, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

Acting in the public interest pursuant to the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the United States Hoffman Machinery Corporation, hereinafter referred to as the respondent corporation, B. A. Brennan, William M. Talbott, Eugene D. Stocker, William H. North, James B. Spencer, Michael J. White, L. Frankel, F. M. Kling, A. N. Haas, S. S. Lesser, F. W. Hart, A. Bellinger, hereinafter referred to as the respondent individuals, have been and are using unfair methods of competition

in commerce in violation of the provisions of Section 5 of the said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent corporation is a corporation organized January 19, 1922, under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 105 Fourth Avenue in the City of New York, New York. It was organized for the purpose, among others, of acquiring or taking over by merger, purchase or otherwise as a going concern the business then carried on by the United States Hoffman Machinery Company, a Delaware corporation organized in 1913, from which time, until its merger with the respondent corporation, it was engaged in the business of manufacturing and selling garment-pressing machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, New York, to purchasers thereof in the various States and Territories of the United States and the District of Columbia. At the time its business was taken over by the respondent corporation, as hereinafter described, the said United States Hoffman Machinery Company had a substantial monopoly in the United States in the business of manufacturing and selling garment-pressing machines, the volume of its business being approximately 85 per cent of the total business then done in the United States in the manufacture and sale of such machines. It marketed its machines by means of orders therefor secured by its salesmen, transmitted to its executive offices at Syracuse, New York, and there accepted or rejected. Upon the acceptance of orders the machines were shipped from Syracuse, New York, to purchasers thereof located in the various States and Territories of the United States and the District of Columbia, who paid for the same in cash or by means of promissory notes, agreeing by written contracts with the said United States Hoffman Machinery Company that title and ownership of said machines would remain in the United States Hoffman Machinery Company until the full purchase price represented by the notes would be paid in cash.

PAR. 2. In the period from May 11, 1921, until the business of the said United States Hoffman Machinery Company was taken over by the United States Hoffman Machinery Corporation, as hereinafter described, the following-named respondent individuals held the following respective offices in the said United States Hoffman Machinery Company, viz:

B. A. Brennan, Chairman Board of Directors.
William M. Talbott, Vice Chairman Board of Directors and Treasurer.
Eugene D. Stocker, President.
James B. Spencer, Vice President.

Michael J. White, Assistant Treasurer.
L. Frankel, Assistant Treasurer.
F. M. Kling, Assistant Treasurer.
S. S. Lesser, Assistant Secretary.
A. N. Haas, Assistant Secretary.
William H. North, Comptroller.
A. Bellinger, Assistant Comptroller.
F. W. Hart, Assistant Comptroller.

The said respondent individuals adopted and carried out in behalf of the said United States Hoffman Machinery Company the following methods of competition used by the said company from May 11, 1921, to and until the acquisition of the business of that company by the respondent corporation as hereinafter described, which said methods of competition had, however, been used by the said United States Hoffman Machinery Company for several years prior to May 11, 1921:

(1) Caused the salesmen and other employees of the United States Hoffman Machinery Company to spy upon the salesmen and employees of its competitors for the purpose of securing the names of persons, firms and individuals to whom such competitors had sold either for cash or on installment payment contracts, garment-pressing machines.

(2) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said company, which machines were known by the officers, salesmen and employees of the said company to have been purchased from such competitors, installed and in use in the places of business of such purchasers on installment payment contracts, wrongfully and unlawfully to breach their contracts, with such competitors and to install and use in the place and stead of such machines purchased from the competitors of said company machines purchased from said The United States Hoffman Machinery Company:

(*a*) Offered to allow, and did allow such purchasers under contract with such competitors as part payment of the purchase price of its own machines such sums as had been paid on contracts for the purchase of such competing machines.

(*b*) Agreed to furnish, and did furnish such purchasers under contract with such competitors, the services of attorneys to defend suits brought, or expected to be brought by such competitors for the purchase price of such competing machines.

(*c*) Furnished, and offered to furnish legal advice to such purchasers under contract with such competitors as to ways in which such contracts might be rescinded and/or evaded.

(*d*) Offered to frame, and did frame letters for such purchasers under contract with such competitors, letters to be addressed to such competitors for the purpose of rescinding such installment contracts.

PAR. 3. On or about January 27, 1922, the respondent corporation and the United States Hoffman Machinery Company entered into an agreement by which the United States Hoffman Machinery Company was consolidated and merged into and with the respondent corporation, the corporate existence of the respondent corporation as a single corporation continuing as theretofore, the separate existence of the said United States Hoffman Machinery Company by the said agreement ceasing, and the said respondent corporation by the said agreement acquiring all the rights, privileges, powers and franchises and becoming subject to all the restrictions, disabilities and duties of the said United States Hoffman Machinery Company. On January 25, 1922, the respondent individuals were elected to, and have since held the following offices in respondent corporation, which offices are the same offices held by the said individual respondents respectively in the United States Hoffman Machinery Company:

B. A. Brennan, Chairman Board of Directors.
William M. Talbott, Vice Chairman Board of Directors and Treasurer.
Eugene D. Stocker, President.
James B. Spencer, Vice President.
Michael J. White, Assistant Treasurer.
L. Frankel, Assistant Treasurer.
F. M. Kling, Assistant Treasurer.
S. S. Lesser, Assistant Secretary.
A. N. Haas, Assistant Secretary.
William H. North, Comptroller.
A. Bellinger, Assistant Comptroller.
F. W. Hart, Assistant Comptroller.

PAR. 4. The respondent corporation since the merger, consolidation and acquisition aforesaid, has been engaged in the business of manufacturing and selling garment-pressing machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, New York, to the purchasers thereof in the various States of the United States and the District of Columbia. At the time it commenced business it had, and still has a substantial monopoly in the United States in the business of manufacturing and selling garment-pressing machines, the volume of its business being approximately 85 per cent of the total business done in the manufacture and sale of such machines in the United States. It has at all times since its organization marketed its machines by means of orders therefor secured by its salesmen and transmitted

to its executive offices in the City of New York, and there accepted or rejected. Upon the acceptance of orders, the machines called for by such orders are and have been shipped from Syracuse, New York, to the purchasers thereof located in the various States and Territories of the United States and the District of Columbia who have paid, and who do pay for the same in cash, or by means of promissory notes, agreeing by written contracts with the respondent corporation that the title and ownership of said machines shall remain in respondent corporation until the whole purchase price represented by the notes is paid in full.

PAR. 5. Since the respondent corporation commenced business it has continued to use the methods of competition pursued by the United States Hoffman Machinery Company described in Paragraph 2 hereof, which methods of competition used by respondent corporation were put into operation and have since been continued by the officers of the respondent corporation named in Paragraph 3 hereof, who respectively held similar offices as described in Paragraph 2 hereof in the United States Hoffman Machinery Company, and now and since the merger, consolidation and acquisition, hereinbefore mentioned, the said respondent corporation has used the following methods of competition, to wit:

(1) Causes the salesmen and other employees of the respondent corporation to spy upon the salesmen and employees of its competitors for the purpose of securing the names of persons, firms and individuals to whom such competitors had sold either for cash or on installment payment contracts, garment-pressing machines.

(2) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said respondent corporation, which machines were known by the officers, salesmen and employees of the said respondent corporation to have been purchased from such competitors, installed and in use in the places of business of such purchasers on installment payment contracts, wrongfully and unlawfully to breach their contracts with such competitors and to install and use in the place and stead of such machines purchased from the competitors of said respondent corporation machines purchased from said respondent corporation:

(*a*) Offers to allow, and does allow such purchasers under contract with such competitors as part payment of the purchase price of its own machines such sums as have been paid on contracts for the purchase of such competing machines.

(*b*) Agrees to furnish, and does furnish such purchasers under contract with such competitors, the services of attorneys to defend

suits brought, or expected to be brought by such competitors for the purchase price of such competing machines.

(*c*) Furnishes, and offers to furnish legal advice to such purchasers under contract with such competitors as to ways in which such contracts might be rescinded and/or evaded.

(*d*) Offers to frame, and does frame letters for such purchasers under contract with such competitors, letters to be addressed to such competitors for the purpose of rescinding such installment contracts.

PAR. 6. The above-alleged acts and things done by respondents are all to the prejudice of the public and competitors of the respondent corporation, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, U. S. Hoffman Machinery Corporation, B. A. Brennan, William M. Talbott, Eugene D. Stocker, William H. North, James B. Spencer, Michael J. White, L. Frankel, F. M. Kling, A. N. Haas, S. S. Lesser, F. W. Hart, A. Bellinger, charging them with the use of unfair methods of competition in violation of the provisions of said Act.

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

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent corporation is a corporation organized January 19, 1922, under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 105 Fourth Avenue in the City of New York, New York. It was organized for the purpose, among others, of acquiring or taking over by merger, purchase or otherwise as a going concern the business then carried on by the United States Hoffman Machinery

Company, a Delaware corporation organized in 1913, from which time, until its merger with the respondent corporation, it was engaged in the business of manufacturing and selling garment-pressing machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, New York, to purchasers thereof in the various States and Territories of the United States and the District of Columbia. At the time its business was taken over by the respondent corporation, as hereinafter described, the said United States Hoffman Machinery Company did approximately 85 per cent of the total business then done in the United States in the manufacture and sale of such machines. It marketed its machines by means of orders therefor secured by its salesmen, transmitted to its executive offices at Syracuse, New York, and there accepted or rejected. Upon the acceptance of orders the machines were shipped from Syracuse, New York, to purchasers thereof located in the various States and Territories of the United States and the District of Columbia, who paid for the same in cash or by means of promissory notes, agreeing by written contracts with the said United States Hoffman Machinery Company that title and ownership of said machines would remain in the United States Hoffman Machinery Company until the full purchase price represented by the notes would be paid in cash.

PAR. 2. In the period from May 11, 1921, until the business of the said United States Hoffman Machinery Company was taken over by the United States Hoffman Machinery Corporation, as hereinafter described, the following-named respondent individuals held the following respective offices in the said United States Hoffman Machinery Company, viz:

B. A. Brennan, Chairman Board of Directors.
William M. Talbott, Vice chairman Board of Directors and Treasurer.
Eugene D. Stocker, President.
James B. Spencer, Vice President.
Michael J. White, Assistant Treasurer.
L. Frankel, Assistant Treasurer.
F. M. Kling, Assistant Treasurer.
S. S. Lesser, Assistant Secretary.
A. N. Haas, Assistant Secretary.
William H. North, Comptroller.
A. Bellinger, Assistant Comptroller.
F. W. Hart, Assistant Comptroller.

The said respondent corporation adopted and carried out in behalf of the said United States Hoffman Machinery Company the following methods of competition used by the said company from May 11, 1921, to and until the acquisition of the business of that company

by the respondent corporation as hereinafter described, which said methods of competition had, however, been used by the said United States Hoffman Machinery Company for several years prior to May 11, 1921:

(1) Caused the salesmen and other employees of the United States Hoffman Machinery Company to watch and keep a close check upon the salesmen and employees of its competitors for the purpose of securing the names of persons, firms, and individuals to whom such competitors had sold either for cash or on installment payment contracts, garment-pressing machines.

(2) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said company, which machines were known by the officers, salesmen and employees of the said company to have been purchased from such competitors, installed and in use in the places of business of such purchasers on installment payment contracts, to breach their contracts with such competitors and to install and use in the place and stead of such machines purchased from the competitors of said company machines purchased from said The United States Hoffman Machinery Company:

(*a*) Offered to allow, and did allow certain purchasers under contract with such competitors as part payment of the purchase price of its own machines such sums as had been paid on contracts for the purchase of such competing machines.

(*b*) Agreed to furnish and did furnish certain purchasers under contract with such competitors, the services of attorneys to defend suits brought, or expected to be brought, by such competitors for the purchase price of such competing machines.

(*c*) Furnished, and offered to furnish legal advice to certain purchasers under contract with such competitors as to ways in which such contracts might be rescinded and/or evaded.

(*d*) Offered to frame, and did frame letters for certain purchasers under contract with such competitors, letters to be addressed to such competitors for the purpose of rescinding such installment contracts.

PAR. 3. On or about January 27, 1922, the respondent corporation and the United States Hoffman Machinery Company entered into an agreement by which the United States Hoffman Machinery Company was consolidated and merged into and with the respondent corporation, the corporate existence of the respondent corporation as a single corporation continuing as theretofore, the separate existence of the said United States Hoffman Machinery Company by the said

agreement ceasing, and the said respondent corporation by the said agreement acquiring all the rights, privileges, powers and franchises and becoming subject to all the restrictions, disabilities and duties of the said United States Hoffman Machinery Company. On January 25, 1922, the respondent individuals were elected to, and have since held the following offices in respondent corporation, which offices are the same offices held by the said individual respondents respectively in the United States Hoffman Machinery Company:

B. A. Brennan, Chairman Board of Directors.
William M. Talbott, Vice Chairman Board of Directors and Treasurer.
Eugene D. Stocker, President.
James B. Spencer, Vice President.
Michael J. White, Assistant Treasurer.
L. Frankel, Assistant Treasurer.
F. M. Kling, Assistant Treasurer.
S. S. Lesser, Assistant Secretary.
A. N. Haas, Assistant Secretary.
William H. North, Comptroller.
A. Bellinger, Assistant Comptroller.
F. W. Hart, Assistant Comptroller.

Since June 25, 1922, respondent William M. Talbott has severed his connection with the respondent corporation and a partial reorganization has taken place, so that the Board of Directors as of August 17, 1922, is as follows:

DIRECTORS.

B. A. Brennan, Chairman Board of Directors.
Henry W. Williams, Secretary and General Counsel.
Eugene D. Stocker, President.
Richard D. Morris, of F. B. Keech & Co., New York City.
John F. B. Mitchell, of Redmond & Co., New York City.
Charles H. Hampton, of Hanover National Bank, New York City.

PAR. 4. The respondent corporation since the merger, consolidation and acquisition, aforesaid, has been engaged in the business of manufacturing and selling garment-pressing machines throughout the United States, shipping such machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, New York, to the purchasers thereof in the various States of the United States and the District of Columbia. At the time it commenced business it did, and still does approximately 85 per cent of the total business done in the manufacture and sale of such machines in the United States. It has at all times since its organization marketed its machines by means of orders therefor secured by its salesmen and transmitted to its executive offices in the City of New

York, and there accepted or rejected. Upon the acceptance of orders, the machines called for by such orders are and have been shipped from Syracuse, New York, to the purchasers thereof located in the various States and Territories of the United States and the District of Columbia who have paid, and who do pay for the same in cash, or by means of promissory notes, agreeing by written contracts with the respondent corporation that the title and ownership of said machines shall remain in respondent corporation until the whole purchase price represented by the notes is paid in full.

PAR. 5. Since the respondent corporation commenced business it has continued to use the methods of competition pursued by the United States Hoffman Machinery Company described in Paragraph 2 hereof, which methods of competition used by respondent corporation were put into operation and have since been continued by the officers of the respondent corporation named in Paragraph 3 hereof, who respectively held similar offices as described in Paragraph 2 hereof in the United States Hoffman Machinery Company, and now and since the merger, consolidation and acquisition, hereinbefore mentioned, the said respondent corporation has used the following methods of competition, to wit:

(1) Causes the salesmen and other employees of the respondent corporation to watch and keep a close check upon the salesmen and employees of its competitors for the purpose of securing the names of persons, firms and individuals to whom such competitors had sold either for cash or on installment payment contracts, garment-pressing machines.

(2) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said respondent corporation, which machines were known by the officers, salesmen, and employees of the said respondent corporation to have been purchased from such competitors, installed and in use in the places of business of such purchasers on installment payment contracts, to breach their contracts with such competitors and to install and use in the place and stead of such machines purchased from the competitors of said respondent corporation machines purchased from said respondent corporation:

(*a*) Offered to allow, and did allow certain purchasers under contract with such competitors as part payment of the purchase price of its own machines such sums as had been paid on contracts for the purchase of such competing machines.

(*b*) Agreed to furnish, and did furnish certain purchasers under contract with such competitors, the services of attorneys to defend

suits brought, or expected to be brought by such competitors for the purchase price of such competing machines.

(*c*) Furnished, and offered to furnish legal advice to certain purchasers under contract with such competitors as to ways in which such contracts might be rescinded and / or evaded.

(*d*) Offered to frame, and did frame letters for certain purchasers under contract with such competitors, letters to be addressed to such competitors for the purpose of rescinding such installment contracts.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

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

Now, therefore, it is ordered, That the respondent corporation, United States Hoffman Machinery Corporation, its agents and employees, and the respondent individuals, B. A. Brennan, William M. Talbott, Eugene D. Stocker, Wm. H. North, James B. Spencer, Michael J. White, L. Frankel, F. M. Kling, A. N. Haas, S. S. Lesser, F. W. Hart and A. Bellinger, their agents and employees, cease and desist from directly or indirectly:

1. Employing or using any system of espionage whereby salesmen or other employees of respondent corporation obtain or seek to obtain the names of persons, firms, or corporations to whom competitors have sold, either for cash or on installment contracts, garment-pressing machines.

2. Inducing, or attempting to induce purchasers of garment-pressing machines of competitors to breach their contracts with such com-

petitors and to install and use machines purchased from said respondent corporation, by any of the following means:

(*a*) Allowing or offering to allow such purchasers as part payment of the purchase price of its own machines, such sums as have been paid on contracts for the purchase of such competing machines.

(*b*) Framing, or offering to frame for such purchasers letters to be addressed to such competitors for the purpose of rescinding such contracts.

(*c*) Furnishing, offering to furnish, or agreeing to furnish legal advice to such purchasers as to ways in which such contracts may be evaded or rescinded.

(*d*) Furnishing, offering to furnish, or agreeing to furnish such purchasers the services of attorneys to defend suits brought by such competitors for the purchase price of such competing machines.

(*e*) Giving or offering to give to such purchasers special terms of payment, or other considerations, as an inducement to secure a breach of such contracts with competitors.

And it is further ordered, That the respondent corporation, United States Hoffman Machinery Corporation, shall file with the Federal Trade Commission within thirty (30) days from the date of the service of this order its report in writing setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

THE CHAMBER OF COMMERCE OF MISSOULA, MONTANA, ITS OFFICERS, DIRECTORS, AND MEMBERS, AND THE NORTHWEST THEATRES COMPANY.

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

Docket 841—February 7, 1923.

SYLLABUS.

Where a local chamber of commerce, which included in its membership concerns engaged, both within and without the State, in competition with mail order houses; for the purpose and with the effect of depriving said mail order houses of the use and benefit of the catalogues through which they sold their merchandise and of thereby obstructing and preventing them from selling goods in the territory involved, and with a capacity and tendency thereby to obstruct, hinder, lessen and prevent competition in interstate commerce;

(*a*) Combined and conspired with an amusement company to remove such catalogues from the custody of the customers or prospective customers in said territory of said mail order houses, by having a local moving picture house accept from children, in lieu of price of admission, such catalogues, and by offering and giving prizes for the newest catalogue, oldest catalogue, and most used catalogue;

(*b*) By such means secured, destroyed and caused to be destroyed a large number of such catalogues:

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

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Chamber of Commerce of Missoula, Montana, its officers, directors and members, and The Northwest Theatres Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be in the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, the Chamber of Commerce of Missoula, Montana, hereinafter referred to as the Chamber of Com-

merce, is a voluntary unincorporated Association, composed of persons, partnerships and corporations engaged in or carrying on business, or engaged in the various industrial and professional pursuits, in the City of Missoula, Montana, and territory adjacent thereto; that more than a majority of such members have been and are engaged in the business of selling goods, wares and merchandise at retail or wholesale in said city and the territory tributary thereto, and such members carry on their respective businesses in direct, active competition with other persons, partnerships and corporations who carry on said business outside of the City of Missoula and State of Montana, and sell goods, wares and merchandise to customers in said State of Montana. That the announced purpose, or object of said Chamber of Commerce is and has been to foster and promote the commercial welfare of said City, the territory tributary thereto, and its members.

PAR. 2. That the following members are representative of members of the Chamber of Commerce described in paragraph 1 hereof, and are the duly selected, qualified and acting officers and directors of said Chamber of Commerce for the year 1921, viz:

George F. Weisel	J. E. Early	Alex. Peterson
W. O. Dickinson	Chas. H. Roberts	Harry O. Bell
Ruel Cosner	J. M. Keith	E. S. Holmes
L. N. Simons	W. E. Dixon	L. J. Croonenberg
H. A. Chaney.		

That the members of said Chamber of Commerce aggregate approximately seven hundred and fifty (750) in number, and constitute a class so numerous as to make it impracticable to designate each of them as a party respondent herein; that the charges herein set out are of common or general interest to the whole of said membership, and especially to those engaged in the sale of goods, wares and merchandise, which class constitutes more than a majority of said members, and the officers and directors of said Chamber of Commerce above named are fairly representative of the whole of said membership, and are charged with the duty of formulating and executing its policies and carrying out any line of activity engaged in by said Chamber of Commerce.

PAR. 3. That the respondent, The Northwest Theatres Company, hereinafter referred to as the Theater Company, is a corporation organized under the laws of the State of Montana, with its principal place of business at Missoula, in said State, and is engaged in the business of operating motion picture theaters at Missoula and at other points. That the said Theater Company and its manager is

and has been a member of the Chamber of Commerce described in paragraph 1 hereof.

PAR 4. That on or about January 1, 1919, the respondents herein conspired and confederated together to hinder or prevent persons, partnerships and corporations carrying on business other than in the State of Montana, from selling upon mail orders goods, wares and merchandise to customers or prospective customers residing in Missoula, Montana, or adjacent thereto; that pursuant to said conspiracy, and to carry out the object thereof, respondents advertised in newspapers of general circulation, published in Missoula, Montana, and announced by other means, that thereafter, on the date or dates named, a catalogue published and distributed by merchants carrying on business in States other than Montana, and soliciting business on mail orders at points in Montana, would be accepted at a theater operated by the Theater Company, when presented by persons under fifteen years of age with one cent to pay the federal tax, in lieu of the usual price of admission, and that certain cash prizes would be awarded to those presenting the oldest catalogues, most used, and the newest and latest catalogues, and as a result thereof there was presented at said theater, and accepted in lieu of the usual admission fee, several hundred catalogues published and distributed by persons, partnerships and corporations carrying on business in States other than the State of Montana, which catalogues had been sent by the respective publishers thereof to their customers or prospective customers residing in or adjacent to Missoula, Montana, as a means of soliciting their patronage; that respondents caused to be destroyed, by burning or by other means, the catalogues obtained in the manner and by the means aforesaid; that such catalogues have been collected and destroyed by respondents pursuant to said conspiracy, at intervals of about one year, beginning in January, 1919.

PAR. 5. That the business of the interstate sale of commodities upon mail orders from catalogues, has been of rapid growth in recent years, and the volume of such sales has reached such proportions that a substantial part of the commerce among the several States is the result of sales of commodities made in this manner; that the principal means of effecting such sales is the distribution of catalogues in which the commodities offered for sale are described; that the practices of the respondents in the collection and destruction of catalogues as set out in paragraph 4 hereof has had the effect of unduly hindering merchants who carry on business outside the State of Montana, and are engaged in the sale of commodities upon mail orders to customers in Montana, from competing in the sale of such commodities with those of the merchants who are engaged in the

business of selling like commodities, at Missoula, Montana, and in the territory tributary thereto, and such practices have unreasonably and wrongfully burdened commerce among the States.

PAR. 6. By reason of the facts set forth in the foregoing paragraphs of this complaint, the respondents, and each and all of them are and have been using unfair methods of competition in commerce, within the intent and meaning of the aforesaid Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, The Chamber of Commerce of Missoula, Montana, a voluntary, unincorporated association, its officers, directors and members, and upon The Northwest Theatres Company, a corporation, charging them with unfair methods of competition in commerce, in violation of the provisions of said Act.

Respondents having entered their appearance by their attorneys and having filed their answers therein, hearings were had before an Examiner of the Federal Trade Commission and a Commissioner of said Commission, theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answers of respondents, which evidence was duly certified, duly recorded and duly forwarded to the Commission; and the Commission having carefully examined and fully considered the testimony and documentary evidence offered and received as hereinabove set forth, hereby makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, The Chamber of Commerce of Missoula, Montana, is a voluntary, unincorporated association composed of persons, partnerships and corporations engaged in carrying on business, or engaged in the various industrial and professional pursuits in the City of Missoula, Montana, and the territory adjacent thereto.

(*a*) Many of said members are engaged in the business of selling goods, wares and merchandise either at wholesale or at retail or both, in the City and County of Missoula, Montana and the territory tributary thereto, the majority being retailers, and some being wholesalers.

(*b*) Said respondent Chamber of Commerce is a commercial organization, in which the members are business and professional men, and the purpose of which is doing everything possible for the betterment of general conditions in the City of Missoula and surrounding territory; and the promotion of the commercial welfare of the City and territory adjacent thereto.

(*c*) The directors of said respondent Chamber of Commerce for the year 1919 included George A. Rice, editor of Daily Missoulan; H. O. Bell, Ford representative; Ruell Cosner, hardware; A. N. Whitlock, attorney; W. M. Dixon, shoes; Alex Peterson, druggist; F. A. Schlick, real estate and insurance; R. M. Barr, Great Western Sugar Company; Tom Edwards, occupation not known by witness; John R. Daily, meat dealer; J. P. Lansing, Polley's Lumber Company.

(*d*) The officers of said respondent, Chamber of Commerce in 1919 were George A. Rice, president; Tom Edwards, vice-president; R. C. Giddings, treasurer; and D. D. Richards, Secretary.

(*e*) The Board of Directors of respondent, Chamber of Commerce, for the year 1920 were Newell Gough, cashier, Western Montana National Bank; William L. Murphy, attorney; E. S. Holmes, meat dealer; John R. Daily, meat dealer; J. M. Keith, president Missoula Trust & Savings Bank; Ruell Cosner; F. A. Schlick, real estate and insurance; L. N. Simons, paints, groceries and hardware; H. O. Bell, Ford representative; W. M. Dixon, shoes; L. J. Croonenberg, garageman; W. O. Dickinson, music store; Alex Peterson, druggist.

(*f*) The officers of said respondent, Chamber of Commerce for the year 1920 were H. O. Bell, president; F. A. Schlick, first vice-president; E. S. Holmes, second vice-president; Newell Gough, treasurer; subsequent to the meeting in January, 1920, when the officers and directors were elected, Charles H. Roberts was elected secretary and manager of said respondent Chamber of Commerce.

(*g*) The directors of said respondent, Chamber of Commerce for the year 1921 were George F. Weisel, W. O. Dickinson, Ruell Cosner, L. N. Simons, H. A. Chaney, J. E. Early, J. M. Keith, W. E. Dixon, Alex Peterson, Harry O. Bell, E. S. Holmes and L. J. Croonenberg. Charles H. Roberts was secretary.

(*h*) Representative members of respondent, Chamber of Commerce engaged in the selling of clothing, dry goods, shoes, stockings and the like commodities were as follows:

Missoula Mercantile Company.	Matt Lucy.
D. J. Donohue Company.	Fred W. Hartkorn.
Abbon Lucy.	H. W. Weston.
John J. Lucy.	Alfred Sterner.

Barney's Fashion Shop
Dixon & Hoon
L. N. Simons

(*i*) From July 27, 1916 to April 1, 1920, except from May 13, 1918 to December 1, 1918, Dudley D. Richards of Missoula, Montana, was secretary of respondent, Chamber of Commerce and subsequent to April 1, 1920, up to and including the time of said hearing, Charles H. Roberts, of Missoula, Montana, was secretary of said respondent, Chamber of Commerce. Both said Richards and said Roberts while holding said position of secretary of said respondent, Chamber of Commerce, were salaried officers of said respondent, and as such, authorized to represent said respondent in its activities, having discretion as to the initiation of activities not requiring any great amount of money.

PAR. 2. Respondent, Northwest Theatres Company, is a corporation organized under and existing by virtue of the laws of the State of Montana, whose principal place of business is Missoula, Montana, where it owns, controls and operates several motion picture theatres, including the Wilma, the Liberty and Empress theaters. Said respondent, Northwest Theatres Company, operated the Isis Theater, a motion picture theater in Missoula, Montana, from March 1920 until about May 1, 1921, soon after which said theater was dismantled.

(*a*) That the Missoula Amusement Company, a corporation, is a fifty per cent stockholder in the said respondent Northwest Theatres Company and that the said Amusement Company controlled and operated the said Isis Theater in Missoula, Montana, during the whole of the year 1919 and during the year 1920 up to or about March 1, 1920, at which time it ceased to operate and control the said Isis Theater and became a stockholder in the respondent Northwest Theatres Company; that on or about said March 1, 1920, the Northwest Theatres Company acquired and exercised control over and operated the said Isis Theater as aforesaid.

(*b*) About January 1, 1919, Henry Turner of Missoula, Montana, became manager for the Missoula Amusement Company, which had then a lease upon said Isis Theater and in that way at that time controlled and operated said Isis Theater until about March 1920, when it fell under the control of the respondent, Northwest Theatres Company, successor to said Missoula Amusement Company. Said Turner became manager of respondent, Northwest Theatres Company about that time and as such manager continued to control and operate said Isis Theater throughout the year 1920.

PAR. 3. The National Cloak & Suit Company, domiciled in New York, New York, with a branch house in Kansas City, Missouri, is a mercantile establishment engaged in business in all the States of the United States of America, in the sale of wearing apparel, dry goods and many other articles of merchandise, by means of catalogs circulated among customers and prospective customers, and by means of correspondence with customers and prospective customers through the mails. Said National Cloak & Suit Company is known as a mail order house or catalog house. It has been in business for about 34 years.

(*a*) Said National Cloak & Suit Company in the course of its business in the year 1919 circulated in the United States of America, about 11 millions of copies of printed catalogs and booklets, describing its goods to customers and prospective customers, and giving the prices of such goods at a cost to it of about $3,155,479. Said National Cloak & Suit Company distributed in the year 1919 in the State of Montana, about 196,000 such catalogs at a cost of about $48,500, and did business that year with about 53,000 customers in the State of Montana, whose business aggregated $675,000. About $11,500 of said business done in said State of Montana was done in Missoula County, Montana, and about $5,400 of said business was done in the City of Missoula, Montana. Within a radius of 50 miles of Missoula, Montana, said National Cloak & Suit Company had about 3,200 customers in 1919.

(*b*) Many other mail order or catalog houses engaged in interstate commerce by methods similar to said National Cloak & Suit Company's circulated in the years 1919 and 1920 and still circulate their catalogs in the State of Montana and in and about the City of Missoula, Montana, among such mail order or catalog houses being, Sears, Roebuck & Company and Montgomery Ward & Company of Chicago.

(*c*) In the course of its said business said National Cloak & Suit Company through the mail, places its catalogs of merchandise in the hands of its customers and prospective customers in the various states of the United States. Said customers note descriptions, prices, etc., of goods therein listed and described, and also the catalog numbers of said goods and after having done so, send to said National Cloak & Suit Company through the mails, orders in writing for the purchase of said goods. When said orders are received by said National Cloak & Suit Company, the goods ordered are packed and shipped from the New York or the Kansas City warehouses of said company, in and through the several states of the United States,

to the customers in Montana and elsewhere so ordering said goods and the sale and delivery of said goods are thus completed. Access to a catalog of said National Cloak & Suit Company is necessary in order that customers may send said company orders for its goods and so that it may make sales thereof.

(*d*) In the sale of said merchandise by means of catalogs, as hereinabove described, said National Cloak & Suit Company and other mail order houses located outside of the State of Montana and engaged in interstate commerce in Montana, are in direct competition in interstate commerce with several members of respondent, Chamber of Commerce. That some representative members of the respondent, the said Chamber of Commerce of Missoula, Montana, were, at all the times mentioned herein and now are doing business outside of the State of Montana, as well as within the State of Montana, in competition in interstate commerce with the said mail order catalog houses; that among these members were the Missoula Mercantile Company, The Smith Drug Store and D. J. Donohue Company.

PAR. 4. In the month of January 1919 and prior to January 23, 1919, Dudley D. Richards of Missoula, Montana, then secretary of respondent, Chamber of Commerce, as such secretary, acting for and on behalf of said respondent, Chamber of Commerce, conspired with said Henry Turner of Missoula, Montana, the manager of the Missoula Amusement Company, predecessor of respondent, Northwest Theatres Company, acting as such manager for and on behalf of said Missoula Amusement Company to remove from the residences or the custody of customers and prospective customers of said mail order houses in the City of Missoula, Montana and the adjacent territory, the catalogs of said mail order houses and thus to obstruct, hinder and prevent said mail order houses from engaging in commerce in said City of Missoula, Montana and in the territory adjacent thereto. Said conspiracy so entered into between said Dudley D. Richards and said Henry Turner was subsequently approved by respondent, Chamber of Commerce through the directors thereof. Subsequently, to-wit, upon dates including January 23, 24 and 25, 1919, said Dudley D. Richards and said Henry Turner, acting respectively for and on behalf of respondent, Chamber of Commerce, and of the Missoula Amusement Company, caused to be brought to said Isis Theater, a motion picture theater in Missoula, Montana, then controlled and operated by said Missoula Amusement Company, three to four hundred of said catalogs of mail order houses, including catalogs of said National Cloak & Suit Company and other

mail order houses located outside the State of Montana, from various residences in the City of Missoula, Montana, and in the territory adjacent thereto and said catalogs were there collected and received and thereafter destroyed, thus depriving said National Cloak & Suit Company and many other mail order houses of the use and benefit of said catalogs in the sale of their goods, wares and merchandise and thus obstructing, lessening, hindering and preventing mail order houses from selling their goods in interstate commerce in the City of Missoula and the territory adjacent thereto. The details of said conspiracy are in substance as follows:

(*a*) In January 1919 and prior to January 23, 1919, said Dudley D. Richards, then secretary of respondent, Chamber of Commerce, approached said Henry Turner, then manager of Missoula Amusement Company, which then controlled and operated said Isis Theater and said Richards proposed and suggested to said Turner that when the next "serial" picture was to appear in said Isis Theater said Turner would admit children to the theater upon the presentation at the door of the theater of a mail order catalog in lieu of admittance fee, the object being to eliminate mail order house catalogs from the city of Missoula and the territory adjacent thereto, and to prevent mail order houses which issued these catalogs from competing with local merchants or members of respondent, Chamber of Commerce. Said Richards urged upon said Turner that this plan of procedure would also be a means of securing publicity for said Isis Theater and also for said Chamber of Commerce.

(*b*) Said Turner at once accepted the suggestion of said Richards for the acceptance of mail order house catalogs from children in lieu of cash admittance fees, and named the "serial" "Eddie Polo, The Circus King" to be exhibited first at said Isis Theater, January 25, 1919, as the occasion for putting the plan into execution.

(*c*) After said Turner had agreed to said proposition of said Richards as to accepting mail order house catalogs from children in lieu of cash admittance fees, said Richards submitted said proposition, said plan and said agreement with said Turner, through its Board of Directors to respondent, Chamber of Commerce and said Chamber of Commerce, through its Board of Directors, approved and adopted said plan thus agreed to between said Richards and said Turner.

(*d*) Subsequently, upon dates including January 23, and 24, 1919, said respondent, Chamber of Commerce, through said Richards, as its secretary, and said Missoula Amusement Company, through its manager, said Turner, caused reading matter and advertising matter to be printed and published in daily papers of general circulation in

the City of Missoula, Montana and the territory adjacent thereto, to wit, in the Missoula Sentinel and in the Daily Missoulan, soliciting the children residing in said City of Missoula and territory adjacent thereto, to procure and collect mail order house catalogs and bring them to said Isis Theater upon a certain day and secure therefor, in lieu of cash admittance fees, admittance to the Isis Theater to see "Eddie Polo, The Circus King," a serial then beginning. In some of these notices children were asked to bring one cent in order to pay the amusement tax. In connection with said announcements and said advertisements a cash prize of $3 was offered to the child who brought the oldest and most thumbed mail order house catalog.

(*e*) In answer to said announcements and said advertisements so caused to be printed by said respondent, Chamber of Commerce and by said Missoula Amusement Company through said Richards and said Turner, as secretary and as manager respectively, children residing in Missoula, Montana and the territory adjacent thereto brought to said Isis Theater on or about January 25, 1919, mail order house catalogs numbering 300 to 400 and said catalogs were received by said Turner in lieu of admittance fees, were turned over to said respondent, Chamber of Commerce and by it destroyed, and said Chamber of Commerce caused to be paid to a child, Pearl Somers, a cash prize of $3 for presenting the oldest and most thumbed catalog.

PAR. 5. Henry Turner, the manager of respondent, Northwest Theatres Company of Missoula, Montana, which then controlled and operated said Isis Theater of Missoula, Montana, acting as such manager for and on behalf of said Theatres Company, conspired with Charles H. Roberts, then secretary of respondent, Chamber of Commerce, acting as such secretary for said respondent, Chamber of Commerce, in September, 1920, prior to September 14, 1920, to remove from the residences or the custody of customers or prospective customers of said mail-order houses, residing in the City of Missoula, Montana and in the territory adjacent thereto, the catalogs of said mail order houses and thus hinder, obstruct and prevent said mail order houses from selling their goods in the City of Missoula, Montana and the territory adjacent thereto. Said conspiracy so entered into between said Henry Turner and said Charles H. Roberts was subsequently approved by respondent, Chamber of Commerce, through the directors thereof, September 14 and 21, 1920. Subsequently, to wit, upon dates including September 17, 18, and 19, 1920, said Turner, manager of said Northwest Theatres Company, acting for and on behalf of respondents, Northwest Theatres Company and with the sanction and consent and the aid of respondent, Chamber

of Commerce of Missoula, and its secretary, said Roberts, acting as secretary for and on behalf of said respondent, Chamber of Commerce, caused to be brought to said Isis Theater in Missoula, Montana, about 262 catalogs of mail order houses, including catalogs of said National Cloak & Suit Company, from various residences in the City of Missoula, Montana, and the territory adjacent thereto, and there collected and received and thereafter destroyed said catalogs, thus depriving said National Cloak & Suit Company and other mail order houses of the use and benefit of such catalogs in the sale of their goods, wares and merchandise and thus obstructing, hindering, lessening and preventing the sale of goods, wares and merchandise by said mail order houses in interstate commerce. The details of said conspiracy are in substance as follows:

(*a*) Sometime in September 1920, prior to September 14, said Turner, then manager of respondent, Northwest Theatres Company, acting as such manager for and on behalf of said respondent, Northwest Theatres Company, which company controlled and operated said Isis Theater in Missoula, Montana, called upon Charles H. Roberts, then secretary of respondent, Chamber of Commerce, and asked the cooperation of said respondent, Chamber of Commerce, in a second mail order catalog day, mentioning at that time that there had been a previous mail order catalog day in Missoula and stating its purpose and its results. Said Roberts thereafter, as secretary of respondent, Chamber of Commerce, submitted said Turner's proposition to said respondent, Chamber of Commerce, through its board of directors, at a regular meeting of said board on or about September 14, 1920 and said board of directors, for and on behalf of said respondent, Chamber of Commerce, accepted and adopted said Turner's proposition for a second mail order catalog day and authorized said Turner to use the name of said respondent, Chamber of Commerce, in arranging for and having a second mail order house catalog day at said Isis Theater, then under the control and operation of said Turner as manager of said respondent, Northwest Theatres Company, the object, aim and purpose of said second mail order house catalog day, so far as respondent, Chamber of Commerce, was concerned, being the collection from residences in the City of Missoula, Montana, and the territory adjacent thereto, of mail order house catalogs and their subsequent destruction so as to hinder and prevent mail order houses issuing and circulating said catalogs from selling their goods, wares and merchandise to customers and prospective customers residing in and about Missoula, Montana, and thus prevent, their competing with the members of

respondent, Chamber of Commerce, in said territory. Subsequently, on or about September 21, 1920, said action of respondent, Chamber of Commerce, was approved by said board by approving the minutes setting forth such action.

(*b*) Subsequently and upon several dates, including September 17, 18, 19 and 25, 1920, in carrying out said conspiracy, said respondent, Chamber of Commerce and said Northwest Theatres Company, through said Turner, caused to be inserted in daily papers of general circulation in Missoula, Montana, and the territory adjacent thereto, to-wit, the Missoula Sentinel and the Daily Missoulan, notices and advertisements soliciting and importuning children residing in Missoula, Montana, and the territory adjacent thereto to secure and collect mail order house catalogs and offer them at the door of said Isis Theater in lieu of cash admittance fees between 11 o'clock A. M. and 6 o'clock P. M. on September 18 and between 4 o'clock P. M. and 11 o'clock P. M. on September 25, 1920, where the "serial," "The Vanishing Dagger" by Eddie Polo was to be exhibited. In addition to the catalog presented each child was to bring one penny to pay war tax. In addition to the inducement of admittance to the motion picture exhibition, said Turner in said notices, offered two cash prizes of $3 and $2 respectively, to the child bringing to the theater the "newest and latest and the next newest" mail order house catalogs.

(*c*) In answer to said notices and advertisements so caused to be printed and circulated by said respondent, Chamber of Commerce and said Northwest Theatres Company through said Turner, children residing in Missoula, Montana, and the territory adjacent thereto collected and brought to said Isis Theater on or about September 18, 1920, and September 25, 1920, mail order house catalogs numbering about 262, and said Turner caused said catalogs to be received at the doors of said Isis Theater in lieu of cash admittance fees. Subsequently said Turner caused said catalogs to be destroyed, said mail order houses issuing said catalogs being thus deprived by respondents of the use and benefit of said catalogs in the transaction of their business and having been harassed and interfered with in the sale of their goods, wares, and merchandise in interstate commerce.

PAR. 6. That customers of and former purchasers from the said mail order catalog houses were, by reason of the aforesaid destruction of said mail order house catalogs, unable for a time to carry out their purposes and intentions to purchase from the said mail order catalog houses and were hindered and delayed in making purchases from said houses.

PAR. 7. Commercial concerns known as mail order or catalog houses, do a large merchandising business in the United States, having business houses or branches in many States and serving customers throughout all the States of the United States. Catalogs and circulars are the means by which mail order houses make their sales. Destruction of such catalogs eliminates the means of merchandising of such mail order catalog houses until such catalogs have been replaced. Collection and destruction of mail order house catalogs has had, and has, a capacity and tendency to obstruct, hinder, lessen, and prevent competition in interstate commerce.

CONCLUSION.

The practices and activities of respondent herein, under the conditions and in the circumstances set forth in the foregoing report upon the facts, are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the testimony and documentary evidence offered and received, and the arguments of counsel for the respective parties hereto, and the Commission having made its findings 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," therefore

It is now ordered, That respondents, The Chamber of Commerce of Missoula, a voluntary organization, its members, officers, directors, agents, servants and employees and respondent, Northwest Theatres Company, a corporation organized under and existing by virtue of the laws of the State of Montana, its officers, directors, agents, servants and employees, do cease and desist.

PARAGRAPH 1. From inducing persons in possession of the catalog or catalogs of mail order houses, to divert said catalogs from their former and customary use by such persons for the purpose of purchasing goods from said mail order houses, and to use them as an exchange for admission to a moving picture theater for the purpose of eliminating or hindering competition between such mail order houses and local merchants.

PAR. 2. From collecting, securing or procuring or from causing to be collected, secured or procured from residents in the City of Missoula, Montana, or the territory adjacent thereto, any catalog or circular of any mail order or catalog house located outside the State of Montana and doing business in said State, for the purpose of depriving such mail order or catalog house or its customers or prospective customers of the use and benefit of such catalogs in the sale and purchase of merchandise in interstate commerce.

PAR. 3. From destroying or causing to be destroyed, such catalog or catalogs of such mail order or catalog houses secured or procured from any customer or prospective customer of such mail order house in the City of Missoula, Montana, or in the territory adjacent thereto, for the purpose of depriving such mail order or catalog house or its customers or prospective customers of the use and benefit of such catalogs in the sale and purchase of merchandise in interstate commerce.

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

FEDERAL TRADE COMMISSION

v.

THE MUSIC PUBLISHERS' ASSOCIATION OF THE UNITED STATES ET AL.

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

Docket 400—February 8, 1923.

SYLLABUS.

Where an association of music publishers, an association of retail dealers in sheet music which included in its membership most of the members of the former association, and their officers, directors, and members, in the accomplishment of a conspiracy entered into for the purpose of fixing and maintaining resale prices, jointly and severally.

(*a*) Held their annual meetings during the same week in the same city, usually on alternate days, the members and committees of each association respectively participating in the proceedings of the other, and conferring with one another or with other individuals and concerns similarly engaged relative to the object of said conspiracy;

(*b*) Passed resolutions recommending action by the other association and its members, calculated and intended to result in increased prices to the public and to the music profession;

(*c*) Ratified, approved and carried out the resolutions so recommended;

(*d*) Met, agreed upon, and put into effect, policies of uniform increases in prices, schedules and rates of certain classes of competitive musical publications;

(*e*) Prepared and distributed among dealers generally circulars, pamphlets, and other papers calculated to induce nonmember dealers to conform to the enhanced or increased prices sought to be enforced, and thereby and by letters and other communications, and by personal solicitation, endeavored to and did induce such dealers to conform to such prices;

With the result that price competition in the sale of musical publications was largely eliminated and prices to the public and the music profession were greatly enhanced:

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

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that The Music Publishers' Association of the United States, National Association of Sheet Music Dealers, Thomas F. Delaney, individually and as president, E. Grant Ege, individually and as vice president, J. M. Priaulx, individually and as secretary and treasurer of the National Association of Sheet Music Dealers, and Walter Fischer, J. Elmer Har-

vey, Charles W. Homeyer, William J. Kearney, Edward P. Little, Holmes T. Maddox, L. W. Miller, Harold Orth, Gustav Schirmer, S. Ernest Philpitt, Paul A. Schmitt, Clayton F. Summy, Charles H. Willis, W. H. Witt, Harvey J. Wood, individually and as directors of the National Association of Sheet Music Dealers, and all the members of said association, hereinafter referred to as respondents, have been for more than three years last past, using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues its complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That The Music Publishers' Association of the United States is a membership corporation organized under the laws of the State of New York about the year 1907 and is composed of 41 members, more or less, being publishers of music and engaged in the business of publishing music in the various States of the United States and selling both at wholesale and retail and transporting the same in and among the various States and the District of Columbia; that respondent National Association of Sheet Music Dealers is an unincorporated association organized about the year 1914, having 100 members, more or less, who are and have been engaged in the business of dealing in and selling musical publications at retail in and among the several States of the United States and the District of Columbia; that Thomas P. Delaney, Chicago, Illinois, is the president of the National Association of Sheet Music Dealers and is interested and engaged in the business of publishing music and is also interested in and engaged in the business of selling music at retail, that E. Grant Ege is vice president of the National Association of Sheet Music Dealers and is engaged in the business of selling musical publications at retail, that J. M. Priaulx is secretary and treasurer of the National Association of Sheet Music Dealers and is connected with the firm of Charles H. Ditson & Company, publishers of and dealers in music; that Walter Fischer, J. Elmer Harvey, Charles W. Homeyer, William J. Kearney, Edward P. Little, Holmes T. Maddox, L. W. Miller, Harold Orth, Gustav Schirmer, S. Ernest Philpitt, Paul A. Schmitt, Clayton F. Summy, Charles H. Willis, W. H. Witt, Harvey J. Wood, and ex-officio, the officers above named of said National Association of Sheet Music Dealers, are directors and members of the said association.

PAR. 2. That for many years it has been the custom for publishers of music to print a price on the title page, which price as printed on the title page of the music was many years ago the price at which the music was sold to the public generally by publishers and retail dealers; that in the course of time as the result of competition it became a general custom to sell such music at 50% or one-half of the price printed on the title page of the sheet. Many dealers and publishers sold music to the public at less than 50% of the price printed on the title page, and dealers and publishers sold music to schools, convents, colleges and music teachers at discounts much in excess of 50%.

PAR. 3. That with the intent, purpose and effect of stifling competition in interstate commerce in the business of selling musical publications in, and throughout the United States and the District of Columbia to the public generally and to schools, convents, colleges and the faculties thereof, and to music teachers, the respondent National Association of Sheet Music Dealers and the members thereof and each of them did conspire together and with the respondent The Music Publishers' Association of the United States and with publishers of musical publications to fix and maintain specific standard resale prices of musical publications in the various States of the United States and in the District of Columbia by the members of the National Association of Sheet Music Dealers and other dealers and publishers selling musical publications to the public, and that as a result of said conspiracy and the acts of the respondents the prices of musical publications to the public and to the music profession have been enhanced generally throughout the United States.

PAR. 4. That for the purpose and with the intent and effect mentioned in paragraph 3 of this complaint the respondents, The Music Publishers' Association of the United States and the National Association of Sheet Music Dealers, for more than three years last past have held, and do hold, annual meetings during the same week and in the same city, that such meetings of said associations are usually held on alternate days, that the meetings of each association are attended by members of the other association who take part in such meetings; that committees representing one association confer with committees representing the other association and with others, persons, firms, corporations or associations interested in or engaged in publishing or dealing in musical publications in connection with and in relation to the matters herein alleged; that most of the members of The Music Publishers' Association of the United States are also members of the National Association of Sheet Music Dealers; that resolutions calculated or intended to result in increased prices to the

public and to the music profession have been and are passed by one of said associations and at times by its members or by part of them acting together, recommending action by the other association and its members, and that such resolutions have been, and are, ratified and approved by such other association or by its members, or some of them, and agreed to and carried out by its members or a part of them.

PAR. 5. That in connection with the general conspiracy and plans above alleged, and for the purpose of supplementing and making more effective the work of the associations of increasing and enhancing the price which the public and the musical profession should be required to pay for musical publications, certain members of said associations, while gathered together at times during the periods fixed for the holding of the meetings of said Associations met and agreed together upon policies of increase of price and upon uniform rates and schedules of prices of certain classes of competitive musical publications and that pursuant to and as a result of such agreements and understandings the rates and the prices of such musical publications were so increased and advanced.

PAR. 6. That pursuant to the general conspiracy, plans and resolutions adopted by the said associations and agreed to by members thereof, the said National Association of Sheet Music Dealers prepared and distributed among the dealers of musical publications generally throughout the United States and the District of Columbia, circulars, pamphlets and other papers calculated to induce dealers, not members of the said National Association of Sheet Music Dealers to conform to the enhanced, or increased prices sought to be enforced by the said associations and the members of said National Association of Sheet Music Dealers, and thereby and by various letters and other communications and by personal solicitation endeavored to, and did, persuade and induce music dealers not members of such National Association of Sheet Music Dealers to conform to such standard of resale prices as fixed and agreed to by the respondents as aforesaid.

PAR. 7. That as a result of said conspiracy and cooperation between said two associations and the members of said two associations, competition has been largely eliminated and the price required to be paid by the public and the musical profession for musical publications has been greatly enhanced.

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 charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

All of the respondents named in the complaint have entered their appearances and filed their answers herein, and hearings were had and evidence introduced, and an agreed statement of facts and a stipulation as to the facts were entered into, executed by attorneys for all the respondents, and filed. In said stipulation as to the facts it was stipulated and agreed that the Federal Trade Commission might take the statement of facts contained therein as the facts in this case and in lieu of testimony and might forthwith proceed further upon said statement to make its report in said proceedings, stating its findings as to the facts and conclusions, and entering its order disposing of the proceeding. Respondents expressly waived their right to present the matter upon brief and oral argument.

The Federal Trade Commission being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That at the time of and immediately prior to the issuing of the complaint, the respondent, The Music Publishers' Association of the United States, was a membership corporation organized under the laws of the State of New York, and was composed of 41 members, more or less, being publishers of music and engaged in the business of publishing music in the various States of the United States, and selling both at wholesale and retail and transporting the same in and among the various States and the District of Columbia; that the respondent National Association of Sheet Music Dealers, was an unincorporated Association organized about the year 1914, having 100 members, more or less, who are engaged in the business of dealing in and selling musical publications at retail in and among the several States of the United States and the District of Columbia; and that all of the other respondents were officers, directors or members of the said National Association of Sheet Music Dealers, as more specifically set out in the complaint and admitted in the stipulation as to facts above mentioned.

PAR. 2. That the respondents and each and all of them conspired together for the purpose of fixing and maintaining specific standard resale prices of musical publications in the various States of the United States and the District of Columbia by the members of the National Association of Sheet Music Dealers and other dealers and

publishers selling musical publications to the public, and that as a result of said conspiracy and the acts of the respondents done in pursuance thereof, the prices of musical publications to the public and to the music profession were enhanced generally throughout the United States.

PAR. 3. That in accomplishing said purpose the respondents the Music Publishers Association of the United States and the National Association of Sheet Music Dealers for more than three years next preceding the filing of the complaint herein, held annual meetings during the same week and in the same city, usually on alternate days. Members of each Association attended and participated in meetings of the other association, and committees representing one association conferred with committees representing the other association and with other persons, firms, corporations and associations interested in or engaged in publishing or dealing in musical publications in connection with and in relation to said conspiracy and the enhancement and maintenance of prices. Most of the members of the Music Publishers' Association of the United States were also members of the National Association of Sheet Music Dealers. Resolutions calculated and intended to result in increased prices to the public and to the music profession were passed by one of said associations and at times by its members or by part of them acting together, recommending action by the other association and its members, and such resolutions were ratified and approved by the other association and by its members, or some of them, and agreed to and carried out by its members or a part of them.

PAR. 4. In the furtherance of the general conspiracy and plans above mentioned certain respondents and other members of said associations, while gathered together at times during the periods fixed for the holding of the meetings of said associations, met and agreed together upon and put into effect policies of uniform increases of prices, schedules, and rates of certain classes of competitive musical publications.

PAR. 5. Pursuant to the general conspiracy, plans, and resolutions adopted by the said associations and agreed to by members thereof, the said National Association of Sheet Music Dealers prepared and distributed among the dealers in musical publications generally throughout the United States and the District of Columbia, circulars, pamphlets, and other papers calculated to induce dealers, not members of the said National Association of Sheet Music Dealers, to conform to the enhanced or increased prices sought to be enforced by the said associations and the members of said National Association of

Sheet Music Dealers, and thereby and by various letters and other communications and by personal solicitation endeavored to, and did, persuade and induce music dealers not members of such National Association of Sheet Music Dealers to conform to such standard of resale prices as fixed and agreed to by respondents as aforesaid.

PAR. 6. As a result of said conspiracy and cooperation among the respondents herein, price competition in the sale of musical publications was largely eliminated, and the prices required to be paid by the public and the musical profession for such publications were greatly enhanced.

CONCLUSION.

That the acts, agreements, understandings, policies, and practices of the respondents set forth in the foregoing findings as to the facts and each and all thereof, under the circumstances therein stated, constitute unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the evidence and stipulations as to facts wherein and whereby it was agreed by said respondents that the Commission might forthwith 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, respondents' right to file brief and present oral argument herein being expressly waived; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is, therefore, ordered, That the respondents, The Music Publishers' Association of the United States, National Association of Sheet Music Dealers, Thomas F. Delaney, E. Grant Ege, J. M. Priaulx, Walter Fischer, J. Elmer Harvey, Charles W. Homeyer, William J. Kearney, Edward P. Little, Holmes T. Maddox, L. W. Miller, Harold Orth, Gustav Schirmer, S. Ernest Philpitt, Paul A. Schmitt, Clayton F. Summy, Charles H. Willis, W. H. Witt, Harvey

J. Wood, and each of them, their officers, directors, agents, representatives and employees, cease and desist from:

1. Combining and conspiring among themselves or with others to fix or increase the prices of musical publications published or sold by them or any of them;

2. Combining and conspiring among themselves or with others to maintain standard or fixed resale prices for musical publications;

3. Using any other device or means whatsoever to accomplish either a general increase in the prices of musical publications, or the maintenance of fixed or standard resale prices for such publications.

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

FEDERAL TRADE COMMISSION

v.

FRED A. MALTBY AND CLARENCE W. MALTBY, AS INDIVIDUALS AND AS PARTNERS.

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

Docket 944—February 8, 1923.

SYLLABUS.

Where two taxicab concerns built up a large and valuable good will as the Yellow Cab Co., and Black & White Taxi Co., respectively; and thereafter a competing concern,

(*a*) Caused its business to be listed and advertised in the local telephone directory as the "Yellow Bell Taxi Co.", "Yellow Ford Taxi Co.", and "Black & White Ford Taxi Co.", so that by reason of alphabetical arrangement its business as so named, listed, and advertised immediately preceded and/or followed the names of said concerns, and they were thereby deprived of a portion of the good will and patronage that should have accrued to them; and

(*b*) For the purpose of preempting their use and with a tendency and capacity to mislead and deceive the public and thereby secure its patronage, caused its business also to be listed and advertised therein under a large number of other names, some of which were well and favorably known as those of taxicab companies operating in other cities:

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

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Fred A. Maltby and Clarence W. Maltby, a copartnership, doing business under the name and style of Yellow Bell Taxi Company, and Yellow Ford Taxi Company, hereinafter referred to as Respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Fred A. Maltby and Clarence W. Maltby, have for more than two years last past been engaged in the business of operating taxicabs for hire in the City of Washington, District of Columbia, both as a copartnership and as individuals, with their principal office and place of business in said City and Dis-

trict. Respondents in the course and conduct of their said business have advertised and operated under a great number of trade names, more specifically set out hereinafter, among which is the "Arcade Taxi Service." In the course and conduct of their said business, respondents are in competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The Yellow Cab Company is a corporation created and existing under the laws of the State of Delaware, with its principal office and place of business in the City of Washington, District of Columbia, where it is engaged in operating taxicabs for hire in said City and District. Said Yellow Cab Company advertises its said business by means of advertisements and listings which it causes to be placed in the directory of the Chesapeake & Potomac Telephone Company, a telephone company rendering telephone service to the public in Washington City and the District of Columbia. The aforesaid cabs operated by the Yellow Cab Company are painted yellow, in conformity with said trade name, and bear upon the door the legend, "Yellow Cab Company." Since the commencement of its said taxicab business the said Yellow Cab Company has built up a large and valuable good will amongst the general public in the City of Washington, District of Columbia, for its said taxicabs.

PAR. 3. The Black & White Taxi Company is a corporation created and existing under the laws of the District of Columbia, with its principal office and place of business in the City of Washington, District of Columbia, where it is engaged in operating taxi cabs for hire in said City and District. Said Black & White Taxi Company advertises its said business by means of advertisements and listings which it causes to be placed in the directory of the Chesapeake & Potomac Telephone Company, a telephone company rendering telephone service to the public in Washington City and the District of Columbia. The aforesaid cabs operated by the Black & White Taxi Company are painted black and white and bear four monograms—one on each door, one on the back of the cab and one on the cowl, which monogram consists of a black rimmed circle around which is inscribed the words, "Black & White Taxi." Since the commencement of its said taxi cab business, the said Black & White Taxi Company has built up a large and valuable good will amongst the general public in the City of Washington, District of Columbia, for its said taxi cabs.

PAR. 4. Respondents placed or caused to be placed certain advertisements and listings in the fall issue of said telephone directory of the Chesapeake & Potomac Telephone Company which was issued by

said Company about November 1, 1921, in which said respondents caused to be set out and advertised the names "Yellow Bell Taxi Company," and "Yellow Ford Taxi Company." Because of the alphabetical arrangement of said names, the said name, "Yellow Bell Taxi Company" appeared immediately above the name of the said Yellow Cab Company, hereinafter mentioned, and the name "Yellow Ford Taxi Company," appeared immediately below the said name "Yellow Cab Company" in the listings in said directory.

PAR. 5. Respondents, in the fall issue of the telephone directory of said Chesapeake & Potomac Telephone Company which was issued by said Company about November 1, 1921, placed or caused to be placed certain advertisements and listings in said telephone directory in which said advertisements and listings respondent caused to be set out and advertised the name of "Black & White Ford Taxi Company." Because of the setting out of the said name, "Black & White Ford Taxi Company" in the listings of said directory, the said name, "Black & White Ford Taxi Company" appeared immediately above the name of the "Black & White Taxi Company."

PAR. 6. Because of the adoption by respondents of the said names, "Yellow Bell Taxi Company" and "Yellow Ford Taxi Company," and because of the alphabetical arrangement of those said names as set out in paragraph 5 hereof, respondents have diverted from the said Yellow Cab Company a portion of the good will and patronage that should have accrued to it. Because of the adoption by respondent of the said name "Black & White Ford Taxi Company," and because of the alphabetical arrangement of said name as set out in Paragraph 5 hereof, respondents have diverted from the said "Black & White Taxi Company" a portion of the good will and patronage that should have accrued to it. Respondents, from time to time in the two years last past listed and advertised in said telephone directory of the said Chesapeake & Potomac Telephone Company, under some fifty-odd additional names set out next below and sought to preempt to themselves the use of these said names within the City of Washington and the District of Columbia, and to prevent other taxi cab companies from operating under or using any of these said names:

A-Bee Taxi,
Arcade Cab Service,
Arcade Taxi,
Arcade Taxicabs,
Arcade Taxi Service,
Bell Taxi,
Bell Taxicabs,
Bell Taxi Service,
Blue & Gray Taxi,
Blue Ribbon Taxi,
Bring-You-Back Taxi,
Brown & Black Taxi,

Brown Taxi,
Cadillac Taxi Co.,
Central Taxi Co.,
Checker Taxicab Co.,
Checker Taxi Co.,
Circle Taxi Co.,
City Taxi Co.,
Colonial Taxi Co.,
Columbia Hgts. Taxi Service,
Columbia Taxi,
Continental Taxi,
Crown Taxi Co.,
Ever-Ready Taxi Co.,
Globe Taxi Co.,
Gray Taxi Co.,
Hacks Taxi Co.,
Home James Taxi Co.,
Hudson Taxi Co.,
Irving St. Taxi Co.,
Keystone Taxi Co.,
Packard Taxi Co.,
Park Taxi Co.,
Park Taxi Service,
Peoples Taxi,
Peoples Taxi Co.,
Quaker Taxi,
Quaker Taxi Co.,
Red Checker Taxi Co.,
Red Taxi,
Red Taxi Co.,
Ring Taxi Co.,
Ritz Carlton Taxi Co.,
Star Taxi Co.,
Sunset Taxi Co.,
Tak-A-Cab Taxi Co.,
Take-U-There Taxi Co.,
Twentieth Century Taxi Co.,
Uneeda Taxi Co.,
White Taxi Co.

PAR. 7. A number of said names so listed by respondents are used by taxi cab companies operating in various other cities of the United States, and enjoy a large and valuable goodwill in said cities, and the use by respondents of said names in the manner hereinbefore set out has the tendency and capacity to mislead and deceive the public, who are familiar with the said names so adopted by respondents and used in other cities, into the belief that the said names listed and advertised by respondents, as aforesaid, are operated by the said taxicab companies and render a service similar to the service rendered by said companies in other cities and cause the public to patronize the taxi cab service of respondents in that belief.

PAR. 8. The acts and things done by respondents, and each of them, as hereinabove alleged, are false and misleading and prejudicial to the public and to the competitors of the respondents, 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.

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 respondents, Fred A. Maltby and Clarence W. Maltby, as individuals and as partners, charging them and each of them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Said respondents having entered their appearance and filed their answer therein and having made, executed and filed an agreed stipulation as to the facts, in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such stipulation as to the facts in this case in lieu of testimony and proceed forthwith upon such stipulation to make its findings as to the facts and such order as it may be prepared to enter therein without the introduction of testimony, the Federal Trade Commission has duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Fred A. Maltby and Clarence W. Maltby, and each of them, have for more than two years last past been engaged in the business of operating taxicabs for hire in the City of Washington, District of Columbia, with their principal office and place of business in said City and District. In the course and conduct of their said business they have advertised and operated under a great number of trade names among which is the "Arcade Taxi Service." In the course and conduct of their said business respondents are in competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The Yellow Cab Company is a corporation created and existing under the laws of the State of Delaware, with its principal office and place of business in the City of Washington, District of Columbia, where it is engaged in operating taxicabs for hire in said City and District. Said Yellow Cab Company advertises its said business by means of advertisements and lists which it causes to be placed in the directory of the Chesapeake & Potomac Telephone Company, a telephone company rendering telephone service to the public in Washington City and the District of Columbia. The aforesaid cabs operated by the Yellow Cab Company are painted yellow in conformity with said trade name and bear upon the door the legend "Yellow Cab Company." Since the commencement of its said taxicab business, the said Yellow Cab Company has built up a large and valuable good-will amongst the general public in the City of Washington, District of Columbia, for its said taxicab service.

PAR. 3. The Black & White Taxi Company is a corporation created and existing under the laws of the District of Columbia, with its principal office and place of business in the City of Washington, District of Columbia, where it is engaged in operating taxicabs for hire in said City and District. Said Black & White Taxi Company advertises its said business by means of advertisements and listings which it causes to be placed in the directories of the Chesapeake & Potomac Telephone Company, a telephone company rendering telephone service to the public in Washington City, and the District of Columbia. The aforesaid cabs operated by the Black & White Taxi Company are painted black and white and bear four monograms,—one on each door, one on the back of the cab and one on the cowl, which monogram consists of a black rimmed circle around which is inscribed the words, "Black & White Taxi." Since the commencement of its said taxicab business, the said Black & White Taxi Company has built up a large and valuable good-will amongst the general public in the City of Washington, District of Columbia, for its said taxicab service.

PAR. 4. Prior and up to the 30th day of May, 1922, respondents placed or caused to be placed certain advertisements and listings in the fall issue of said telephone directory of the Chesapeake & Potomac Telephone Company which was issued by said Company about November 1, 1921, in which said respondents caused to be set out and advertised the names "Yellow Bell Taxi Company," and "Yellow Ford Taxi Company." Because of the alphabetical arrangement of said names, the said name, "Yellow Bell Taxi Company" appeared immediately above the name of the said Yellow Cab Company, hereinafter mentioned, and the name "Yellow Ford Taxi Company," appeared immediately below the said name "Yellow Cab Company" in the listings in said directory. That on or about the 30th day of May, 1922, the Supreme Court of the District of Columbia issued its injunction, Equity No. 40013, restraining the respondents herein from the use of the said names set out next above, and in compliance with said injunction respondents have ceased to use said trade names.

PAR. 5. Respondents, prior and up to October 7, 1922, placed or caused to be placed in the telephone directory of the Chesapeake & Potomac Telephone Company aforesaid, certain advertisements and listings in said telephone directory in which said advertisements and listings respondents caused to be set out and advertised the name of "Black & White Ford Taxi Company." Because of the setting out of the said name, "Black & White Ford Taxi Company" in the listings of said directory, the said name, "Black & White Ford Taxi

Company" appeared immediately above the name of the "Black & White Taxi Company." That on or about October 7, 1922, respondents voluntarily discontinued the use of the said trade names set out next above.

PAR. 6. Because of the adoption by respondents of the said names "Yellow Bell Taxi Company" and "Yellow Ford Taxi Company," and because of the alphabetical arrangement of those said names as set out in Paragraph Five hereof, respondents have diverted from the said Yellow Cab Company a portion of the good-will and patronage that should have accrued to it. Because of the adoption by respondent of the said name "Black & White Ford Taxi Company," and because of the alphabetical arrangement of said names as set out in paragraph 5 hereof, respondents have diverted from the said "Black & White Taxi Company" a portion of the good-will and patronage that should have accrued to it. Respondents from time to time in the two years last past up to on or about October 7, 1922, advertised in said directory of the said Chesapeake & Potomac Telephone Company under some fifty odd additional names as set out next below for the purpose of preempting to themselves the use of the said names, within the City of Washington, in the District of Columbia, and of preventing other taxicabs companies from operating under or using any of the said names.

A-Bee Taxi,
Arcade Cab Service,
Arcade Taxi,
Arcade Taxicabs,
Arcade Taxi Service,
Bell Taxi,
Bell Taxicabs,
Bell Taxi Service,
Blue & Gray Taxi,
Blue Ribbon Taxi,
Bring-You-Back-Taxi,
Brown & Black Taxi,
Brown Taxi,
Cadillac Taxi Co.,
Central Taxi Co.,
Checker Taxicab Co.,
Checker Taxi Co.,
Circle Taxi Co.,
City Taxi Co.,
Colonial Taxi Co.,
Columbia Hgts. Taxi Service,
Continental Taxi,
Crown-Taxi Co.,
Diamond Taxi Co.,
Domino Taxi Co.,
Ever-ready Taxi Co.,
Globe Taxi Co.,
Gray Taxi Co.,
Green & White,
Hacks Taxi Co.,
Home James Taxi Co.,
Hudson Taxi Co.,
Irving St. Taxi Co.,
Keystone Taxi Co.,
Packard Taxi Co.,
Park Taxi Co.,
Park Taxi Service,
Peoples Taxi,
Peoples Taxi Co.,
Quaker Taxi,

Quaker Taxi Co.,
Red Checker Taxi Co.,
Red Taxi,
Red Taxi Co.,
Ring Taxi Co.,
Ritz Carlton Taxi Co.,
Star Taxi Co.,
Sunset Taxi Co.,
Tak-a-Cab Co.,
Take-U-There Taxi Co.,
Twentieth Century Taxi Co.,
Uneeda Taxi Co.,
White Taxi Co.

On or about October 7, 1922, respondents ceased the use of certain of the trade names set out next above, and no longer advertises under said trade names, but advertises under the following:

Arcade Taxi,
Arcade Taxicabs,
Arcade Taxi Service,
Brown & Black Taxi,
Brown Taxi,
Checker Taxi Co.,
Columbia Taxi,
Diamond Taxi Co.,
Domino Taxi Co.,
Park Taxi Co.,
Peoples Taxi Co.,
Quaker Taxi Co.,
Red Taxi,
Red Taxi Co.,
Ritz Carlton Taxi Co.,
White Taxi Co.

PAR. 7. A number of said names so listed by respondents are used by taxicab companies operating in various other cities of the United States and enjoy a large and valuable good-will in said cities. The use by respondents of the said names in the manner hereinbefore set out has the tendency and capacity to mislead and deceive the public, who are familiar with the said names so adopted by respondents, which are used in other cities, into the belief that the said names listed and advertised by respondents as aforesaid are taxi companies operated by the said taxi companies in other cities and thereby cause and induce the public to patronize the said taxicab service of respondent's in such mistaken belief.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and agreed statement of facts filed herein, and the

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

It is now ordered, That the respondents, Fred A. Maltby and Clarence W. Maltby, their agents, representatives, servants and employees do cease and desist from directly or indirectly:

(1) Advertising or listing in the telephone book of the Chesapeake and Potomac Telephone Company, or in any other manner, or from operating their said taxicab business in the City of Washington, District of Columbia, under the names of:

(*a*) "Yellow Bell Taxi Company"

(*b*) "Yellow Ford Taxi Company"

(*c*) "Black and White Ford Taxi Company."

(2) Operating, advertising or listing the same taxicab business under more than one name.

It is further ordered, That the respondents, Fred A. Maltby and Clarence W. Maltby, shall within thirty (30) days after the service upon them of a copy of this order file with the Commission their answer in writing in setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Commissioner Thompson dissents.

CASES IN WHICH ORDERS FOR DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED.

Date of order.	Docket No.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1922.						
June 1	735	Bartlett Manufacturing Co.	Clocks.	Misbranding and misrepresentations.	Answer.	"Respondent has gone out of business and its assets are in the hands of a duly appointed receiver in bankruptcy."
2	618	Eastern Road Machinery Co.	Road machinery.	Commercial bribery.	Answer and trial.	"Respondent has gone out of business."
2	711	A. L. Bramble, trading under the name and style of A. L. Bramble & Co.	Ship chandlery supplies.	do.	do.	No reasons assigned.
3	860	H. W. Hebb Supply Co.	do.	do.	do.	Do.
5	599	International Fur Exchange, Funston Bros. & Co., F. C. Taylor Fur Co., and Mallory, Mitchell & Faust.	Furs.	Combining and conspiring to cut off, or restrict competitors' access to, source of supplies.	do.	Respondents, with the exception of Mallory, Mitchell & Faust, an advertising agency, "are now out of business."
24	579	The Atlanta Wholesale Grocers, J. J. Barnes-Fain Co., Marett-Streater Co., A. McD. Wilson Co., Conley & Ennis, McCord, Stewart Co., McDaniel & Co., and J. N. Hirsch.	Grocery products.	Combining or conspiring to bring about less favorable terms to objectionable competitor.	Answer and trial.	No reasons assigned.[1]
July 3	250	Borden's Farm Products Co., Inc.	Milk and milk products.	Acquisition of stock of competitor in violation of section 7 of the Clayton Act.	Answer and stipulation.	No reasons assigned. Commissioner Murdock dissents.
10	504	F. Hecht, Louis Friedheim, and T. I. Glynn, partners styling themselves F. Hecht & Co.; and T. I. Glynn Leather Co., Inc.	Leather.	Selling abroad by sample without conforming thereto in goods delivered.	Answer and trial.	Failure of proof.
20	25	J. F. Hillerich & Son Co., now Hillerich & Bradsby Co.	Baseball bats.	Resale price maintenance: price discrimination in violation of sec. 2 of the Clayton Act.	Answer.	"A complaint having been issued herein by the Federal Trade Commission, including the charge of a violation of sec. 5 of the Federal Trade Commission Act declaring unlawful unfair methods of competition, by reason of the respondent * * * having adopted a policy of maintaining resale prices fixed by it, and the respondent having answered; and an order of the Commission in a proceeding brought by it

						against the Beechnut Co., for the same cause having meanwhile been taken to the United States Supreme Court for final determination, and further proceedings herein having been suspended to await its decision, and the Supreme Court having thereafter decided said Beechnut case and set forth the law therein in an opinion (January 3, 1922, 257 U. S. 441, 42 Sup. Ct. 150). "Now, in view of said decision, and the lapse of time since the beginning of this proceeding, "*It is hereby ordered*, That the complaint herein be, and hereby is, dismissed without prejudice to the commencement of another proceeding by the Commission against this respondent."
20	28	Ward Baking Co.	Bread and cake	Resale price maintenance	do	Do.
20	30	Western Clock Co	Clocks	Resale price maintenance: price discrimination in violation of sec. 2 of the Clayton Act.	do	Do.
20	40	Colorado Milling & Elevator Co.	Flour	Resale price maintenance	do	Do
20	87	Crescent Manufacturing Co.	Baking powder, spices, teas, coffees and flavoring extracts.	do	do	Do.
20	89	L. E. Waterman Co.	Fountain pens	do	do	Do.
20	90	Cluett, Peabody & Co. (Inc.)	Collars	do	do	Do.
20	91	Massachusetts Chocolate Co.	Candy	do	Answer and stipulation.	Do.
20	141	The Evans Dollar Pen Co.	Fountain pens	do	do	Do.
20	167	United Electric Co	Vacuum cleaners	Resale price maintenance: prices, rebates, or discounts conditioned on exclusive or tying contracts or dealings in violation of sec. 3 of the Clayton Act.	Answer	Do.
20	170	Kryptok Co., and Kryptok Sales Co.	Lenses	Resale price maintenance	do	Do.

[1] For cease and desist order against other respondents in the same case, see 4 F. T. C., p. 466 et seq.

Cases in which orders for discontinuance or dismissal have been entered—Continued.

Date of order.	Docket No.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1922. July 20	171	Goodyear Tire & Rubber Co.	Tires, inner tubes, and accessories pertaining to the use thereof.	Resale price maintenance, misleading and false claims of services rendered in connection with the sale of products, imposing oppressive requirements upon dealer customers, and exclusive or tying contracts or dealings; price discrimination in violation of section 2, and prices, discounts, or rebates conditioned on exclusive or tying contracts or dealings in violation of sec. 3 of the Clayton Act.	Answer	Do. (See pp 482, 483.)
20	173	D. M. Ferry & Co.	Seeds.	Resale price maintenance.	do	Do.
20	182	Hoover Suction Sweeper Co.	Vacuum sweepers.	do	do	Do.
20	183	Vortex Manufacturing Co.	Metal holders, paraffin cups, paraffin paper dishes, and similar products.	Resale price maintenance; prices and discounts conditioned on exclusive or tying contracts or dealings in violation of sec. 3 of the Clayton Act.	do	Do.
20	184	Enders Sales Co. (Inc.)	Safety razors, and razor blades.	Resale price maintenance; price discrimination in violation of sec. 2 of the Clayton Act.	do	Do.
20	189	H. L. Hildreth Co.	Candy.	Resale price maintenance.	do	Do.
20	196	De Miracle Chemical Co.	Depilatories and other toilet specialties.	do	do	Do.
20	206	Marinello Co. of Wisconsin; Marinello Co. of Illinois; Marinello School of Chicago; and School of Cosmetitians.	Cosmetics, toilet articles, toilet preparations, and similar products.	Resale price maintenance; tying or exclusive contracts or dealings; prices, discounts, or rebates conditioned on exclusive or tying contracts or dealings in violation of sec. 3 of the Clayton Act.	do	Do.
20	213	American Thermos Bottle Co.	Thermos bottles.	Resale price maintenance; price discrimination in violation of sec. 2 of the Clayton Act.	do	Do.
20	217	Klaxon Co.	Warning horns for automobiles and other vehicles.	Resale price maintenance; tying or exclusive contracts or dealings; prices, rebates, or discounts conditioned on exclusive or tying contracts or dealings in violation of sec. 3 of the Clayton Act.	do	Do.
20	218	Proctor & Gamble Co. and the Proctor & Gamble Distributing Co.	Soap, candles, oil, and glycerine.	Resale price maintenance; full line forcing.	do	Do.
20	223	The De Laval Separator Co.	Cream separators.	Resale price maintenance; exclusive or tying contracts or dealings in violation of sec. 3 of the Clayton Act.	do	Do.

20	237	General Chemical Co.	Baking powder.	Resale price maintenance.	do.	Do.
20	240	Buffalo Specialty Co.	Liquid veneer, tire fluids, and similar products.	Resale price maintenance; price discrimination in violation of sec. 2 of the Clayton Act.	do.	(Same as Docket No. 25.)
20	269	American Graphophone Co.: Columbia Graphophone Co.: and Columbia Graphophone Manufacturing Co.	Talking machines and records therefor.	Resale price maintenance.	do.	Do.
20	272	Wm. Waltke & Co.	Soaps and toilet sundries.	do.	Answer and hearing.	Do.
20	306	High Rock Knitting Co.	Knit underwear.	do.	Answer.	Do.
20	342	Curtis & Company Manufacturing Co., and Curtis Pneumatic Machinery Co.	Compressors, outfits, tanks, pneumatic machinery and other automobile accessories.	Resale price maintenance; price discrimination and prices, rebates, or discounts conditioned on exclusive or tying contracts or dealings, in violation of secs. 2 and 3 of the Clayton Act, respectively.	do.	Do.
20	405	J. H. Haney, W. A. McKey, and W. M. Dutton, copartners, doing business as J. M. Haney & Co.	Automobile tire pumps.	Resale price maintenance.	do.	Do.
20	414	Marshall Oil Co., trading as Tungsten Manufacturing Co.	Spark plugs.	do.	do.	Do.
20	444	The Gates Rubber Co. and J. R. Hunt & Wm. H. Klinefelter, copartners, doing business as J. R. Hunt & Co.	Tires, fan belts, break linings, tire patches, and other automobile accessories.	do.	Answer and stipulation.	D.
20	500	Pennsylvania Salt Manufacturing Co.	Salt and lye.	do.	Answer.	Do.
20	503	The Upjohn Co.	Pharmaceutical supplies.	Resale price maintenance; cumulative quantity discounts based on aggregate of year's purchases.	do.	Do.
20	512	The Ronald Press Co.	Books and periodicals.	Resale price maintenance.	do.	Do.
20	519	Colgate & Co.	Soaps, perfumes, and toilet preparations.	Resale price maintenance and guarantee against price decline.	do.	Do.
20	524	The Sheets Elevator Co.	Poultry feed and similar products.	Resale price maintenance.	do.	Do.
20	532	L. Richardson, H. Smith Richardson, and L. Richardson, jr., copartners, doing business under the name and style of The Vick Chemical Co.	Proprietary remedies and similar products.	do.	do.	Do.

Cases in which orders for discontinuance or dismissal have been entered—Continued.

Date of order.	Docket No.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1922. July 24	353	Domestic Engineering Co., Inc.; H. W. Arnold and S. A. Long, doing business as Arnold & Long, Distributors; Ashelman Brothers, Inc.; W. W. Barnett, doing business as Barnett Ranch Lighting & Appliance Co.; P. M. Bratten, doing business as P. M. Bratten & Co.; H. R. Colby; Henry R. Colby and M. A. Bridge, jr., doing business as C. & B. Electric Co.; Collins & Moore, Inc.; E. A. Cox and Hugh J. Cooper, doing business as Cox & Cooper, Distributors; E. A. Cox and W. C. Dance, doing business as Cox & Dance, Distributors; Ivan L. de Jongh and W. L. Cochran, doing business as de Jongh & Cochran; The Del-Home Light Co., Inc.; Domestic Electric Appliance Co., Inc.; Domestic Electric Co., Inc. (incorporated in N. Y.); The Domestic Electric Co. (incorporated in Ga.); The Domestic Electric Co. (incorporated in Ala.); Electric Equipment Co., Inc. (incorporated in Okla.); Electric Equipment Co. (incorporated in Iowa); The Electric Farm Lighting Co., Inc.; George M. Foos; Paul D. Fuqua, doing business as East Tenn. Electric Co.; W. P. Galloway Co., Inc.; W. F. Gray; The H. & S. Electric Co., Inc.; Joseph Herzstam; Home Electric Co., Inc.; Home Electric Equipment Co.; Home Electric Light & Power Equipment Co., Inc.; Independent Electric Light & Power Co., Inc.; E. L. Kruse;	Private electric lighting plants and accessories pertaining thereto.	Resale price maintenance; and tying or exclusive contracts or dealings in violation of sec. 3 of the Clayton Act.	Answer.....	"A complaint having been issued herein by the Federal Trade Commission, including the charge of a violation of sec. 5 of the Federal Trade Commission Act declaring unlawful unfair methods of competition, by reason of the respondents, Domestic Engineering Co., Inc., et. al., having adopted a policy o maintaining resale prices fixed by it, and the respondents having answered; and an order of the Commission in a proceeding brought by it against the Beechnut Co., for the same cause having meanwhile been taken to the United States Supreme Court for final determination, and further proceedings herein having been suspended to await its decision, and the Supreme Court having thereafter decided said Beechnut case and set forth the law therein in an opinion. Jan. 3, 1922, 257 U. S. 441; 42 Sup. Ct. 150.] "Now, in view of said decision, and the lapse of time since the beginning of this proceeding. "*It is hereby ordered*, That the complaint herein be, and hereby is, dismissed without prejudice to the commencement of another proceeding by the Commission against these respondents."

		M. L. Lasley; S. O. Lindeman, doing business as Home Light & Power Co.; Modern Appliance Co., Inc.; W. H. Moulton; J. J. Munsell; Claude Nolan; R. E. Parsons; J. J. Pocock; Pringle Matthews Co., Inc.; G. F. Schonek; Stover Co., Inc.; Suburban Electric Development Co.; Inc., Suburban Lighting Corp.; R. F. Trant; R. F. Trant and J. L. Conover, doing business as Trant & Conover; E. L. Uncapher Co., Inc.; Charles E. Wagner, Inc.; and E. H. Walker.				
Oct. 21	515	The Heller & Merz Co	Dyestuffs and chemicals.	Commercial bribery	Answer and trial	No reasons assigned.
21	905	Midvale Steel & Ordnance Co., Republic Iron & Steel Co., and Inland Steel Co	Iron and steel products.	Combining or merging or agreeing to combine or merge properties, with a dangerous tendency unduly to hinder and lessen competition and with an undue hindering and lessening of competition as a result if consummated, and with a dangerous tendency unduly to restrain trade and commerce and to create monopoly, and with the effect of unduly restraining trade and commerce, and tending to create a monopoly, if consummated, in that portion of the United States particularly served by the companies involved.		"A formal statement having been filed with the Commission by Chadbourne, Babbitt, and Wallace, attorneys for the respondents, stating that the proposed merger, consolidation, and combination charged in the complaint in this proceeding had been entirely abandoned and that all acts for the consummation of such merger, consolidation, and combination had been discontinued; *It is ordered*, That the complaint herein be, and the same is hereby, dismissed."
23	526	Louis Rosenthal, doing business under the name and style of United Chemical & Color Co.	Dyestuffs and chemicals.	Commercial bribery	Trial	No reasons assigned.
23	545	Samuel Abraham, doing business under the name and style of Abraham Bros.	Paints, varnishes and bindred products.	do	Answer and trial	Do.
23	688	Reber Manufacturing Co	Hosiery	Misbranding and mislabeling	Answer	Respondent is not now engaged in business.
23	697	New York Hosiery Works	do	do	Stipulation	Do,
Nov. 4	556	G. H. Hammond Co	Oleomargarine and butterine	Exclusive or tying contracts or dealings in violation of sections 5 and 3 of the Federal Trade Commission and Clayton Acts, respectively.	Answer	No reasons assigned.
4	557	Morris & Co	do	do	do	Do.
4	558	Wilson & Co., Inc	do	do	do	Do.
6	499	The Bayer Co., Inc	Aspirin	False and misleading advertising	do	Do
6	662	Deep Wells Oil Co., George B. Mechem & Co., and George B. Mechem.	Oil stocks	do	do	Failure of proof.

Cases in which orders for discontinuance or dismissal have been entered—Continued.

Date of order.	Docket No.	Respondents.	Commodities	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1922. Nov. 22	761	Prest-O-Lite Co., Inc.	Acetylene gas	Tying or exclusive contracts or dealings in violation of sections 5 and 3 of the Federal Trade Commission and Clayton Acts, respectively; resale price maintenance.	Answer and trial	No reasons assigned.
1923. Jan. 3	517	The Franklin Import & Export Co., Inc.	Dyestuffs, chemicals, and similar products.	Commercial bribery	do	Do.
3	525	New York Color & Chemical Co.	do	do	do	Do.
4	395	Ida Davis, doing business under the trade name and style of David Davis Sons.	Sponges	Adulterating	do	Do.
4	794	Big Bear Oil Co., William G. Krepe Investment Co., & William G. Krepe.	Oil stocks	Advertising falsely and misleadingly	do	Failure of proof.
Jan. 30	339	The Pictorial Review Co. and Oklahoma Publication Co.	Magazines and periodicals.	Spying on or harassing competitors	Answer	No reasons assigned.
30	468	H. A. Metz & Co., Inc.	Dyestuffs and chemicals.	Commercial bribery	Answer and trial	Failure of proof.
30	528	Arkansas Distributing Co.	Chemicals	do	do	No reasons assigned.
30	529	Max B. Kaesche, doing business under the name and style of F. Bredt & Co.	Dyestuffs and chemicals.	do	do	Death of respondent.
Feb. 3	831	The Excelsior Shoe Co.	Shoes	Advertising falsely and misleadingly and misbranding.	do	No reasons assigned.
Feb. 5	891	Bethlehem Steel Corporation and Lackawanna Steel Co.	Iron and steel products.	Agreeing to a combination of properties and businesses, with a dangerous tendency unduly to restrain trade and commerce and with the effect of so doing if consummated, and with the intent to monopolize commerce in certain sections and communities and with the effect of so doing if consummated.	Answer	Dismissed without prejudice; no reasons assigned.

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 (May 22, 1922, to Feb. 13, 1923) and arising under this act are printed in full in Appendix II hereof (see *infra*, p. 529 et seq.). Previously reported decisions will be found set forth in Appendix II of Volumes II, III, and IV of the Commission's Reports.

It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat., 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.

Term, seven years.

each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Chairman to be chosen by commission.

Pursuit other business prohibited.

Removal by President.

Vacancy not to impair exercise of powers by remaining commissioners.

The commission shall have an official seal, which shall be judicially noticed.

Seal 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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duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962–1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerce on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report presenting the minority views respectively of Messrs. Stevens and Lafferty; report of Senator Newlands from the Committee on Interstate Commerce on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressmen Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840–8849; 9068; 14925–14933 (part 15); Dickinson for, part 9, pp. 9189–9190; Mann against, part 15, pp. 14939–14940; Morgan, part 9, 8854–8857, 9063–9064, 14941–14943 (part 15); Sims for, 14940–14941; Stevens of N. H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8849–8853 (part 9); 14933–14939 (part 15); and of Senators Borah against, 11186–11189 (part 11); 11232–11237, 11298–11302, 11600–11601 (part 12); Brandegee against, 12217–12218, 12220–12222, 12261–12262, 12410–12411, 12792–12804 (part 13), 13103–13105, 13299–13301; Clapp against, 11872–11873 (part 12), 13061–13065 (part 13), 13143–13146, 13301–13302; Cummins for, 11102–11106 (part 11), 11379–11389, 11447–11458 (part 12), 11528–11539,

commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Appointment of secretary. Salary, $5,000.

Other employees. Salaries fixed by Commission.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

12873–12875 (part 13), 12912–12924, 12987–12992, 13045–13052, 14768–14770 (part 15); Hollis for, 11177–11180 (part 11), 12141–12149 (part 12), 12151–12152; Kenyon for, 13155–13160 (part 13); Lewis for, 11302–11307 (part 11), 12924–12933 (part 13); Lippit against, 11111–11112 (part 11), 13210–13219 (part 13); Newlands for, 9930 (part 10), 10376–10378 (part 11), 11081–11101, 11106–11116, 11594–11597 (part 12); Pomerene for, 12870–12873 (part 13), 12993–12996, 13102–13103; Reed against, 11112–11116 (part 11), 11874–11876 (part 12), 12022–12029, 12150–12151, 12539–12551 (part 13), 12933–12939, 13224–13234, 14787–14791 (part 15); Robinson for, 11107 (part 11), 11228–11232; Saulsbury for, 11185, 11591–11594 (part 12); Shields against, 13056–13061 (part 13), 13146–13148; Sutherland against, 11601–11604 (part 12), 12805–12817 (part 13), 12855–12862, 12980–12986, 13055–13056, 13109–13111; Thomas against, 11181–11185 (part 11), 11598–11600 (part 12), 12862–12869 (part 13), 12978–12980; Townsend against, 11870–11872 (part 12); and Walsh for, 13052–13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 429–442. (See case also in Vol. II of Commission's Decisions, p. 564 at pp. 570–579.)

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES—Continued.

Commission may rent suitable offices.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing of accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.

Bureau of Corporations absorbed by Commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employees, records, papers, property, appropriations, transferred to Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in Washington, but Commission may meet elsewhere.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

May prosecute any inquiry anywhere in United States.

Sec. 4. DEFINITIONS.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any

such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members. "Corporation."

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act. "Documentary evidence."

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto. "Acts to regulate commerce."

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety;[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.[1]

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.

[1] For text of Sherman Act, see footnote on pp. 503-505.

[2] 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. 489.

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 applica-

tion a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Action by Court. Notice to respondent. Decree affirming modifying, or setting aside Commission's order.

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

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

Liability under antitrust acts not affected.

shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.[3]

Service of Commission's complaints, orders, and other processes.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering

Personal; or

a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the cor-

At office or place of business; or

poration to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person,

By registered mail.

partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or

Verified return by person serving, and return post-office receipt, proof of service.

place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. FURTHER POWERS.[4]

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

SEC. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

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[3] For text of Sherman Act, see footnote on pp. 503–505. As enumerated in last paragraph of sec. 4 of this act, see p. 493.

[4] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

To require annual or special reports from corporations, except banks and common carriers.

Such reports to be under oath, or otherwise, and filed within such reasonable period as commission may prescribe.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts,[5] to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

To transmit findings and recommendations to Attorney General.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts[5] by any corporation.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts[5] in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient

To make public, as it deems expedient, portions of information obtained.

[5] For text of Sherman Act, see footnote on pp. 503–505. As enumerated in last paragraph of sec. 4 of this act, see p. 493.

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.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts,[6] the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

To ascertain and report an appropriate form of decree.

Commission to proceed on notice to parties and as prescribed by court. Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS.[7]

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and

[6] For text of Sherman Act, see footnote on pp. 503–505. As enumerated in last paragraph of sec. 4 of this act, see p. 493.

[7] Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT.[7a]

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.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpœna. Commission may invoke aid of any United States court.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

In case of contumacy or disobedience of subpœna, any district court in jurisdiction involved may order obedience.

Disobedience thereafter punishable as contempt.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Mandamus from District Courts on application of Attorney General to enforce compliance with Act.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investi-

Commission may order depositions at any stage.

[7a] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

May be taken before person designated by Commission.

gation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent.

Testimony to be reduced to writing, etc.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission.

Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witness fees, same as paid for like services in United States courts.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Incriminating testimony or evidence no excuse for failure to testify or produce.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpœna of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpœna issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

Sec. 10. PENALTIES.[a]

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.

[a] 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

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

Failure of corporation to file required report.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business.

Various district attorneys to prosecute for recovery.

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000,

Sec. 10. PENALTIES—Continued.

or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE.

Not affected by this act.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts[9] or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

THE CLAYTON ACT.[1]

[Approved Oct. 15, 1914.]

[PUBLIC—No. 212—63D CONGRESS.]

[H. R. 15657.]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

Sec. 1. DEFINITIONS.

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

"Antitrust laws."

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[9] For text of Sherman Act, see footnote on pp. 503–505. As enumerated in last paragraph of sec. 4 of this Act, see p. 493.

[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 volume (July 1, 1921, to Feb. 13, 1923) and bearing on the provisions of this act affecting the Commission are: *Canfield Oil Co.* v. *Federal Trade Commission*, 274 Fed 571 (see opinion set forth in Appendix II of Volume IV at p. 542 et seq.); *Sinclair Refining Co.* v. *Federal Trade Commission*, 276 Fed. 686 (see opinion set forth in Appendix II of Volume IV at p. 552 et seq.); *Auto Acetylene Light Co.* v. *Prest-O-Lite Co., Inc.*, 276 Fed. 537; *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 42 Sup. Ct. 360, and *United Shoe Machinery Corporation* v. *United States*, 258 U. S. 451, 42 Sup. Ct. 363; *Aluminum Co. of America* v. *Federal Trade Commission*, 284 Fed. 401 (see opinion set forth in Appendix II of this volume 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 this volume at p. 542 et seq.); and *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568 (see opinion set forth in Appendix II of this volume at p. 599 et seq.).

It should be noted in connection with this law—

That the so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess.) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto * * *";

That the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 169, sec. 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

July second, eighteen hundred and ninety[2]; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government,

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no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

That by the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 456 at 482, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisition by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

That Public No. 146, Sixty-seventh Congress, approved Feb. 8, 1922, permits, subject to the provisions set forth, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products * * *." (See also in this general connection the limitation imposed in connection with the appropriations for enforcing the Sherman Act as set forth in the following note:)

[2] The Sherman Act (26 Stat. 209), which, as a matter of convenience, is printed herewith. While the Act itself has not been amended, appropriations for the fiscal years ending June 30, 1920, 1921, 1922, and 1923 (Sundry Civil Appropriation Act, July 19, 1919, ch. 24, 41 Stat. 208, Sundry Civil Appropriation Act, June 5, 1920, ch. 235, 41 Stat. 922, Sundry Civil Appropriation Act, Mar. 4, 1921, ch. 161, 41 Stat. 1411, and State, Justice, and Judiciary Appropriation Acts, June 1, 1922, ch. 204, sess. II, 42 Stat. 613, and Jan. 3, 1923, 42 Stat., respectively), were made contingent upon no part of the moneys being—

"Spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful: *Provided further*, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products."

The act, omitting the usual formal "*Be it enacted*," etc., follows:

CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL.

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand

Sec. 1. DEFINITIONS—Continued.

and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce." "Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

"Person or persons." The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of

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dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

PERSON MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

COMBINATIONS IN TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

ENFORCEMENT.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such

either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. PRICE DISCRIMINATION.[1]

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of com-

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ADDITIONAL PARTIES.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

FORFEITURE OF PROPERTY.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SUITS—RECOVERY.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"PERSON" OR "PERSONS" DEFINED.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State or the laws of any foreign country.

[1] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see second, third, and fourth paragraphs of the footnote on pp. 502–503.

Sec. 2. PRICE DISCRIMINATION—Continued.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

merce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Vendor may select own customers if not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.[4]

Unlawful where effect may be to substantially lessen competition.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED.

May sue in any United States district court, and recover threefold damages, including cost of suit.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws[5] may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect

[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 second, third, and fourth paragraphs of the footnote on pp. 502–503.

[5] For text of Sherman Act, see footnote on pp. 503–505. As enumerated in Clayton Act, see first paragraph thereof on pp. 502–504.

to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS.

Prima facie evidence against same defendant in private litigation.

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust[6] laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or 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

[6] For text of Sherman Act, see footnote on pp. 503–505. As enumerated in Clayton Act, see first paragraph thereof on pp. 502–504.

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.[1]

Of other corporation. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Purchase solely for investment excepted.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Formation of subsidiary corporations for immediate lawful business also excepted.

[1] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see second, third, and fourth paragraphs of the footnote on pp. 502–503.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 526, sec. 3.)

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the 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.

Existing rights heretofore lawfully acquired not affected.

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.

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]

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over $5,000,000.

SEC. 8. 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

[8] For text of Sherman Act, see footnote on pp. 503–505. As enumerated in Clayton Act, see first paragraph thereof on pp. 502–504.

[9] By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or employee of any" bank or corporation, "chartered or incorporated under the laws of the United States or of any State thereof, and principally

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than $5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

How eligibility determined.

Not to serve more than one bank, banking association, or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid

Savings banks without capital (share) stock excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

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engaged in international or foreign banking, or banking in a dependency or insular possession of the United States," in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the Act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see second, third, and fourth paragraphs of the footnote on pp. 502–503.

a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker or any officer, director, or employee of any member bank or class A director of a Federal reserve bank, who shall first procure the consent of the Federal Reserve Board, which board is hereby authorized, at its discretion, to grant, withhold, or revoke such consent, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if such other bank, banking association, or trust company is not in substantial competition with such banker or member bank.

Class A director of Federal reserve bank excepted, and

Private banker or officer, etc., of member bank, or class A director may serve, with consent of Federal Reserve Board, not more than two other banks, etc., where no substantial competition.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.[10]

Consent may be secured before applicant elected director.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.[11] The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

Not to serve two or more presently or previously competing corporations if capital, surplus, and undivided profits aggregate more than $1,000,000, and elimination of competition by agreement would violate antitrust laws.

How eligibility determined.

[10] The part of the section immediately preceding beginning with, "*And provided further*, That nothing in this Act" to this point, amendments made by act May 15, 1916, ch. 120, and act May 26, 1920, ch. 206.

[11] For text of Sherman Act, see footnote on pp. 503–505. As enumerated in Clayton Act, see first paragraph thereof on pp. 502–504.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY.

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than $500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

May prosecute in district court of United States for district where offense committed.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.

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

[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 second, third, and fourth paragraphs of the footnote on pp. 502–503.

complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commis-

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying, or setting aside order of commission or board.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE—Continued.

Findings of commission or board conclusive if supported by testimony.

sion or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

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

Commission or board may make new or modified findings by reason thereof.

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

Judgment and decree subject to review upon certiorari, but otherwise final.

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.

Petition by respondent to review order to cease and desist.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A

To be served on commission or board which thereupon to certify and file transcript of record in the court.

copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same

Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.

jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

Jurisdiction of Court of Appeals exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.[14]

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Service of commission's or board's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS.

SEC. 12. That any suit, action, or proceeding under the antitrust laws[14] against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or crimi-

[14] For text of Sherman Act, see footnote on pp. 503–505. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on pp. 502–504.

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. 503–505. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on pp. 502–504.

of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpœnas to that end may be served in any district by the marshal thereof.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.

Sec. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws,[16] including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS.

Sec. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No preliminary injunction without notice.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the in-

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

[16] For text of Sherman Act, see footnote on pp. 503–505. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on pp. 502–504.

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. 268 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 misdeameanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial may be by court or, upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed $1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

Sec. 23. EVIDENCE. APPEALS.

Evidence may be preserved by bill of exceptions.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SEC. 21 NOT AFFECTED.

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States,

And other cases not in sec. 21.

Punished in conformity with prevailing usages at law and in equity.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT.

But to be confined to clause, sentence, etc., directly involved.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Approved, October 15, 1914.

WEBB ACT.[1]

[Approved Apr. 10, 1918.]

[PUBLIC—No. 126—65TH CONGRESS.]

[H. R. 2316.]

AN ACT To promote export trade, and for other purposes.

Sec. 1. DEFINITIONS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale. "Export trade."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States. "Trade within the United States."

That the word "Association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations. "Association."

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety,[2] shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in Association not illegal if organized for and engaged in export trade solely.

[1] With the exception of a reference thereto in the case of *United States v. United States Steel Corporation*, 251 U. S. 417 at 453, and in *Ex Parte Lamar*, 274 Fed. 160 at 171, this act appears as yet neither to have been involved in nor referred to in any reported case.

[2] For text of Sherman Act, see footnote on pp. 503–505.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW—Continued.

Nor agreement nor act, if not in restraint of trade within the United States, or of the export trade of any domestic competitor, and

If such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION.

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.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS.

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen,[4] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in ex-

[3] See *ante*, p. 502 et seq.
[4] See *ante*, p. 489 et seq.

port trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Even though acts involved done without territorial jurisdiction of United States.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION.

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION— Continued.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and mangement and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

Commission given same powers as under Federal Trade Commission Act so far as applicable.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."[5]

Approved, April 10, 1918.

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[5] See *ante*, p. 489 et seq.

APPENDIX II.

DECISIONS OF THE COURTS IN CASES INSTITUTED AGAINST OR BY THE COMMISSION.[1]

ALUMINUM CO. OF AMERICA v. FEDERAL TRADE COMMISSION.[2]

(Circuit Court of Appeals, Third Circuit, June 1, 1922. Rehearing denied November 22, 1922.)

No. 2721.

1. MONOPOLIES KEY NO. 20—EFFECT OF CONVEYANCE OF BUSINESS TO ANOTHER CORPORATION, IN WHICH COMPETITOR PURCHASED STOCK, TO BE CONSIDERED WITH REFERENCE TO TENDENCY TO CREATE MONOPOLY.

Under Clayton Act, Par. 7 (Comp. St. Par. 8835g), relative to the purchase by a corporation engaged in commerce of stock in another corporation so engaged, where, by agreement between the C Company and the A Company, a third corporation was organized to take over part of the business of the C Company, and the A Company purchased stock therein, though it was not the corporation engaged in interstate commerce in which stock was acquired, the effect of the transaction with reference to its tendency to create a monopoly, as well as its tendency to lessen competition, must be considered.

2. MONOPOLIES KEY NO. 20—STATUTE NOT DIRECTED TO ACQUISITION OF STOCK IN ONE CORPORATION BY ANOTHER, BUT TO EFFECT ON COMMERCE.

Clayton Act, Par. 7 (Comp. St. Par. 8835g), forbidding a corporation engaged in commerce to acquire stock in another

[1] The period covered coincides with that of this volume, namely, May 22, 1922, to Feb. 13, 1923. During this period, however, in addition to the opinions and decisions herewith reprinted, the Supreme Court of the District of Columbia handed down a written opinion as of Jan. 30, 1923, in the case of the Maynard Coal Co. *v.* Federal Trade Commission, sustaining a motion of the company to strike out the Commission's amended answer upon the ground that it raised no defense. This opinion will be reprinted together with the court's final decree in the case (the Commission having elected to stand upon its answer) as of Mar. 6, 1923, the date of said decree. (For a statement by the court of the facts in this proceeding, pending on appeal as of this writing before the Court of Appeals for the District of Columbia, in which the Commission was enjoined from requiring certain reports required by it, see opinion handed down Apr. 19, 1920, in connection with the granting of a preliminary injunction, reported in 3 F. T. C. at p. 555 et seq.). It should also be noted that during the period referred to the Supreme Court on June 5, 1922, denied a petition by the Beechnut Co. for a rehearing in the case of Federal Trade Commission *v.* Beech-Nut Packing Co., 257 U. S. 441 (see opinion also reported in 4 F. T. C. at p. 583 et seq.).

[2] Petition of the Aluminum Co. for a rehearing or modification of the court's order, denied Nov. 22, 1922. Petition by the company for writ of certiorari denied by the Supreme Court on Feb. 26, 1923, 261 U. S. 616 (43 Sup. Ct. 362).

corporation so engaged, where the effect is substantially to lessen competition, to restrain commerce, or tend to create a monopoly, is not directed to the mere acquisition of stock of one corporation by another, but to the effect of such acquisition on commerce.

3. MONOPOLIES KEY No. 20—COMPETITION EXISTS BETWEEN CORPORATIONS IN SAME BUSINESS, THOUGH THERE IS A "SELLERS' MARKET."

Within Clayton Act, Par. 7 (Comp. St. Par. 8835g), relative to the purchase by a corporation of stock in another corporation having the effect of substantially lessening competition, competition exists between corporations selling the same class of goods, though there is a "sellers' market," or condition of affairs under which sellers do not have to compete for trade, but where the trade competes for the sellers' products.

4. MONOPOLIES KEY No. 20.—COMPETITION HELD LESSENED WHEN ONLY COMPETITOR IN CERTAIN GOODS AND ONE OF TWO COMPETITORS IN OTHERS ELIMINATED.

Competition was substantially lessened, within Clayton Act, Par. 7 (Comp. St. Par. 8835g), by a stock acquisition which eliminated from the sheet aluminum trade a company's only competitor in the manufacture and sale of wide sheets, and one of its only two competitors in the manufacture of sheets of any width.

5. MONOPOLIES KEY No. 20.—LESSENING OF COMPETITION WITH CORPORATION OTHER THAN ONE WHOSE STOCK WAS ACQUIRED HELD TO HAVE EVIDENTIAL BEARING.

Where, by agreement between the A Company and the C Company, a third company, in which the A Company acquired stock, was organized to take over part of the C Company's business, though the stock acquired was not that of the C Company, the lessening of competition with the C Company had an evidential bearing on the question whether the transaction tended to create a monopoly, within Clayton Act, Par. 7 (Comp. St. Par. 8835g).

6. MONOPOLIES KEY No. 20—MAY BE CREATED BY STOCK ACQUISITION NOT LESSENING COMPETITION WITH CORPORATION WHOSE STOCK IS ACQUIRED.

A "monopoly" can be created, within Clayton Act, Par. 7 (Comp. St. Par. 8835g), by acquisition of stock in another corporation, when the effect is not to lessen competition with such corporation, if its effect is to end competition existing elsewhere.

7. MONOPOLIES KEY No. 20—CORPORATION WHOSE STOCK WAS PURCHASED HELD "ENGAGED IN COMMERCE," AND POTENTIALLY ENGAGED IN COMPETITION WITH PURCHASER.

Where the A Company and the C Company, a competitor, agreed that a third company, in which the A Company was to acquire stock, should be organized and purchase the aluminum rolling mill and rolling mill business of the C Company, and the new company paid for such business from the proceeds of

monthly calls on the other companies' stock subscriptions during a period when it was operating the newly acquired plant, it was "engaged in commerce," and potentially engaged in competition with the A Company, when the latter company's stock was acquired, within the meaning of Clayton Act, Par. 7 (Comp. St. Par. 8835g).

8. MONOPOLIES KEY NO. 20—CORPORATION TEMPORARILY SUSPENDING MANUFACTURE HELD NEVERTHELESS ENGAGED IN COMMERCE.

Where a corporation purchased a going business in the manufacture and sale of sheet aluminum, and engaged in such business, it did not cease to be engaged in commerce, within Clayton Act, Par. 7 (Comp. St. Par. 8835g), by temporarily suspending the rolling of sheets, while changing from an old mill to a new one.

9. MONOPOLIES KEY NO. 20—MOTIVE OF ACQUISITION OF STOCK IN ANOTHER CORPORATION HELD IMMATERIAL.

Under Clayton Act, Par. 7 (Comp. St. Par. 8835g), the effect of a corporation's acquisition of stock in another corporation as substantially lessening competition, restraining commerce, or tending to create a monopoly, and not the motive for the transaction, is the question for the court, and it is immaterial that the object of the transaction was not to evade the statute, but to increase production and maintain reasonable prices.

(The syllabus is taken from 284 Fed. 401.)

Petition for Review from Federal Trade Commission.

Petition by the Aluminum Company of America to review an order of the Federal Trade Commission. Order sustained.

George B. Gordon, S. G. Nolin, and Gordon & Smith, all of Pittsburgh, Pa., for petitioner.

Francis W. Treadway and Treadway & Marlatt, all of Cleveland, Ohio, for Cleveland Metal Products Co.

Edward L. Smith, Wm. H. Fuller, and Adrien F. Busick, all of Washington, D. C., for respondent.

Before Buffington, Woolley, and Davis, Circuit Judges, Buffington, J., dissenting.

WOOLLEY, *Circuit Judge:*

This is a petition of Aluminum Company of America for review of an order of the Federal Trade Commission commanding that corporation, on a finding that it had violated section 7 of the Clayton Act, 38 Stat. 730, to divest itself of all its stockholdings in the Aluminum Rolling Mills Company, another corporation.

The relevant facts, shortly stated, are these:

The Aluminum Company of America (to which we shall refer as the Aluminum Company) is the dominant

factor in the aluminum industry. Its business, and that of its subsidiaries, extends to the production and sale of crude or pig aluminum and of aluminum ingots; the production and sale of sheet aluminum rolled from ingots; and the manufacture and sale of articles fabricated from sheets.

During the time covered by this controversy the Aluminum Company produced one-half of the pig aluminum and aluminum ingots made in the world and all that was made in the United States. Its ingot output was 150,000,000 pounds a year. In the domestic field, one substantial competitor—the Southern Aluminum Company, of French affiliation, with a capital of $8,000,000—arose before the war; but during the war it succumbed to financial difficulties and its properties were purchased by the Aluminum Company.

Pig aluminum and aluminum ingots are used for two general purposes, namely; for casting articles and for rolling sheets. From aluminum sheets many things are made, among them kitchen utensils and automobile bodies. The Aluminum Company and its subsidiaries produce one-half of all the sheet aluminum made in the world and, prior to the war, they produced all of the sheet aluminum made in the United States.

In March, 1915, the Cleveland Metal Products Company—of which we shall have more to say presently—built a mill for rolling sheet aluminum of a width of 60 inches and entered the trade in competition with the Aluminum Company, and its subsidiaries.

In 1916 the Bremer-Waltz Corporation became a competitor of the Aluminum Company and its subsidiaries in the manufacture of sheet aluminum 30 inches wide. In 1919 this concern sold a part of its physical assets, including its rolling mill, to the Aluminum Goods Manufacturing Company, of whose stock the Aluminum Company owns thirty-six per cent.

In 1916 the United States Smelting & Aluminum Company became a competitor of the Aluminum Company and its subsidiaries in sheet aluminum of the width of 30 inches.

Thus during the time in question the Aluminum Company had no domestic competitors in the manufacture of aluminum ingots and but three competitors in the manufacture of aluminum sheets, two of narrow sheets, and one of broad sheets, the difference in width of sheets being a factor in the breadth of the sheet market, for only broad sheets are used in the manufacture of automobile bodies.

Prior to 1913 there were two corporations doing business in the City of Cleveland, the Cleveland Metal Products Company and the Cleveland Foundry Company, which were owned by the same people. The Cleveland Metal Products Company (hereafter referred to as the Cleveland Company) was engaged in the manufacture of

enameled steel cooking utensils, and the Cleveland Foundry Company (hereafter dropping out of the case) was engaged in the manufacture of oil stoves with aluminum parts. These corporations were merged in January, 1917, under the name of the former.

In 1913 the Cleveland Company contemplated the extension of its steel cooking utensils business by adding aluminum cooking utensils. With this in view it took up the matter of rolling its own sheet aluminum from which to fabricate its cooking utensils and stove parts. Its first step was to investigate the sources of raw material. It knew that aluminum ingots could be purchased from the Aluminum Company, the sole domestic source. Its president, however, went abroad and found that aluminum ingots could be purchased in Europe. Being assured of an ingot supply from the foreign source, the president returned to America and, on his report, the Cleveland Company began the erection of a plant. This plant was completed in 1915 at a cost of $227,000. In order to roll sheets for its own use at a low cost, the mill was constructed on a scale larger than the company's own needs. Its capacity was 250,000 pounds of sheet aluminum a month, of which later the company used twenty-seven per cent in the manufacture of its products and sold seventy-three per cent on the market. Recourse to the foreign market having been cut off by the war, the Cleveland Company obtained ingots from the Aluminum Company, the only available source. From sheets sold on the market (not from sheets used in its own business), the Cleveland Company earned net profits of $23,000 for the six months ending December 31, 1915; $219,000 for the year 1916; and $52,000 for the year 1917. Profits in these substantial amounts were due, it is explained, to several causes: One was that the demand for sheet aluminum arising from the war exceeded the supply; another, that the market price for sheets was fixed by extensive time contracts of the Aluminum Company at a point considerably below what the trade was willing to pay for spot deliveries, and that the Cleveland Company, declining to make time contracts, was able to sell its product at the higher figures.

When the United States entered the war and was about to fix the price of sheet aluminum (which it did in March, 1918), prices of the upper level began to recede toward those of the lower level, and the Cleveland Company found that the "spread" or difference between the cost price of ingots, fixed by the Aluminum Company, and the selling price of sheets likely to be fixed by the Government, was not sufficient to cover the cost of converting ingots into sheets. Therefore, with a market responding to this situation, the Cleveland Company incurred losses of $14,000 a month for the first two months of 1918, with a prospect of continuance. This condition of actual and

impending losses was made more acute by the fact that the Cleveland Company had outstanding a contract with the Aluminum Company for the purchase of ingots running into the future. The Cleveland Company asked the Aluminum Company to relieve it from its contract. The Aluminum Company declined. There followed interviews, discussions, negotiations between the officers of the two companies, and eventually the development of a plan to meet the difficulty. This plan contemplated the organization of a new corporation, to be known as "Aluminum Rolling Mills Company," and its capitalization at $1,000,000, of which $600,000 was to be issued; the sale by the Cleveland Company of its rolling mill and sheet business to the new corporation at a figure somewhat above the cost of the mill; subscription by the Cleveland Company for $200,000 and by the Aluminum Company for $400,000 of the capital stock of the new corporation; and the organization of the new corporation and the operation of the mill by the Aluminum Company. This plan was carried out with an assurance to the Cleveland Company that its needs for sheet aluminum would be cared for at market prices. This is the transaction which the Federal Trade Commission found to be violative of section 7 of the Clayton Act.

The findings of the commission were based solely on section 7 of the Clayton Act (hereafter referred to as "the section"). Hence, this is the only law involved in the case. The applicable provision of the section is as follows:

"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. * * *"

The Aluminum Company, maintaining under recent decisions that it is for the courts, not for the commission, ultimately to determine, as matter of law, what acts "lessen competition," "restrain commerce," or "tend to create a monopoly" within the meaning of the section, *Federal Trade Commission* v. *Gratz*, 253 U. S. 421; *Curtis Publishing Company* v. *Federal Trade Commission*, 270 Fed. 881; *Standard Oil Company* v. *Federal Trade Commission*, 273 Fed. 478, challenges the commission's order on several grounds. All are based on the proposition of law, arising from the power of Congress to enact laws controlling interstate commerce, that before there can be a violation of the section both the corporation acquiring stock and the corporation whose stock is acquired must at the time be engaged in interstate commerce.

Taking up the events in the order of their occurence, the Aluminum Company's first contention is that this requirement of the section is not met by the phase of the transaction relating to the Cleveland Company because, although that corporation was engaged in interstate commerce, it was not the stock of that corporation which the Aluminum Company acquired. While this is literally true we can not thus summarily drop the Cleveland Company out of the case. The Cleveland Company was one of two actors in the transaction whose effect on trade the commission found violated the section. Therefore, we must inquire, as did the Aluminum Company in its briefs, into the effect of the transaction on commerce, not with reference to lessening of competition alone but with reference as well to its tendency to create monopoly.

Clearly, the object to which the section is directed is not the mere acquisition of stock of one corporation by another. It is the "effect" of such acquisition upon commerce. Our first inquiry, therefore, is whether in this case the effect was substantially to lessen competition between the two corporations. The Aluminum Company meets the issue of lessened competition as it bears on the two phases of the transaction, one between itself and the Cleveland Company and the other between itself and the Rolling Mills Company.

As between itself and the Cleveland Company, the Aluminum Company contends there never was competition during the three years the latter concern was rolling and selling sheets, because, it maintains, under the exceptional conditions arising from war, there was always a sellers' market; that is, a market where, as we understand it, sellers do not have to compete for trade, but where the trade competes for sellers' products. It is hard to believe that Congress intended that violations of section 7 of the Clayton Act should be determined according to market movements and that the section may be violated when stock acquisition is made on a buyers' market and not violated when a like acquisition is made on a sellers' market. We are of opinion that the finding of the commission that there was competition between the Aluminum Company and the Cleveland Company during the period in controversy is supported by the testimony.

The next question is whether the testimony shows that this competition was substantially lessened by the stock acquisition which followed. As the transaction eliminated the Cleveland Company from the sheet trade, manifestly it put an end to competition between that corporation and the Aluminum Company and its subsidiaries. The "effect" of a transaction which ended competition between the Aluminum Company and its one competitor in the manufacture and sale of wide sheets and ended competition between it and one of only two

independent competitors in the manufacture of sheets of any width, was inevitably to lessen competition, and to lessen it substantially. Still, the Aluminum Company says the law was not violated because the substantial lessening of competition was not between the corporation whose stock was acquired and the corporation which acquired the stock. This also is true; but, as everyone agrees, the transaction had two parts; one between the Aluminum Company and the Cleveland Company, by which competition between them was ended; the other between the Aluminum Company and the Rolling Mills Company. Violation of the section does not turn alone on a substantial lessening of competition. It turns in the disjunctive, on the tendency of the transaction "to create a monopoly." For these reasons we are of opinion that the lessening of competition with the Cleveland Company has an evidential bearing on the next question, whether the acquisition of the stock of the Rolling Mills Company by the Aluminum Company tended to create a monopoly. Obviously, while the ending of competition with the Cleveland Company and the acquisition of the stock of the Rolling Mills Company were parts of one transaction, these parts were interdependent and were so intimately related that one can not be considered without the other.

Passing from the phase of the transaction with the Cleveland Company, which, though engaged in commerce, was not the corporation whose stock was acquired, and coming to the phase where a new corporation was created whose stock, it is contended, was acquired before it began rolling sheets and delivering them in commerce, the Aluminum Company advances the proposition that the latter phase of the transaction does not come within its interpretation of the section that before the law can be violated both the corporation acquiring stock and the corporation whose stock is acquired must at the time be engaged in interstate commerce. In other words, the Aluminum Company maintains that the new corporation at the time its stock was acquired had not begun business and, therefore, could not have been "engaged * * * in commerce." From this premise the Aluminum Company draws the conclusion that the latter phase of the transaction did not violate the section. Continuing argumentatively it maintains that after the stock acquisition, and when later the new corporation embarked in commerce, it created commerce where none before existed, the effect of which was to increase, not to restrain, commerce; and, as there was no competition between the Aluminum Company and the new corporation at the time of the acquisition of its stock, necessarily "the effect of such acquisition" could not be to lessen competition where none existed. It seems to us that in this defense the Aluminum Company stands on a ledge

too narrow for safety. Assuming for a moment that at the time of the stock acquisition the new corporation had not become engaged in commerce because it had not begun rolling sheets and, therefore, had not been in competition with the Aluminum Company, we doubt that the Aluminum Company could be saved from violating the section in view of the next fact that by the terms of the arrangement the Aluminum Company at once put the new corporation into commerce, and put it into commerce in a way which forever prevented competition with itself.

But the lessening of competition is not the only effect of the acquisition by one corporation of stock of another which Congress sought to avoid. It intended as well to prevent a transaction "where the effect" may "tend to create a monopoly," which is the effect which the commission found in the acquisition of the stock of the Rolling Mills Company. A monopoly can be created by a transaction of stock acquisition when the effect is not to lessen competition with the corporation whose stock is acquired if the effect is to end competition existing elsewhere, *United States* v. *New England Fish Exchange*, 258 Fed. 732, 746; as, for instance, the ending of competion with the Cleveland Company. This is for the reason that the lessening of competition and a tendency to monopoly are not always synonymous. There may be a lessening of competition between two corporations in a stock transaction that does not tend to monopoly. But, curtailing this discussion, we are not prepared to admit the premise from which the Aluminum Company deduces its conclusion. In other words, we do not find that at the time the Aluminum Company acquired the stock of the Rolling Mills Company, the latter was not engaged in commerce and was not, potentially, engaged in competition with the Aluminum Company, for these reasons:

Prior to February 17, 1918, the Cleveland Company had been engaged in competition with the Aluminum Company. On that day it agreed with the Aluminum Company to organize, and later there was organized, a third corporation, which was to purchase, and later did purchase, the aluminum rolling mill and also the "aluminum rolling mill business" of the Cleveland Company. This finding of the commission is sustained by the record which includes an agreement between the two old corporations for sale by the Cleveland Company to the new corporation not of its rolling mill alone but its accounts receivable, and providing also for the delivery to the new corporation of a list of the Cleveland Company's customers scattered through many States, and for the taking over by the new corporation of all "unfilled orders" for aluminum sheets on the books of the Cleveland Company.[2] The "business" thus sold by the Cleveland Com-

[2] Record pp. 750, 151, 511, 512, 526 to 644, 645, 649, 653, 654, 655, 660, 661, 673, 674, 696 to 707, 711 to 718, 194.

pany and purchased by the new corporation was that of a going concern consisting of the manufacture and sale of sheet aluminum in commerce and in competition with the Aluminum Company. Settlement with the Cleveland Company for the purchase of these assets was not made at the time with money acquired by the new corporation from previous sale of its stock, but was made by six notes given by the new corporation payable monthly, and the notes were met from the proceeds of six monthly calls upon the Cleveland Company and the Aluminum Company to meet their stock subscriptions. During the period through which these payments were being made and stock subscriptions were being paid, the new corporation had begun the operation of the newly acquired plant and continued its operation until the mill was moved to a new location. Later, during the change from the old mill to the new, doubtless the rolling of sheets was suspended. Yet it does not follow that the relation of the new corporation to the trade which it had purchased and in which it had been engaged was also suspended, and that, in consequence, the new corporation was not engaged in commerce within the meaning of the section. Having purchased trade upon which to start and having started upon the trade it had purchased, the new corporation was, we think, truly engaged in commerce at the time of the stock acquisition.

In addition to the several defenses made by the Aluminum Company there is much in the record to the effect that the need of aluminum for purposes of war and the assistance rendered the allied Governments and our own Government by increasing production and maintaining reasonable prices entered into the transaction. For these reasons and others it is persuasively urged that the arrangement was not a device intended to get around the Clayton Act but was a plain business transaction having the twofold object of relieving one party from a difficult business situation and enabling the other party to meet more effectively the demands of war. With these matters, we surmise, we have no present concern. They have to do with the motive for the transaction. We have to do only with the "effect" of the transaction; and with its effect only as it may "substantially lessen competition * * * or restrain commerce, * * * or tend to create a monopoly." As we are not called upon to determine whether the Aluminum Company is a monopoly within the definition of the Antitrust law, we limit our decision to the question whether, within the policy of the Clayton Act, the transaction comes within the definition of the section. In this we are of opinion that it does, and that its effect upon actual competition as well as in destroying potential competition in a way later to make actual competition impossible was substantially to lessen competition between the corporation whose stock

was acquired and the corporation making the acquisition; and second, that, without regard to whether its effect was substantially to lessen competition between these two corporations, the stock acquisition did, in effect, "tend to create a monopoly."

Being of opinion that the findings of the Federal Trade Commission are supported by the testimony, its order is sustained.

BUFFINGTON, *Circuit Judge*, dissenting:

This case involves the construction of the first clause of section 7 of the act of October 15, 1914, and its application to the facts disclosed by the proofs. That act, being "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," was supplementary to existing laws against unlawful restraints and monopolies. The paragraph in question is: "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."

These plainly expressed provisions contemplate the existence of two corporations which are competitors in the same line of business, and one of them, with the view to substantially lessening competition, or creating a monopoly, buying the whole or a part of the stock of its competitor. That two existing competing corporations were the subjects of the clause, is shown plainly by its terms. The offending buying corporation is aptly described as being in business, by the words "No corporation engaged in commerce," and the other corporation is described as being in like manner engaged in commerce by the words "another corporation engaged *also* in commerce," and that the two corporations thus described were each actually engaged in competition of a substantial character is evidenced by the fact that the stated object of the law was to prevent the two corporations engaged in commerce from doing a thing "the effect of which was to *substantially lessen* competition," or which tended "to create a monopoly of any *line of commerce*." Moreover, the word "acquire" is an apt one to describe the buying by one corporation of the stock of another competing corporation, as will be seen by reference to the proviso in the third paragraph that "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*," and also by refer-

ence to section 11 of the act, where the remedy against the stock acquiring corporation is "to cease and desist from such violations and *divest* itself of the stock held." Such divesting would restore the competitive corporation to its former competing status.

Clearly, such was the situation to which this section was directed, but lest the stock of two or more corporations thus engaged in competition, should be bought up not by one another, but by a holding company which was not engaged in commerce, the next paragraph was added, which provided: "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." A study of this latter paragraph clearly shows it contemplated two sorts of corporations, viz: One class engaged in competitive commerce with each other, viz: "Two or more corporations engaged in commerce," the acquisition of whose shares "may be to substantially lessen competition between such corporations," or "to restrain such commerce in any section or community," or "tend to create a monopoly of any line of commerce." The other or stock-acquiring class of corporation, was not described as engaged in commerce, but was described without any limitation by the inclusive words, "No corporation shall acquire," etc., thus clearly referring to a mere holding corporation.

In my judgment, the first quoted clause of section 7 was a case unlike the present, where there was not only no competing corporation buying a competing company's stock, but where there were no elements or purpose of oppression, bad faith, increase of product price, diminution of output, or any other of the vicious earmarks of monopoly or lessening of competition, and where indeed, the uncontradicted evidence is that the whole transaction was influenced by a patriotic war purpose to increase the supply of aluminum, which the Government was then largely absorbing for war requirements at its own fixed price. The business problem which confronted those concerned in the transaction was simply this: The Cleveland Foundry Company, whose major business was making stamped steel and enameled vitreous utensils, built in 1915 a mill to roll aluminum sheets for its own use. When the abnormal war demand for aluminum stopped, the mill began to lose five hundred dollars a day. This necessitated either mill abandonment or mill enlargement. At this point, I remark that if the Aluminum Company

of America, which furnished the Cleveland Company with aluminum ingots, desired to lessen competition or to broaden the monopoly of rolling aluminum sheets, all it had to do was to do nothing and allow the losing mill to drop out of business. On the other hand, if it desired to continue the mill as an ingot consumer and to increase the production of aluminum sheets, its only course was to enlarge the mill and increase its production. Such enlargement the Cleveland Company, after its disastrous venture, was unwilling to make itself, but was willing to contribute a minor part if the Aluminum Company would contribute the major part of the funds to enlarge.

What was really done was that the Aluminum Company formed a new company, and by taking the major stock thereof made the new company a subsidiary company of its own, the Cleveland Company becoming a minority stockholder, its mill being taken in part payment for such minority stock. Such was the simple business proposition; a losing plant, enlargement, and increased production, the Aluminum Company forming a subsidiary to take over and enlarge the business and the Cleveland Company contributing the mill and the minority of the money needed to effect enlargement. In point of fact, the situation was in no respect different than it would have been had the Aluminum Company bought the losing mill from the Cleveland Company and itself furnished the entire funds to capitalize the new subsidiary company. In my judgment, the present situation did not fall within the terms of either of the quoted paragraphs, was not an acquisition of stock such as the act contemplated, or one over which jurisdiction was conferred on the Trade Commission by the act. Nor does the construction which is thus given the act create a remediless situation, for, manifestly, if wrong was done, if this transaction was a subterfuge to lessen competition or to create a monopoly, the existing trust laws would have applied. And, indeed, the District Court of the United States for the Western District of Pennsylvania having theretofore taken jurisdiction of a bill filed by the United States against the Aluminum Company of America, the Attorney General by proper proceeding in that case could have, and can now prevent that company taking this step if it tended to lessen competition or create a monopoly. And this prior, general, and effective jurisdiction of courts over such matters Congress recognized when it created a Trade Commission of defined and limited power by providing in the act: "This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the

formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition," and at the same time making it clear "That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided."

Being of opinion the case was one to which the limited jurisdiction of the Trade Commission was not extended by the act of Congress, I respectfully record this my dissent.

STANDARD OIL CO. OF NEW JERSEY ET AL. v. FEDERAL TRADE COMMISSION.*

(Circuit Court of Appeals, Third Circuit. July 14, 1922.)

Nos. 2599, 2609, 2632.

1. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—PRACTICE OF LOANING EQUIPMENT TO RETAILERS HELD TO AFFECT PUBLIC SO AS TO AUTHORIZE PROCEEDINGS UNDER TRADE COMMISSION ACT.

If the practice of wholesale dealers in gasoline in loaning or leasing without rental to many thousands of retailers, throughout a territory comprising more than half the population of the United States, equipment for the storage, measurement, and delivery of gasoline, on their agreement to use it exclusively for the storage and handling of gasoline purchased from the wholesaler, is illegal, it so affects the public as to authorize proceedings under Federal Trade Commission act, paragraph 5 (Comp. St., par. 8836e), providing for a proceeding when it shall appear to the commission that such a proceeding would be to the interest of the public.

2. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—LOANING OF GASOLINE STORAGE EQUIPMENT TO RETAILERS FOR USE ONLY IN STORING LENDER'S GASOLINE HELD NOT UNFAIR COMPETITION.

The loan or lease without rental by wholesalers to retailers of equipment for the storage, measurement, and delivery of gasoline on the retailer's agreement to use it solely for gasoline purchased from the lender, but without any agreement not to purchase gasoline from others, does not constitute unfair competition under Trade Commission act, paragraph 5 (Comp. St.,

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* Affirmed in *Sinclair Refining Co. et al. v. Federal Trade Commission*, April 9, 1923, 261 U. S. 463, 43 Sup. Ct. 450.

par. 8836e), and Clayton Act, paragraph 3 (Comp. St., par. 8835c), as to the public, other wholesalers, retailers, or manufacturers of such equipment.

3. MONOPOLIES KEY NO. 10—SCOPE OF CLAYTON ACT DEFINED.

The Clayton Act seeks to reach monopolies in their incipiency and stop their growth, but is not intended to reach every remote lessening of competition, or every dim or uncertain tendency to monopoly, or any possible lessening of competition, or possible creation of monopoly, but only acts which probably lessen competition substantially and actually tend to create a monopoly.

4. MONOPOLIES KEY NO. 12 (2)—LEASE OF MACHINERY ON AGREEMENT NOT TO HANDLE COMPETITORS' GOODS TO BE CONSIDERED BY ITS EFFECT AS WELL AS BY ITS TERMS.

Under Clayton Act, paragraph 3 (Comp. St., par. 8835c), declaring it unlawful to lease machinery, etc., on the agreement or understanding that the lessee shall not use or deal in the goods, etc., of competitors of the lessor, where the effect may be to substantially lessen competition or tend to create a monopoly, such a tying contract is to be construed, not by its terms alone, but by its effect as well.

(The syllabus is taken from 282 Fed. 81.)

Petitions for Review from Federal Trade Commission.

Original petitions by the Standard Oil Co., by the Gulf Refining Co., and by the Maloney Oil & Manufacturing Co. to set aside orders of the Federal Trade Commission. Orders set aside and complaints dismissed.

James H. Hayes and Chester O. Swain, both of New York City, for Standard Oil Co.

W. J. Guthrie, of Pittsburgh, Pa., for Gulf Refining Co.

Herbert B. Fuller, of Cleveland, Ohio, for Maloney Oil & Manufacturing Co.

E. W. Burr and Adrien F. Busick, both of Washington, D. C., for Federal Trade Commission.

Before Woolley and Davis, Circuit Judges, and Morris, District Judge, Morris, J., dissenting in part.

WOOLLEY, *Circuit Judge:*

In these proceedings we are asked to review and set aside three orders of the Federal Trade Commission commanding the petitioning corporations forever to cease and desist from a practice found by the commission to violate section 5 of the act creating the Federal Trade Commission (38 Stat. 717, 719) and section 3 of the Clayton Act (38 Stat. 730, 731). The applicable provisions of these statutes are, in the first, "That unfair methods of competition in commerce are * * * unlawful," and in the second, "That it shall be unlawful for any person engaged in commerce * * * to lease

* * * or make a sale * * * of goods, * * * machinery, * * * or other commodities * * * on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, * * * machinery, * * * or other commodities of * * * competitors of the lessor or seller, where the effect of such lease or sale, * * * or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

These are three of a large number of cases involving the same practice. They were tried in three groups. The testimony in one group bore most directly on gasoline marketing in States along the Atlantic seaboard. In another it related particularly to business done by companies within the State of Ohio. In the third it concerned business farther west. As the testimony in all cases was in the main identical, the 12 comprising the eastern group (which includes the cases at bar) were combined and heard together.

The testimony discloses a practice which has been widely pursued in the eastern part of the United States by corporations refining and marketing gasoline. It consists of what is practically a loan, or technically a lease without rental, by a wholesaler to a retailer, of equipment for the temporary storage, measurement, and delivery of gasoline to the consuming public. The practice extends mainly to the retailer whose place of business is referred to as a "curb filling station." The leased equipment is known as a "curb pump outfit" and comprises a sunken tank for the storage of gasoline and a pump of familiar design by which gasoline is drawn from the tank and delivered to motor vehicles. The retailer is the proprietor of the station and is generally engaged in some other business. Typical of his class are keepers of country stores, residents in hamlets and at crossroads, and farmers. The practice does not relate to retail stations owned and managed by the refining and marketing companies themselves. These are the more elaborate affairs, also familiar to the public and generally known as "service stations." Proprietors of garages comprise an intermediate class of retailers to whom the practice in some measure extends.

The practice held by the commission to offend against the statutes is found wholly within the terms of the leasing contracts. The form of the contract is important in two respects: First, in what the wholesaler requires the retailer to do; and second, in what it does not require him to do. The form of contract used by the Standard Oil Company is identical in substance with contracts used by the other petitioners. Paraphrased, it is as follows:

Reciting by preamble that the retailer is now purchasing gasoline from the wholesaler for sale to its customers

and has requested it to install on his premises equipment for the better storage and handling of the gasoline so purchased, and that in compliance with his request the wholesaler is about to make the installation; it is agreed between them that the "equipment shall be used solely for the storage and handling of motor gasoline purchased by the" retailer from the wholesaler. Then follow undertakings by the retailer that he will maintain the equipment in good condition at his own cost; that he will not encumber or remove it or permit it to be seized or taken in execution; and that he will indemnify the wholesaler from liability for injuries occasioned by leakage, fire, or explosion of gasoline. The contract concludes with four provisions for its termination: First, upon the use of the equipment by the retailer for any other purpose than the storage and handling of gasoline purchased from the wholesaler; second, upon the retailer's failure for 30 days to purchase gasoline from the wholesaler; third, upon the sale of the premises by the retailer; and fourth, by either party upon 5 days' notice in writing to the other party; with the right of the wholesaler in any event to enter upon the premises and remove the equipment.

Having stated what the contract requires the retailer to do, the things which it does not require of him are equally important. The first is he is not required to pay any license fee, rental, or other thing for the use of the equipment; nor is he restricted in his business to the equipment covered by the contract. On the contrary, he may use other equipment leased by competing wholesalers or purchased by himself. Nor does the contract expressly tie him to the wholesaler's products. He may freely deal in gasoline or other petroleum products purchased from competing wholesalers. He may not, however, use the equipment of the contract for storing and handling a competitor's gasoline.

In justification of their practice the petitioners maintain that the curb pump outfit is a natural development of the oil industry. In this industry the distribution and marketing of petroleum products more or less volatile and therefore more or less dangerous has always been a serious problem. The petitioners point out that for many years kerosene and other less volatile oils have been sold to retailers in barrels or direct to householders in cans. The barrels and cans being the property of the wholesaler are returned when the contents are removed. When the market for gasoline and more volatile oils developed, the wholesaler for safety shipped them to the retailer in steel barrels or drums. These also remained the property of the wholesaler and were returned when empty. With the marvelous increase of motor vehicles in all sections, urban and rural, there came a corresponding necessity for wider distribution of gasoline. Distribution from large central reservoirs to dis-

tant places by barrels and drums was no longer practicable. Then curb filling stations were established and curb pump outfits were installed whereby gasoline is delivered by tank trucks to many smaller centers and there stored and sold. These centers grew in number as the demand spread. At first this demand was met by one station and one outfit. As the demand increased stations and outfits were multiplied, the purpose of the practice, the petitioners claim, being to increase business by making easy and convenient the sale of gasoline to the public everywhere. But outfits cost money and the little storekeeper and the farmer by the roadside could not be induced, and frequently were not able, to invest capital in the purchase of an outfit. The result was that outfits were purchased by the wholesaler and loaned or leased to the retailer at practically no cost to him, yet upon the terms with respect to their use which we have detailed.

The view which the Federal Trade Commission takes of this practice is quite different. Its conclusions based on its findings of fact are that the installation of one outfit either supplies the needs of the retailer or meets the demand of his locality, and that, in consequence, the retailer has neither economic means nor personal desire to permit the installation of more than one outfit on his premises; that the contract for an outfit has the effect of tying the retailer to the products of the one wholesaler so long as one outfit meets the local demand and of substantially lessening competition by enabling the wholesaler to monopolize first one retailer and then, as the contracts are multiplied, to monopolize many thousand retailers, and eventually the whole territory in which they reside. Finding this practice of the petitioners violative of the laws referred to, the commission entered the orders to cease and desist here under review.

On this statement of facts we shall discuss the practice as it bears on four classes of interested parties. The first of these is the public.

The Federal Trade Commission act, in so far as proceedings thereunder are founded on a public interest, provides: "* * * 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, * * *." (38 Stat. 719, sec. 5.)

See *F. T. C.* v. *Gratz*, 253 U. S. 421.

The petitioners challenge the authority of the Federal Trade Commission to institute and prosecute these proceedings on two grounds as affecting the public interest. The first is, that the complaints do not allege facts necessary to show that public interest is involved. Upon taking this position, there arose an issue whether public

interest is a matter to be found by the Federal Trade Commission preliminary to the issuance of its complaints or is a fact to be alleged in the complaints and proved like any other fact. This question, in view of the record, is purely academic, because whether public interest is to be regarded as a consideration moving the commission to action or a jurisdictional fact to be pleaded and proved in support of its action, the fact of public interest in these cases is abundantly established.

The law of unfair competition in its modern conception regards as its chief concern the effect of forbidden acts upon consumers. The Congress in passing the Clayton Act and denouncing tying contracts and leases obviously had in mind the public as the principal sufferer therefrom. It is true, as said by Judge Denison in *Steers* v. *United States*, 192 Fed. 1, in speaking of the Sherman Antitrust Act (26 Stat. 209), that the theory of injury to the public lies at the bottom of the statutes and is directed against things which tend to deprive the public of the advantages which flow from free competition. Having denounced methods of business which are unfair and which substantially lessen competition and tend to create a monopoly, it is clear that in a case of this kind the public is within the protection of these statutes. If under these statutes the practice is illegal, then in truth the public, which pays the bill, is the main sufferer. As the practice extends to many thousand retailers and comprehends many million transactions through territory comprising more than half of the population of the United States, it is idle to say that the public has not an interest. Therefore, on this contention we think the petitioners have wholly failed to grasp the principle and purpose of the statutes and are entirely wrong in their contention.

The next contention of the petitioners, however, is very different. It squarely meets the issue of public interest and is to the effect that the evidence fails to show that the public has been injured. With this we agree. Postponing discussion of the effect of the practice upon competition and monopoly, we do not find that the practice has increased the cost of distribution or has enhanced the price of gasoline to the public. On the contrary, it has decreased the cost of distribution. Whether the price to the public has been reduced, we can not say. Clearly, the public has found an advantage in the practice, both in the matter of convenience and in the certainty of getting the precise make of gasoline advertised on the globe of the pump. On the other hand, if the orders of the commission commanding the petitioners to cease and desist from the practice and thereafter to lease outfits to retailers only on remunerative rentals stand, the inevitable result will be that the number of curb filling stations will be reduced, thereby lessening the con-

venience to the public; or the rental charged the retailer for the outfit will be covered by fixing wholesale prices so as to allow him a larger profit. In the readjustment the public doubtless will undergo its usual experience of paying higher prices.

The second class of parties interested in or affected by the practice is that of oil refiners or wholesalers, including both the petitioning wholesalers—the leading actors in the practice—and their wholesale competitors. The parts played by the members of this class depend for their legality upon the scope and purpose of the two statutes involved.

The first paragraph of each of the orders of the commission does not deal with the restrictive clause of the contract; it deals solely with the leasing of outfits for a nominal rental or for no rental at all. One question decided by the commission and here under review is whether this feature of the contract is an unfair method of competition within section 5 of the Federal Trade Commission act. Interpreting this section, the Supreme Court, in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427, said:

"The words 'unfair method of competition' are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as matter of law what they include. They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade."

Therefore in determining, as matter of law, whether leasing of gasoline outfits without rentals is an unfair method of competition, we shall inquire whether the method is characterized by oppression of competitors or is against public policy because of its dangerous tendency unduly to hinder competition or create monopoly. So also under the Clayton Act, by force of which the commission framed the second paragraph of each of its orders denouncing the restrictive clause of the contract, we shall, upon the authorities given below, make a similar inquiry with reference to the effect of the practice in lessening competition and creating a monopoly. To make clear the principle upon which we shall examine the testimony and decide these cases, it may be well to observe that the Clayton Act, which is a part of the scheme of laws against unlawful restraints and monopolies, does not wait for its operation until monopolies have been created and restraints of trade established, but seeks to reach them in their incipiency and stop their growth.

Yet, in thus avoiding an objectionable effect by removing the cause, the Congress did not intend the statute to reach every remote lessening of competition or every dim and uncertain tendency to monopoly. It intended rather that the commission, and ultimately the courts, should inquire not whether a given practice may possibly lessen competition, or possibly create a monopoly, but whether it probably lessens competition—and lessens it substantially—and whether it actually tends to create a monopoly. *The Standard Fashion Company* v. *Magrane-Houston Company*, 258 U. S. 346, 42 Sup. Ct. Rep. 360. Though differing somewhat from other laws, as we have indicated, the Clayton Act, nevertheless, deals with matters within the realm of monopoly. Therefore in determining whether given acts amount to unfair methods of competition within the meaning of the Federal Trade Commission act, or substantially lessen competition and tend to create a monopoly within the meaning of the Clayton Act, the only standard of legality with which we are acquainted is the standard established by the Sherman Act in the words "restraint of trade or commerce" and "monopolize, or attempt to monopolize," and by the courts in construing the Sherman Act with reference to acts "which operate to the prejudice of the public interest by unduly restricting competition or unduly obstructing the due course of trade," and "restrict the common liberty to engage therein." *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.*, 224 Fed. 566, 573; affirmed 227 Fed., 46; *United States* v. *American Tobacco Co.*, 221 U. S. 106, 179; *United States* v. *Patten*, 226 U. S. 525, 541; *Eastern States Lumber Asso.* v. *United States*, 234 U. S. 600, 613, 614; *Standard Oil case*, 221 U. S. 1; *Standard Fashion Company* v. *Magrane-Houston Company*, 258 U. S. 346, 42 Sup. Ct. Rep. 360.

Applying this standard to the trade practice here involved, the first question, that of unfair method of competition, relates to the leasing of outfits without rentals.

Is this phase of the practice oppressive upon competitors and does it tend to create a monopoly? Concededly, a lease of a curb pump outfit without rental gives a wholesaler a trade advantage over its competitors. This alone is not unlawful, for such advantage is the object of all competition and is attained whenever one sells another goods of greater excellence or at lower prices than goods offered by others. Does this trade advantage contain the seeds of monopoly? It admittedly leaves competitors free to install competing outfits in the same locality and in all other localities. It also leaves every competitor free to place its outfit with the same retailer if it can prevail upon him by the ordinary competitive inducements of better goods, lower prices, and easier terms of credit. That the practice imposes upon a competitor the invest-

ment of more capital is an argument which would apply with equal force—and with equal infirmity—to competition based on superiority of goods and liberality of credit.

Under the Federal Trade Commission act declaring unfair methods of competition unlawful—as the act stood before the passage of the Clayton Act—a loan of a curb-pump outfit without return or a lease without rental did not, we think, tend to create a monopoly, and accordingly, was not, in our opinion, an unfair method of competition.

But the Clayton Act, when it came along, bore upon another phase of the contract, namely, upon the clause which restricts the use of the leased outfit to the product of the wholesaler, thereby, the commission found, lessening competition and tending to create a monopoly. Such a clause of a contract, commonly known as a tying contract, is to be construed not by its terms alone but by its effect as well. The act looks particularly to the consequences. In the *United Shoe Machinery Corporation case*, 258 U. S. 451, 42 Sup. Ct. Rep. 585, the Supreme Court said:

"While the clauses enjoined do not contain specific agreements not to use the machinery of the competitor of the lessor, the practical effect of these drastic provisions is to prevent such use. We can entertain no doubt that such provisions as were enjoined are embraced in the broad terms of the Clayton Act, which cover all conditions, agreements, or understandings of this nature. That such restrictive and tying agreements must necessarily lessen competition and tend to monopoly is, we believe, equally apparent * * *. This system of 'tying' restrictions is quite as effective as express covenants could be and practically compels the use of the machine of the lessor except upon risks which the manufacturer will not willingly incur."

The point of similarity between the United Shoe Machinery Corporation case and the cases at bar is that, in both, the offending clauses did not expressly provide against the use of machinery or equipment of competitors. The difference between the contract clauses in the two cases is that as certain machinery of the United Shoe Machinery Corporation was essential to the lessee in his business, the practical effect of the clauses in that contract, although not specifically prohibiting the use of the machinery of a competitor, was absolutely to prevent its use, while the clause of the contract in the cases under consideration related to but one kind of machine or equipment, and extended to a situation which did not impose upon the lessee the necessity of obtaining something from the lessor which was indispensable in his business, the clause, in consequence, did not have the practical effect of preventing the use of equipment of a competitor.

Also, the cases at bar are distinguished from the *Standard Fashion Company* v. *Magrane-Houston Company*, 258 U. S. 346, 42 Sup. Ct. Rep. 360, by the fact that the contract in that case contained an express agreement that the retailer should not sell or permit to be sold on his premises any other make of patterns. Here was a restrictive covenant which by its terms came within the third section of the Clayton Act. In discussing this clause the Supreme Court approved an observation in the opinion of the Circuit Court of Appeals, as follows:

"The restriction of each merchant to one pattern manufacturer must in hundreds, perhaps in thousands, of small communities amount to giving such single pattern manufacturer a monopoly of the business in such community. Even in the larger cities to limit to a single pattern maker the pattern business of dealers most resorted to by customers whose purchases tend to give fashions their vogue, may tend to facilitate further combinations; so that the plaintiff, or some other aggressive concern, instead of controlling two-fifths, will shortly have almost, if not quite, all the pattern business."

It has been suggested that this expression is apposite to the leasing contract here under discussion. But we think the cases are distinguished by the important fact that there the dealer was restricted by the contract to the sale of patterns of one manufacturer. This eliminated from his business all other patterns and tied him to the patterns of the contract. Here he is restricted in the use of the leased outfit to the storage and delivery of gasoline purchased from the lessor, but he is not limited to the use of one outfit, nor is he hampered in the sale of gasoline and other products of other manufacturers. The contract leaves every competitor free to persuade the retailer to install an additional outfit or to replace the outfit already installed by one of its own, and permits the retailer to yield if he chooses. While the effect of the restrictive clause of the contract in these cases may make competition somewhat more difficult because of the inclination of a satisfied retailer to stand by his wholesaler until another comes along and offers him something better, we are of opinion that the clause does not thereby lessen competition between wholesalers to the extent contemplated by the statute and that a tendency to monopolize the wholesale trade has not been disclosed.

"That it was not intended to reach every remote lessening of competition is shown in the requirement that such lessening must be substantial." *Standard Fashion Company* v. *Magrane-Houston Company*, 258 U. S. 346, 42 Sup. Ct. Rep. 360; *Standard Oil Co.* v. *F. T. C.*, 273 Fed. 478; *Canfield Oil Co.* v. *F. T. C.*, 274 Fed. 571; *Sinclair Refining Co.* v. *F. T. C.*, 276 Fed. 686.

The third class of parties interested in the practice is that of retailers.

Many retailers buy and own curb-pump outfits. With these we have nothing to do except to note that by the practice of leasing outfits competition with them is greatly increased. We are concerned only with the retailer who has not money enough to purchase an outfit, or, having money, does not care to risk it. What happens? If his locality promises trade, one of the many wholesalers will supply him with an outfit without cost and without risk to him. The only condition imposed is that he shall not store and deliver through the outfit gasoline of any other wholesaler. The tying element in the transaction, if any there be, is the one arising from human nature and business sense, namely, that the retailer will install no other outfit so long as he is satisfied with the quality and price of the wholesaler's gasoline and so long as one outfit serves his trade. The contract leaves him perfectly free to deal in all petroleum products made by competing wholesalers. He is at liberty to install by lease or purchase as many other outfits as he may choose and to sell through them as many brands of gasoline as he may desire. The leasing contract, being terminable by him at will on brief notice, permits him to change outfits at will, replacing one by another as often in the course of wholesalers' competition as he is induced to do so. The retailer, regarded in the aggregate, is an actor in the practice, who by reason of his number, place, and interest causes competition between wholesalers to be increased rather than lessened. If the practice is abridged or abolished the retailer's risk is increased and his number diminished, and, correspondingly, competition is lessened. Certainly the retailer's part in the practice violates neither of the statutes. Nor, for the reasons given, can we think he is monopolized by the wholesaler, or the territory in which many retailers do business under the practice is monopolized.

The fourth class of parties claiming an interest in the practice is that of manufacturers of curb-pump outfits. Of these there are a half dozen or more in the country, in none of which the petitioning corporations have an interest. The petitioning corporations do not manufacture pump outfits themselves but purchase them from manufacturers like anyone else. The commission found as a fact that having purchased outfits, the petitioning corporations then leased them in competition with manufacturers engaged in the sale of like equipment in commerce, and upon this finding drew the conclusion—

"That the practices of leasing such devices at a nominal rental * * * is an unfair method of competition in interstate commerce as against the competitors of respondents engaged in the manufacture of such devices, and in the sale of the same for profit, in the territory wherein the respondent leases such devices * * *."

After the manufacturer has sold equipments to the respondents without condition or limitation, and has

turned them loose in commerce, we are at a loss to see just how he can be heard to complain that the equipment so sold and paid for is being leased by the owners on terms which make it difficult for him to sell like equipments to others. As there is involved here no question of fraud, deception, good conscience, or even business ethics, we should hesitate to follow business transactions to this length and determine whether conduct so remotely related to the original transaction of purchase is an unfair method of competition.

Having given these cases full and deliberate consideration, we are of opinion that, while the evidence supports some of the commission's findings of fact as distinguished from the conclusions drawn from them, it does not establish the offenses laid in the complaints and founded on the statutes, and, accordingly, does not sustain the orders based thereon. Therefore, we are constrained to set aside the orders and direct that the complaints be dismissed.

MORRIS, *District Judge*, concurring in part and dissenting in part:

The operative parts of the order of the commission here attacked are that the respondent forever cease and desist from:

"1. * * * leasing pumps or tanks or both and equipment for storing or handling petroleum products in furtherance of its petroleum business, at a rental which will not yield to it a reasonable profit on the cost of same after making due allowance for depreciation * * *.

"2. Entering into contracts or agreements with dealers in its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipment, the same shall be used only for storing or handling the products of respondent, * * *."

The first paragraph of the order is directed only to the method of competition whereby the petitioners lease pumps and tanks to retailers at a nominal rental and is concerned not at all with the restrictive or tying clause of the lease. Divorced from the tying clause, leasing the pumps at a nominal rental is, in my opinion, a practice "never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression," nor is that practice against public policy as declared by the Sherman and Clayton Acts and, consequently, is not an unfair method of competition within section 5 of the Trade Commission act as interpreted by the Supreme Court in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427, even though the leasing of the pumps at a nominal rental may, perhaps, have a

tendency to lessen competition either in the sale of pumps or in the sale of gasoline at wholesale. I am, therefore, in full accord with the views expressed by the majority of the court with respect to the first paragraph of the commission's order.

The second paragraph of the order rests upon section 3 of the Clayton Act. While section 5 of the Trade Commission act provides "if it shall appear to the commission that a proceeding by it * * * would be to the interests of the public, it shall issue," etc., no similar provision is found in the Clayton Act. In proceedings under that act public interest is as conclusively presumed as in a criminal proceeding and needs to be neither alleged nor proved. Consequently, as I see it, the petition for review presents with respect to the second paragraph of the order two questions only: First, whether the leases here involved are "on the condition, agreement, or understanding that the lessee * * * shall not use or deal in the goods, * * * merchandise, * * * or other commodities of a competitor of the lessor," and, if so, then, second, whether "the effect of such lease, * * * condition, agreement, or understanding may be to substantially lessen competition or tend to create monopoly in any line of commerce," both within the meaning of section 3 of the Clayton Act. The leases contain the following provision:

"That the said equipment shall be used solely for the storage and handling of motor gasoline purchased by the party of the second part from the party of the first part for the purpose aforesaid."

While the foregoing clause does not contain a specific agreement not to use or deal in the gasoline of a competitor of the lessor, yet the clause falls within the terms of the Clayton Act if its practical effect is to prevent such use. *United Shoe Machinery Corpn. et al.* v. *The United States*, 258 U. S. 451. Whether the practical effect of the restrictive agreement is to prevent the lessee from using or dealing in the gasoline of a competitor must be determined from the findings of the commission and the evidence adduced before it, for under section 11 of the Clayton Act its findings of fact are conclusive, if supported by the testimony. One of the findings of the commission, supported by the testimony, is "that a small number of retail dealers to whom the respondent leases or sells such devices upon the terms and conditions aforesaid, handle similar products of respondent's competitors, but a large majority of the retailers to whom the respondent leases or sells such devices upon the terms and conditions aforesaid, require and use in their business only a single-pump outfit."

With respect to the one-pump retailer the restrictive clause in the leases in question is as effective in prevent-

ing the lessee from using or dealing in the gasoline of a competitor of the lessor as if the lease expressly so provided. True, the lessee may terminate the lease at the time and under the conditions mentioned therein, but that fact does not enable the tying clause to elude the prohibition of section 3 of the Clayton Act, for that section operates with respect to short-term leases and leases at will in like manner and with like force as it does with respect to long-term leases or, for that matter, leases in perpetuity. The legality or illegality of the tying clause is dependent not at all upon the duration of the lease or the manner in which it may be terminated. It is likewise true that the lessee has the right to install another pump of his own or a pump of a competitor, but as his business does not warrant or require more than one pump he has not installed more than one and, consequently, his right is not a practical one but a mere abstract right. The result, in my opinion, is that in practice the restrictive clause of the leases in question has prevented and prevents a "single pump" lessee from using or dealing in gasoline of a competitor of the lessor just as effectively as if the lease had expressly so provided. Consequently, the lease falls within the prohibition of section 3 of the Clayton Act if the effect of such lease "may be to substantially lessen competition or tend to create a monopoly" in selling gasoline at wholesale.

Whether its effect may be to substantially lessen competition or tend to create a monopoly is our second question for consideration. The leases are now in force. The fact that they may be terminated at some future time is not relevant to the issue now under consideration. What has already been said shows that "a large majority of the retailers" require for use in their business only a single-pump outfit and the practical effect of the restrictive covenant of the lease under which they operate is to prevent such large majority from using or dealing in the gasoline of competitors of their respective lessors. Thereby free competition among the wholesalers of gasoline has been and now is restricted not with respect to an insignificant number of retailers but with respect to a large majority thereof and as effectually as if the leases were in perpetuity and as if they expressly prohibited the lessee from using or dealing in the gasoline of the competitors of the respective lessors.

The petitioners have set up as a reason for the reversal of the commission's order the excellence of the pump as a means for storing and delivering gasoline. But the com-

mission has not attacked the pump. On the contrary, it admits the pump's many advantages and great utility. It denies, however, the right of the petitioners to make unlawful contracts with respect thereto or otherwise to use it as a means of stifling competition. The petitioners further urge that the restrictive clause is the only method by which they are enabled to use and adequately protect their trade-mark. Even if this contention were supported by the evidence it would be ineffective, for the petitioners are not at liberty to violate the law of the land whatever proper result may be the consequence of their so doing. The evidence, however, discloses that many pumps are owned by retailers, yet there is no evidence that the name of the gasoline being sold through such pumps is not exhibited in the same manner as it is on the leased pumps. Nor is there any evidence that in such cases the gasoline of one wholesaler has been sold as the gasoline of another. These last contentions of the petitioners are, in my judgment, wholly irrelevant to either of the two issues presented with respect to section 3 of the Clayton Act.

Again, the petitioners contend that by means of the leases in question the number of retailers has been substantially enlarged and competition thereby increased rather than lessened. If it be a fact that by means of the leases the number of retailers has been increased, such increase was beyond question due to the nominal rental and not to the tying clause, and the tying clause is none the less invalid even though accompanied by other clauses that are valid. Furthermore, each increase obtained by the nominal rental was simultaneously monopolized by the tying clause and competition thereby lessened and not increased.

Although not differing from the majority of the court as to the legal principles by which the correctness of the second paragraph of the commission's order should be tested, yet I find myself not in full accord with their ultimate decision, for the only conclusion that I am able to reach by applying those principles of law to the facts of these cases is that the effect of the restrictive covenant has been, now is, and so "may be" to substantially lessen competition; that the practical effect of that covenant is to prevent the "one pump" retailer from using or dealing in the gasoline of a competitor of his lessor and that, consequently, all "one pump" leases are in violation of section 3 of the Clayton Act and invalid.

MISHAWAKA WOOLEN MANUFACTURING CO. v. FEDERAL TRADE COMMISSION.

Commission's order in 1 F. T. C. 506 requiring petitioner to cease and desist from using systems of price maintenance therein set forth, affirmed, upon the authority of Federal Trade Commission *v.* Beech-Nut Packing Co., 257 U. S. 441, and petition for writ of certiorari denied by the Supreme Court with the understanding that the Commission will modify its order so that the same may be no broader than said decision.

(Circuit Court of Appeals, Seventh Circuit. September 13, 1922.)[1]

No. 2773.

Before Baker, Evans, and Page, Circuit Judges.

Per Curiam:

This is a proceeding to revise an order of the Federal Trade Commission. In its order the Commission found that the petitioner's methods of controlling prices in the retail trade were unfair.

Inasmuch as the record shows that the condemned practices were substantially identical with those involved in *Federal Trade Commission* v. *Beech-Nut Packing Company*, 257 U. S. 441, we approve the finding of the Commission upon the authority of that decision.

The petition is accordingly dismissed.

(Supreme Court of the United States. January 8, 1923.)[2]

No. 720.

Per Curiam:

The petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is denied. The Solicitor General, in his brief for the Federal Trade Commission, concedes that the order affirmed by the Circuit Court of Appeals is broader than the decision in *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U. S. 441, 42 Sup. Ct. 150, 56 L. Ed. 314, 19 A. L. R. 882, which the Circuit Court of Appeals followed in dismissing the petition for the Woolen Manufacturing Co. The court denies the application for writ of certiorari herein, assuming that the Federal Trade Commission will modify its order accordingly, and without prejudice to an application for that purpose by the petitioner.

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[1] Reported in 283 Fed. 1022. Appearances: Alexis C. Angell and Henry E. Bodman, of Detroit, Mich., for petitioner. Adrien F. Busick, of Washington, D. C., for respondent.

[2] Reported in 260 U. S. 748, 43 Sup. Ct. 247. Appearances: Henry E. Bodman, of Detroit, Mich., for petitioner.

FEDERAL TRADE COMMISSION v. P. LORILLARD CO.[1]

SAME v. AMERICAN TOBACCO CO., INC.[1]

(District Court, S. D. New York. October 3, 1922.)

1. COMMERCE KEY NO. 48—FEDERAL TRADE COMMISSION ACT RELATES TO INTERSTATE COMMERCE ONLY.

Federal Trade Commission Act Sept. 26, 1914 (Comp. St. Par. 8836a–8836k), was enacted under the power conferred on Congress by the commerce clause of the Constitution, and the Commission has no authority in respect to intrastate commerce or transactions.

2. CONSTITUTIONAL LAW KEY NO. 48—TO BE CONSTRUED SO AS TO AVOID DOUBT OF CONSTITUTIONALITY.

A statute must be construed, if fairly possible, so as to avoid any doubt of its constitutionality.

3. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—POWERS OF FEDERAL TRADE COMMISSION.

A resolution of the Senate directing the Federal Trade Commission to investigate and report the tobacco situation as to the domestic and export trade, etc., but without reference to any alleged violation of law, is not within the provision of Federal Trade Commission Act, Par. 6 (Comp. St. Par. 8836f), authorizing the Commission on direction of the President or either House of Congress to investigate and report the facts relating to any alleged violation of the antitrust acts by any corporation, nor within the provision of section 9 (section 8836i), vesting District Courts with jurisdiction to issue writs of mandamus to compel compliance with the provisions of the act or any order of the Commission made in pursuance thereof, and in the investigation under said resolution neither the Commission nor the court has authority to compel a private corporation to produce its books and papers for inspection and the making of copies thereof.

4. SEARCHES AND SEIZURES KEY NO. 7.—LIMITATION OF POWER OF TRADE COMMISSION.

While the Federal Trade Commission may make investigations, its visitorial power over private corporations must keep within the restrictions of the Fourth Constitutional Amendment. Congress could not grant, and did not intend to grant, to the Commission, an unlimited power of inquisition or an unlimited right of access to books and papers of private parties, not engaged in any public service or of search without basis of some facts tending to establish a charge of wrongdoing.

(The syllabus is taken from 283 Fed. 999).

[1] Writ of error to Supreme Court allowed on January 2, 1923.

Petitions for mandamus by the Federal Trade Commission against the P. Lorillard Company, and against the American Tobacco Company, Inc. Denied.

William Hayward, U. S. Atty., of New York City, and W. H. Fuller, Chief Counsel for Federal Trade Commission, of Washington, D. C. (A. S. Barnes, of New York City, of counsel), for petitioner.

William D. Guthrie and William B. Bell, both of New York City (Bernard Hershkopf, of New York City, of counsel), for respondent P. Lorillard Co.

John Walsh, of Washington, D. C., and Junius Parker, of New York City (Jonathan H. Holmes, of New York City, of counsel), for respondent American Tobacco Co., Inc.

MANTON, *Circuit Judge:*

These cases were argued together and will be considered in one opinion.

The petitioner in each of the above-named proceedings was granted an alternative writ of mandamus commanding the respondent to show cause why a peremptory writ should not issue directing that immediately it forthwith deliver into the possession of the Federal Trade Commission the accounts, books, records, documents, memoranda, papers, and correspondence of the respondent for inspection and examination and for the purpose of making copies thereof. The petition upon which the alternative writ was granted sets forth that on the 16th of September, 1921, a complaint was filed with the Federal Trade Commission against the respondent. The complaint alleged that the respondent in the conduct of its interstate commerce was indulging in practices which were in violation of the provisions of the Act of Congress of September 26, 1914 (38 Stat. 717) in that the respondent was using certain methods of business practices resulting in unfair competition, and that it was regulating and fixing or attempting to regulate and fix the prices at which the commodities sold by it should be resold by those to whom it had sold them, and was cooperating, aiding, and abetting others to successfully formulate and carry out a scheme or combination pursuant to which the resale prices of respondent's commodities should be fixed and maintained by those to whom respondent had previously sold its products or commodities. Further, that the Senate of the Congress of the United States by a resolution directed the Federal Trade Commission to investigate the tobacco situation in the United States as to the domestic and export trade, with particular reference as to the market price to producers of tobacco and the market price for manufacturing tobacco and the price of leaf tobacco

exported, and to report to the Senate as soon as possible the result of such investigation. Petitioner then sets forth that at various times between September 29, 1921, and November 5, 1921, authorized agents of the petitioner, in its behalf, demanded of the respondent to produce and furnish to them at respondent's offices certain specified documentary evidence or written data, correspondence, and other paper writings which were then and there in the possession, custody, and control of the respondent so that copies thereof or parts thereof might be made. And the respondent, complying with the demands and pursuant to its duty, under the provisions of the Federal Trade Act, did produce for inspection and examination of petitioner's agents certain of the data commanded, but in violation of provisions of the Federal Trade Act, it refused to produce for inspection and examination "certain documentary evidence, records, correspondence, and writings herein specified which were then and there in respondent's possession, custody, and control, and it refused to permit copies thereof to be made by petitioner." And it sets forth that it is necessary in the prosecution of its duty that such inspection and examination be granted to the petitioner's agents and that it is hindered in the performance of its duty and in the exercise of its power by the refusal of the respondent to grant such examination and inspection. Its prayer for relief is that "all papers and telegrams received by the American Tobacco Company (or P. Lorillard Company) from all of its jobber customers located in different points throughout the United States and also copies of all letters and telegrams sent by the American Tobacco Company (or P. Lorillard Company) to such jobbers during the period of January 1, 1921, to December 31, 1921, inclusive" be turned over for examination and inspection. Each respondent resists the application for a peremptory writ, contending that the Federal Trade Commission is asserting authority which it does not possess in seeking to make an unlimited and unrestricted inspection with the right to copy all of the correspondence with its jobber customers, and that the Senate resolution directing the Federal Trade Commission to make the investigation referred to grants no authority for unlimited and unrestricted search with the right to copy the correspondence. It further contends that Secs. 5, 6, and 9 of the Federal Trade Commission Act give no such authority of unlimited and unrestricted search and examination, and it is said that any such construction or interpretation of the Federal Trade Commission Act would be in contravention of the Fourth Amendment of the Constitution guaranteeing the right of the people to be secure in their papers and effects against unreasonable searches and seizures and that no warrant shall issue but upon probable cause supported by oath or affirmation. Thus the question is presented

whether Congress can delegate visitorial powers under the commerce clause of the Constitution over private corporations engaged in interstate commerce to the extent of granting unlimited and unrestricted examination and inspection with the right to copy.

By the Act of Congress of September 26, 1914, the Federal Trade Commission was created a body corporate. Its purposes were defined by the statute creating it and its duties and powers and administration are referred to in Secs. 5, 6, and 9. It is provided by Sec. 9 of the Act 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 Sec. 6 of the Act provides:

"That the Commission shall also have power—(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships."

The Constitution provides (Art. 1, Sec. 8, Cl. 3) that Congress shall have power to regulate commerce with foreign nations and among the several States.

Each respondent is conceded to be a private corporation engaged in selling tobacco and its products and is engaged in interstate and intrastate commerce. This investigation was commenced "For the purpose of ascertaining the facts relating to respondent's business." The business of each of the respondents is very extensive, its letters, papers, and other documents making it a business of thousands of letters per month. The affidavits submitted by the respondents set forth a mass of correspondence and other documentary evidence which, if the petitioner prevails in its alleged right to "full and complete access to any and all documentary evidence in the possession and control of the respondent," would, it is alleged, handicap the respondent in its business and entail considerable expense and difficulties. Much of the correspondence relates to transactions bearing upon intrastate commerce only. As to such of the correspondence as bear upon intrastate commerce, the petitioner is not entitled to examination, inspection, or copying any part thereof. The commerce clause of the Constitution granting power to the Congress to legislate as to the commerce permits only of legislation which has to do with interstate commerce. The Federal Trade Act forbids unfair practices in reference to the commerce of an interstate character only. *Ward Baking*

Co. vs. *Federal Trade Comm.*, 264 Fed. 330. The commerce clause of the Constitution vested in the Congress "a full and complete power to regulate commerce among the several States, for the strong arm of the national government may be put forth to brush away all obstacles to interstate commerce." *In re Debs.*, 158 U. S. 564. And "Constitutional privileges do not change but their operation extends to new matters as modes of business and the habits of life of the peoples vary with each succeeding generation. The power is the same but it operates to-day upon modes of interstate commerce unknown to the fathers and will operate with equal force upon any new modes of such commerce which the future may develop." *Gibbons* vs. *Ogden*, 22 U. S. 1. The power of Congress to legislate embraces power not only to regulate and control that which is wholly interstate but also that which even though intrastate affects the free flow of interstate commerce. *Minn. Rate Cases*, 230 U. S. 352. To regulate is the power to enact legislation directly affecting interstate commerce. *United States* vs. *Adair*, 152 Fed. 737. The Constitution having granted to the Congress plenary power to regulate or control commerce among the States, Congress may delegate such duties to investigate and learn conditions to a permanent administrative body.

The validity of the Interstate Commerce Commission Act granting to that commission the power to investigate facts relating to interstate transportation was considered in *Interstate Commerce Commission* vs. *Brimson*, 154 U. S. 447. It has been held that the visitorial power of the Federal Government provided for in the act, over private corporations, must be restricted to activities of an interstate commerce character. *Hale* vs. *Henkel*, 201 U. S. 43; *Interstate Commerce Comm.* vs. *Goodrich Co.*, 224 U. S. 194; *United States* vs. *Basic Products Co.*, 260 Fed. 472. We must presume that the Congress did not intend by this legislation to invade the field reserved under the Constitution to the several States by interfering with transactions in intrastate commerce. "The statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." *United States* vs. *Jim Fuey Moy*, 241 U. S. 394; see also *United States* vs. *D. & H. Co.* 213 U. S. 366.

The resolution of the Senate provided that "the Federal Trade Commission be and is hereby directed to investigate the tobacco situation in the United States as to the domestic and export trade, with particular reference to the market price to producers for tobacco and the market price for manufactured tobacco and the price of leaf tobacco exported, and report to the Senate as soon as possible the result of such investigation."

This resolution has not the mandatory effect of statutory enactment with reference to the commerce clause of the Constitution, and the present application for the writ must rest upon the command of Sec. 9 of the Federal Trade Commission Act, wherein jurisdiction is granted to the District Courts of the United States "to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the Commission made in pursuance thereof." The resolution of the Senate does not come within the terms of the authority conferred by the statute in question. Under Sec. 6 power is conferred upon the Commission "upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation," but the language of this statute makes it necessary for one of the Houses of Congress to adopt a resolution for a direction to investigate, and the reporting of such investigation must be for alleged violation of the antitrust acts. The quotation from the resolution of the Senate fails to indicate that it is founded upon any violation or alleged violation of the antitrust law. It does not indicate that the Senate intended that any antitrust law violation should be investigated by the Commission. If so, an apt expression to that effect could have been used. It can not, therefore, be concluded that it was intended in the language used to investigate any violations of the antitrust acts by any corporation. In any case the power of the Federal Trade Commission can not be broader than what Congress did or could delegate. The analogy of the cases arising under the powers of the Interstate Commerce Commission with that of the Federal Trade Commission's powers is pertinent. This was referred to in *Beechnut Packing Co.* vs. *Federal Trade Comm.*, 264 Fed. 885. A comparison of the statutes particularly setting forth the procedure under the two acts shows the similarity. In each any person may be compelled to appear and depose and produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission. Both commissions are required to make findings and proceedings before them, and the findings must be based upon the testimony given.

In the Harriman case (211 U. S. 407) Justice Holmes said:

"The Commission * * * is given power to require the testimony of witnesses 'for the purpose of this Act.' The argument for the Commission is that the purposes of the Act embrace all the duties that the Act imposes and the powers that it gives the Commission; that one of the purposes is that the Commission shall keep itself informed as to the manner and method in which the

business of carriers is conducted, as required by Section 12; that another is that it shall recommend additional legislation * * * and that for either of these general objects it may call on the courts to require any one whom it may point out to attend and testify if he would avoid the penalties for contempt.

"We are of the opinion, on the contrary, that the purposes of the Act for which the Commission may exact evidence embrace only complaints for violation of the Act and investigations by the Commission upon matters that might have been made the object of complaint. As we have already implied, the main purpose of the Act was to regulate the interstate business of carriers, and the secondary purpose, that for which the Commission was established, was to enforce the regulations enacted. These, in our opinion, are the purposes referred to; in other words, the power to require testimony is limited, as it usually is in English-speaking countries, at least, to the only cases where the sacrifice of privacy is necessary—those where the investigations concern a specific breach of the law. * * *

"If we felt more hesitation than we do, we still should feel bound to construe the statute not merely so as to sustain its constitutionality, but so as to avoid a succession of constitutional doubts, so far as candor permits."

The Interstate Commerce Commission deals with quasi-public corporations. But the phrase of the Federal Trade Commission Act considered, in view of the language in the Harriman case, would indicate that the right to procure information in its investigations under the provisions of Sec. 6 would not grant the unlimited search and inspection of correspondence with the right to copy the same in the absence of some specific complaint which would point out the materiality to that complaint of the particular correspondence and papers sought to be obtained.

Reading Secs. 5, 6, and 9, I do not think that Congress intended at the time of the enactment of this law to go beyond the well-recognized principles of limitations with reference to searches and seizures guarded against by the Fourth Amendment of the Constitution. It is better to deduce the intention that information should only be extracted by the procedure long established in the courts in conformity with the Constitutional guarantee against unlawful and unreasonable searches and seizures and the right of people to be secure in their papers and effects therefrom. The Fourth Amendment provides:

"The right of the people to be secure in their * * * papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

This command of the Constitution, properly interpreted, is a prohibition against Congress granting powers to the Commission for unlimited searches and seizures of letters and documents. . The act makes plain the duty of the Commission to gather, compile, and publish for use in its proceedings what may be voluntarily offered or submitted in response to request or demand. It may also make investigation independently, but the exercise of visitorial power over private corporations must keep within the restrictions of the Fourth Amendment. "Neither branch of the legislative department, still less any merely administrative body established by the Congress, possesses or can be vested with a general power of making inquiry into the private affairs of the citizen." *Interstate Commerce Comm.* vs. *Brimson*, 154 U. S. 478.

As was said by Mr. Justice Brewer in *In re Pacific Ry. Comm.*, 32 Fed. 241:

"There is no doubt that Congress may authorize a commission to obtain information upon any subject which, in its judgment, it may be important to possess * * * But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters."

It is the duty of the Court to so construe the Act as to save the statute from Constitutional infirmity. *Knights Templar Indemnity Co.* vs. *Jarman*, 187 U. S. 197; *U. S.* vs. *D. & H. Co.*, 213 U. S. 407; *Harriman* vs. *Interstate Commerce Comm.*, 211 U. S. 407.

Section 6 (b) grants to the Commission the right to require corporations coming within its jurisdiction to make reports concerning their affairs and thus to furnish to the Commission such information as it may require. And subdivision (a) of Sec. 6 calls upon the corporations in question to report upon specific matters as provided in subdivision (b). If the corporations fail in reporting or the reports are false, the Commission is entitled, upon properly showing the probable cause, to demand due disclosures and access to the inspection of any specific, necessary, and relevant papers, excluding such papers as may be privileged. In other words, there must appear to be some reasonable cause for a search such as a definite complaint charging a specific wrong and thus presenting an inquiry which would have reasonable and readily ascertainable limits. Such a construction of subdivisions (a) and (b) of Sec. 6 would effectuate the intent of Congress, and the procedure can be kept within Constitutional limits. *United States* vs. *L. & N. R. R.*, 236 U. S. 318; *Veeder* vs. *United States*, 252 Fed. 414. Such a construction would seem to be in accord with the discussions in the Senate when this legislation was enacted. (See 51 Congressional Records, part 13, 63rd Congress, Second Session, pp. 12747, 12800, 12806–11, 12918, 12927.) It was not intended to grant an unlimited power of inquisi-

tion or an unlimited right of access to books and papers of private parties not engaged in any public service or a search without basis of some facts tending to establish a charge of wrongdoing.

It is now well established that a corporation is entitled to invoke the guarantees of the Fourth Amendment against unreasonable searches and seizures in as full a measure as would a person or partnership. *Silverthorne Lumber Co.* vs. *United States*, 251 U. S. 385; *Coastwise Lumber Co.* vs. *United States*, 259 Fed. 847.

In the papers submitted on this application there is no showing of the existence of probable cause. The relief prayed for is in general terms and includes all papers and telegrams received by each respondent from its jobber customers located in different points throughout the United States and copies of all letters and telegrams sent by each respondent to such jobbers during the period from January 1, 1921, to December 31, 1921, inclusive. Such general demands made in other warrants of law, such as a subpoena duces tecum, have been condemned as not giving a reasonably accurate description of the papers wanted, either by date, title, substance, or subject to which they relate. *Ex Parte Brown*, 72 Mo. 83; *Carson* vs. *Hawley*, 82 Minn. 204.

In *Boyd* vs. *United States*, 116 U. S. 616, the court quoted with approval Judge Camden's language in *Entick* v. *Carrington and Three Other King's Messengers*, 19 Howell's State Trials, 1029, wherein he said:

"Papers are the owner's goods and chattels; they are his dearest property; and are so far from enduring a seizure that they will hardly bear an inspection; and though the eye can not by the laws of England be guilty of a trespass, yet where private papers are removed and carried away the secret nature of those goods will be an aggravation of the trespass, and demand more considerable damages in that respect. Where is the written law that gives any magistrate such a power? I can safely answer, there is none; and, therefore, it is too much for us, without such authority, to pronounce a practice legal which would be subversive of all the comforts of society."

To grant the relief prayed for by the petitioner would be to permit an unreasonable search and seizure of papers in violation of the Fourth Amendment. It was not the intention of Congress to grant such unlimited examination and inspection by the legislation in question, nor, indeed, did Congress have authority to do so under the commerce clause of the Constitution. It would be unreasonable and unjust to accede to the demands of the petitioner, and the application for the peremptory writ of mandamus against the respondents American Tobacco Company and P. Lorillard Company is denied.

GUARANTEE VETERINARY CO. ET AL. v. FEDERAL TRADE COMMISSION.

(Circuit Court of Appeals, Second Circuit. November 6, 1922.)

No. 8.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—THREE ANALYSES HELD TO SUSTAIN FINDING OF COMMISSION THAT PRODUCT DID NOT CONTAIN ADVERTISED INGREDIENTS.

Where three analyses of samples of a product, one of which was furnished by the seller and the other two purchased in the open market, all showed that the product lacked 10 of the 16 ingredients stated in the advertisements thereof, and there was no evidence to the contrary, nor offer to submit other samples for further analysis, the finding of the Commission that the product, some of which was admittedly shipped in interstate commerce, did not contain the advertised ingredients, was sustained by the presumption that the samples analyzed were fair samples, so as to be conclusive under Federal Trade Commission act, par. 5 (Comp. St., par. 8836e).

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—EVIDENCE HELD TO SUSTAIN FINDING ADVERTISEMENT GOVERNMENT HAD ADOPTED PRODUCT WAS FALSE.

The Federal Trade Commission's finding that an advertisement that the Government had adopted the product advertised was false was sustained by proof that the only purchase of the product by the Government was permission given by the Government to the manufacturer of the product to substitute some of it for the manufacturer's own product, marketed under another name, which had been sold to the Government.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—VOLUNTARY DISCONTINUANCE OF PRACTICE DOES NOT PREVENT COMMISSION FROM ISSUING ORDER.

The fact that the company had discontinued the publication of a false advertisement that the Government had adopted its product before the complaint was filed against it before the Federal Trade Commission, does not deprive the Commission of authority to command the company to desist from such advertisement, since it is not obliged to assume that the false publication would not be resumed.

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—COMMISSION HAS DISCRETION AS TO THE ORDER AGAINST COMPANY USING FALSE ADVERTISEMENT.

Where the testimony showed conclusively that a company had published advertising matter containing false and misleading

statements, which it circulated in several states, and that it sold its product in interstate commerce, it was a proper exercise of the Commission's discretion to command the company to desist from publishing such advertisement.

5. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—MANAGER OF COMMON-LAW TRUST CAN NOT COMPLAIN HE WAS MADE A PARTY.

Even though the manager of a common-law trust, which was engaged in unfair competition in interstate commerce, was not individually engaged in such commerce, and was not a necessary party to proceedings against the company before the Federal Trade Commission, he can not complain that he was made a party.

(The syllabus is taken from 285 Fed. 853.)

Petition to Review Order of the Federal Trade Commission.

Proceeding under the Federal Trade Commission against the Guarantee Veterinary Company and George L. Owens. On petition by the company to revise an order of the Commission commanding it to desist from certain advertising. Order affirmed.

Will H. Krause, of Washington, D. C., for petitioners.

W. H. Fuller and I. E. Lambert, both of Washington, D. C., for respondent.

Before Rogers and Manton, Circuit Judges, and Augustus N. Hand, District Judge.

ROGERS, *Circuit Judge:*

This proceeding brings before us for review an order entered by the Federal Trade Commission directing the petitioners to desist from certain unfair methods of competition.

The Guarantee Veterinary Company is an association in the form of a common-law trust, and has its principal office and place of business in the city of Chicago in the State of Illinois. George L. Owens is the controlling and managing trustee. They are engaged in the sale of salt in the form of blocks for the use of live stock under the brand name "Sal-Tonik" in the several States of the United States.

It appears that the Federal Trade Commission, proceeding under the act of September 26, 1914, commonly known as the Federal Trade Commission act (38 Stat. 717, c. 311), on September 2, 1919, issued a complaint against the petitioners in which it averred that they are engaged in interstate commerce in the sale of salt in the

form of blocks for the use of live stock under the brand of "Sal-Tonik" in direct competition with other persons, copartnerships, and corporations also engaged in the sale of block salt for the use of live stock; that in connection with the sale of said "Sal-Tonik" blocks they had been publishing and distributing advertising matter containing false and misleading statements concerning the said "Sal-Tonik" blocks. And the complaint alleged that among the false and misleading statements which the petitioners put forth in their advertising matter were representations and implications to the effect that the "Sal-Tonik" blocks contained certain medicinal ingredients; that they operated a number of factories in various parts of the United States, the total product of one of which was purchased and thereby indorsed by the Quartermaster's Department of the United States Army, and that the petitioners owned and operated certain large and expensive machinery necessary for the manufacture of the said "Sal-Tonik" blocks; and that all of this was designed to and did mislead the purchasing public into the belief that the petitioners' product possessed certain unique and beneficial characteristics and tended to secure for the product an undue preference over the product of competitors.

The complaint was duly served upon the petitioners, who filed their answer thereto on October 11, 1919.

Notice of the taking of testimony was given, and testimony was taken on September 9, 1920, and on December 15, 1920. On June 8, 1921, the Commission filed its findings as to facts and conclusion and on the same day entered the order to cease and desist.

On July 18, 1921, the petitioners filed their exceptions and on December 13, 1921, the Commission filed modified findings and a modified order.

The Commission has made the following findings of fact:

"One. That the respondent, the Guarantee Veterinary Company, is an association in the form of a trust, having its principal office and place of business in the city of Chicago, State of Illinois, of which the respondent, George L. Owens, is the controlling and managing trustee, and that the respondents are now and for more than two years last past have been engaged in the sale of salt in the form of blocks, for the use of live stock, under the brand name 'Sal-Tonik,' in and among the several States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations also engaged in the sale of block salt for the use of live stock.

"Two. That during the years 1918 and 1919 the respondents printed and caused to be circulated, in and

throughout the various States of the United States, circulars in which it stated that its product, Sal-Tonik, contained the following ingredients: Sulphate of iron (redried), carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, pure salt, chloride of magnesia, Epsom salts, Glauber's salts, bicarbonate of soda, oxide of iron, mineralized humoides, American wormseed, Levant wormseed, capsicum (red pepper); when in truth and in fact respondent's product, Sal-Tonik, did not contain all of said ingredients, and did not contain carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoides, American wormseed, Levant wormseed, or capsicum (red pepper).

"Three. That prior to the organization of the respondent, Guarantee Veterinary Company, in the year 1918, the respondent, George L. Owens, caused to be organized the Guarantee Swine Veterinary Company, a corporation organized under the laws of South Dakota, and the Guarantee Serum Company, a corporation organized under the laws of Iowa, in both of which corporations the respondent, George L. Owens, was the largest stockholder, and of which he was the controlling manager and president.

"Four. That said Guarantee Serum Company was owned and operated by said Guarantee Swine Veterinary Company; that later the word 'Swine' was dropped from the corporate name and the owning and operating company became the Guarantee Veterinary Company, Incorporated; that said Guarantee Veterinary Company, Incorporated, succeeded to all property, assets, and rights of both the said Guarantee Serum Company and the said Guarantee Swine Veterinary Company, and that later the assets and rights of the said Guarantee Veterinary Company, Incorporated, were assigned or surrendered to the Guarantee Veterinary Company, a common-law trust; that George L. Owens was the principal stockholder and president of the Guarantee Serum Company, the Guarantee Swine Veterinary Company, and the Guarantee Veterinary Company, Incorporated, and is the controlling and managing trustee of the Guarantee Veterinary Company, a common-law trust; and that all of these corporations and the trust and George L. Owens, first as president and later as trustee, caused to be manufactured and sold, and are now causing to be manufactured and sold, in interstate commerce the article known and designated Sal-Tonik.

"Five. That during all the time of the existence of the said Guarantee Serum Company, the said Guarantee Swine Veterinary Company, the said Guarantee Veterinary Company, Incorporated, the said Guarantee Veterinary Company, a common-law trust, George L. Owens,

as the principal stockholder and president of the first three named corporations and as trustee for the last named, a common-law trust, was advertising and representing or causing to be advertised and represented to customers and dealers in said Sal-Tonik that their product, Sal-Tonik, contained substantially the following ingredients: Sulphate of iron (redried), carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, pure salt, chloride of magnesia, Epsom salts, Glauber's salts, bicarbonate of soda, oxide of iron, mineralized humoides, American wormseed, Levant wormseed, capsicum (red pepper); when in truth and in fact respondent's product, Sal-Tonik, did not contain all of said ingredients, and did not contain carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoides, American wormseed, Levant wormseed, or capsicum (red pepper).

"Six. That during the years 1918 and 1919 respondents advertised in the Cooperative Manager and Farmer (Commission's Exhibit No. 10), a magazine published at Minneapolis, Minn., which had a general circulation through the medium of the mails and other distributing agencies in and throughout various States and Territories of the United States and the District of Columbia, and also by circulars prepared and printed by respondents which they caused to be circulated throughout various States and Territories of the United States and District of Columbia, the following:

"'U. S. Government adopts Sal-Tonik.—The Quartermaster's Department of the U. S. Army has adopted Sal-Tonik and purchased our entire southern output for use in the U. S. Cavalry. * * *

"'The U. S. Army used Sal-Tonik, as is shown by a letter which appears below, written by the assistant veterinarian of the U. S. Army at Camp Johnston. * * *

"'CAMP JOSEPH E. JOHNSTON, FLA.,
"'*January 25, 1919.*

"'GUARANTEE VETERINARY COMPANY,
"'*Chicago, Illinois.*

"'*To whom it may concern:*

"'While acting as 2d Lt., Vet. U. S. A., Auxiliary Remount Depot No. 333, Camp Joseph E. Johnston, Florida, I had the opportunity of recognizing the value of Sal-Tonik. Large numbers of animals were kept in corrals in the camp, and naturally much sickness would be expected; however, I noticed that where the animals had access to Sal-Tonik they improved in flesh and vitality. There was a very small percentage of digestive disturbances, such as indigestion, colic, impactions, and diseases of systemic origin.

"'Having recognized the value of Sal-Tonik I highly recommend it as an efficient medicinal salt of superior quality.

"'(Signed) J. F. SWAIN,
"'*2d. Lt., Vet. U. S. A., Auxiliary Remount*
"'*Depot 333, Camp Joseph E. Johnston.*'

"That the Palestine Salt & Coal Co., of Palestine, Texas, made salt blocks for respondents, the respondents furnishing the medical ingredients and the Palestine Salt & Coal Co. furnishing the labor and salt. That the Quartermaster Department of the U. S. Army purchased in the month of December, 1917, 1,200 blocks of Sal-Tonik at Palestine, Texas, from the Palestine Salt & Coal Co., who were agents for the respondents, and that this one purchase was the only purchase of the respondent's product made by the United States Government.

"That the U. S. Government did not adopt Sal-Tonik.

"That Mr. J. F. Swain was not assistant veterinarian of the U. S. Army at Camp Johnston, and at the time the above letter was written he was not a 2d lieutenant in the U. S. Army, nor was he located at Camp Joseph E. Johnston, Fla."

After making the above findings as to the facts the Commission made the following conclusion:

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

Thereupon it issued the following order:

"It is ordered that the respondents, Guarantee Veterinary Co., and George L. Owens, trustee, their officers, agents, servants, and representatives, do cease and desist, directly or indirectly—

"From publishing or causing to be published or circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, advertisements, circular letters, or other printed matter whatsoever wherein it is falsely stated, set forth, or held out to the general public that the respondents' product, Sal-Tonik, contains carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoids, American wormseed, Levant wormseed, or capsicum (red pepper), or any other ingredients, medical or otherwise, if said Sal-Tonik does not then, in fact, contain each and all of the ingredients which are stated in the advertisement to enter into its composition;

"From publishing and circulating or causing to be published and circulated throughout the various States

of the United States, the Territories thereof, the District of Columbia, and foreign countries, advertisements, circulars, folders, letters, or any other printed or written matter whatsoever, wherein it is falsely stated, set forth, or held out to the public:

"(1) That the United States Government, or any department, branch, or agency thereof, has adopted respondents' product, Sal-Tonik.

"(2) That respondents have sold their entire southern output to the United States Government or to any department, branch, or agency thereof.

"From using as an advertisement of their product, Sal-Tonik, a certain letter, dated January 25, 1919, and signed by J. F. Swain, purported to be at the time of signature a second lieutenant in the United States Army, at Camp Joseph E. Johnston, Florida.

"It is further ordered, that the respondents, the Guarantee Veterinary Co. and George L. Owens, trustee, shall within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth."

The Federal Trade Commission act, in section 5, provides that "The findings of the Commission as to the facts, if supported by testimony, shall be conclusive." (38 Stat. 720.) We have, therefore, examined the transcript of record, which has been filed in this court, for the purpose of determining whether the testimony before the Commission supports the findings.

It appears that the Guarantee Veterinary Company admitted in its answer that it was engaged in interstate commerce. It, however, asserts that no proof was ever made that any Sal-Tonik claimed to have been analyzed ever moved in interstate commerce, or that said blocks were made either for or by the Guarantee Veterinary Company, or George L. Owens, nor was it shown or proven that any competitors ever made or sold any medicated salt block, nor was it shown that George L. Owens individually was ever engaged in interstate commerce at any time.

The transcript of record shows that the petitioners prepared and sent out to prospective customers in various States, in the latter part of the year 1918 and the earlier part of the year 1919, an advertising circular which stated that "Sal-Tonik contains the following ingredients:

"'Sulphate of iron (redried), carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, pure salt, chloride of magnesia, Epsom salts, Glauber's salts, bicarbonate of soda, oxide of iron, mineralized humoides, American wormseed, Levant wormseed, capsicum (red pepper).'"

The statement contained in the circular sustains that part of finding No. 1 as to the advertising circulars which the petitioners circulated setting forth the ingredients of the product Sal-Tonik.

It also appears from the transcript that three different analyses were made of the petitioners' product. The first in June, 1916, from a sample furnished by the petitioners; the second in February, 1919, from a sample purchased on the open market, which was the product of petitioners; and the third in December, 1919, from a sample purchased on the open market, which also was the product of petitioners. This last analysis was made by the acting chief chemist of the United States Department of Agriculture—an expert chemist in the Department of Agriculture who had studied and compared all three of these analyses testified that they did not show any of the following ingredients: Carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineral humoides, American wormseed, Levant wormseed, capsicum (red pepper). He further testified that "Sal-Tonik" was just salt with its impurities and coloring matter.

The petitioners advertised in their circulars that sixteeen ingredients entered into the manufacture of their blocks of "Sal-Tonik," and the chemical analyses proved show no trace of ten of them. This is an excerpt from the testimony:

"Question. Mr. Murray, is it not a fact that this product is merely salt with a little coloring matter?

"Answer. Essentially that; nearly all salt contains more or less impurities, and this is colored distinctly red by the iron oxide.

"Question. And that is about all this product is, just salt with its impurities and coloring matter?

"Answer. Essentially that; yes.

"Question. That is what the different analyses show?

"Answer. The impurities would be a little greater than you would get in first-class table salt. The Bureau of Chemistry's analysis shows two per cent of sodium sulphate. That is much more than you would get in good table salt."

The petitioners contend, however, that the "Sal-Tonik" blocks might contain all the ingredients as advertised, and yet all the ingredients might not appear in any of the different analyses which were introduced in evidence by the Commission. This might be possible but is not probable. The three analyses which were introduced in evidence stand undisputed and uncontradicted. The petitioners might have submitted samples of their product for analysis and offered evidence to rebut that produced before the Commission, but they did not choose to do so. The presumption is that the testimony presented is true, no proof having been introduced to over-

come it. There is no evidence to show that the specimens taken for analysis were not fair or typical ones, and the question whether the ingredients which were not detected upon the chemical analysis were in some other part of the block from which the specimen was not taken and failed to be detected on account of improper mixing is one of fact on which the decision of the Commission should be followed.

The petitioners object to finding of fact No. 6. An examination of the transcript, however, satisfies us that the finding is supported by the testimony. It appears conclusively that Swain, the writer of the letter set forth in the finding, never was assistant veterinarian at Camp Joseph E. Johnston and that he had not been at the camp since December 11, 1918. That he had been discharged from the Army long before the letter of January 25, 1919, was written, and that he was not at that time connected with the Army in any way also is beyond question.

The circumstances connected with the purchase of "Sal-Tonik" by the Government are disclosed in a letter written to the Guarantee Veterinary Company by the Palestine Salt & Coal Company, dated January 23, 1917, and which is in the transcript. The letter shows that the Palestine Salt & Coal Company were themselves the manufacturers of a medicated block and had arranged to sell their own product to the United States Government at $13.40 per ton; that on December 23, 1917, a Government inspector came to the Palestine plant to inspect their blocks. At that time 1,200 blocks which the Palestine Company had manufactured for the Guarantee Veterinary Company were on hand and the Palestine Company wanted "to have them out of the way," and it was suggested by the latter that they could turn these blocks belonging to the Guarantee Veterinary Company in on the contract which it, the Palestine Company, had with the Government, the blocks having been held so long in the Palestine's warehouse that they were being damaged. This was assented to and the 1,200 blocks were turned in by the Palestine Company on its contract. There is no evidence whatever that the United States Government ever bought any "Sal-Tonik" blocks other than those mentioned above. This was all the basis there was for the advertisement that "Sal-Tonik" had been adopted by the Quartermaster's Department of the United States Army, and that it had purchased the entire southern output for use in the United States Cavalry.

The advertisement was unquestionably false and misleading. The United States Government never adopted the respondent's product, never bought any Sal-Tonik blocks other than those mentioned above and which were taken over by the Government to accommodate the Palestine Company and to get them out of its warehouse and out of its way. And it does not appear that the respond-

ent at any time ever had a contract of any kind with the Government of the United States. Our conclusion is that finding No. 6, like finding No. 2, is amply sustained by the evidence.

It is not necessary for us to comment upon the other findings of fact. It is enough to say that we have read all the testimony the Commission had before it, and it amply sustains all the findings the Commission made.

The Commission's order among other things requires the petitioners to cease and desist from publishing and circulating any printed matter wherein it is falsely stated that the United States Government or any department, branch, or agency thereof has adopted respondent's product, Sal-Tonik. It appears that for several months before the complaint herein was filed against them the petitioners had voluntarily ceased to use the word "adopted" in their advertisements and circulars and inserted in lieu thereof the word "purchased." Because of this voluntary discontinuance of the word "adopted" prior to the filing of the complaint it is urged that this part of the order to cease and desist is unjustifiable and erroneous.

Mr. Kerr lays it down as a rule in regard to bills to restrain the violation of trade-marks that the owner of a trade-mark, where the mark has been illegally taken by another, is not bound to rely upon his assurance or promises not to repeat the illegal appropriation of the mark, but is entitled to the protection of the court by injunction. Kerr on Injunctions, 4th ed. 350.

Mr. Nims, in his work on Unfair Competition, sec. 372, states that the fact that defendant has ceased to commit infringing acts is no reason why an injunction should not issue.

In *Saxlehner* v. *Eisner*, 147 Fed. 189, 191, which was brought for an infringement of a trade-mark, it appeared that all use of the infringing bottles had ceased three weeks before the suit was brought. This court, speaking through Judge Lacombe, said: "In view of the past conduct of defendants, complainant might fairly aver an apprehension that they would in some way continue the old infringement or concoct some new one, even though the company itself were enjoined. The circumstance that since that time they have not, in fact, infringed is not controlling." The injunction granted below was sustained.

It is to be observed, however, that this is not a suit to restrain the infringement of a patent or a trade-mark or copyright, but that it is a proceeding under the Federal Trade Commission act. The language of the act therefore must be considered Section 5 of the act declares that "whenever the Commission shall have reason to believe that any such person, partnership * * * *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 * * *." In view of this language of the statute we are unable to say that the language of the order was used improvidently and was beyond the Commission's authority.

In *Sears, Roebuck & Co.* v. *Federal Trade Commission*,, 258 Fed. 307, 310, it was insisted as here that the injunctional order was improvidently issued because before the complaint was filed and hearing had, the petitioner had discontinued certain methods complained of. In that case, unlike this, the petitioner had stated in its answer that it had no intention of resuming them. The Circuit Court of Appeals for the Seventh Circuit, notwithstanding these facts, sustained the right of the Commission to make the injunctional order, and said: "No assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course."

The testimony shows conclusively that the petitioners had been publishing advertising matter containing false and misleading statements and had used an unfair method of commerce, and we think the Commission was quite within its right in issuing the order in the form it did. In such cases the Commission must exercise its discretion in view of all the circumstances.

Before bringing this opinion to its conclusion we perhaps should refer to the fact that one of the petitioners, George L. Owens, moved the Commission to strike his name from the proceeding on the ground that he individually is not now and never was engaged in interstate commerce and never did any advertising of any kind individually. It is undoubtedly true that George L. Owens was not a necessary party to this proceeding. But the evidence shows that he is and has been since its organization the president or trustee and absolute manager of the Guarantee Veterinary Company. He has no right, therefore, to complain because he was made a party to the proceeding.

The order of the Commission is affirmed.

FEDERAL TRADE COMMISSION v. BALTIMORE GRAIN CO. ET AL.[1]

(District Court, District of Maryland. November 20, 1922.)

No. 301.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—SENATE RESOLUTION HELD NOT TO ENLARGE COMMISSION'S POWER TO EXAMINE PAPERS.

Senate Resolution No. 133 of December 22, 1921, directing the Federal Trade Commission to investigate certain phases of the marketing and exportation of grain and other farm products, gave the Commission no authority to examine the books and papers of nonpublic service corporations not already given by law.

2. SEARCHES AND SEIZURES KEY No. 7—FEDERAL TRADE COMMISSION NOT AUTHORIZED TO EXAMINE PAPERS IN GENERAL INVESTIGATION.

In view of the prohibition of unreasonable searches and seizures, under which general warrants are forbidden, the Federal Trade Commission Act (Comp. St. Pars. 8836a–8836k) does not authorize the Commission, in a general investigation of a branch of trade not directed against any particular corporations, to examine the books and papers of nonpublic service corporations engaged in interstate commerce, but to authorize such examination the inquiry must be more or less definite and restricted in character, and if the statute does give such authority it goes beyond the powers of Congress.

(The syllabus is taken from 284 Fed. 886.)

Mandamus petitions for writs by the Federal Trade Commission against the Baltimore Grain Company, against the H. C. Jones Company, Inc., and against the Hammond-Snyder Company, Inc. Petition denied.

Robert R. Carman, United States attorney, of Baltimore, Md., for plaintiff.

R. E. Lee Marshall, of Baltimore, Md., for defendants.

ROSE, *District Judge:*

In these cases the Federal Trade Commission seeks a mandamus to compel the respondents, each a corporation, the first two of Maryland and the last of Delaware, and each of them engaged in foreign and interstate, as well as intrastate, trade in grain, to permit the petitioner's

[1] Writ of error to Supreme Court allowed April 11, 1923.

agents to examine, inspect, and copy respondents' books of account, records, documents, correspondence, and paper writings relating to or bearing upon their business in interstate commerce, and all letters and telegrams passing between the respondents and the latters' jobber customers throughout the United States during the calendar year 1921.

The petitions say that the commission, on its own motion, determined to gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practice, and management of the respondents and to investigate and determine the facts of the relation of each of them to other corporations, individuals, associations, and partnerships. The petitions further represent that the commission is also acting in compliance with Resolution No. 133 of the Senate of the United States, passed December 22, 1921, directing it to investigate the margins between farm and export prices; the freight and other costs of handling; the profits or losses of the principal exporting firms and corporations and their subsidiary or allied companies and firms; all the facts concerning market manipulations, if any, in connection with large export transactions or otherwise; the organization, ownership, control, interrelationship, foreign subsidiaries, agents, or connections of the concerns engaged in the export of grain, including the extent of their control of the facilities used by them; the organization, methods of operation and agents used by farm buyers of grain in this country; and other data affecting the demand for a foreign disposition movement and use of American exported grain and report its findings and recommendations thereon as promptly as the various phases of the work are concluded.

In the case of the *Federal Trade Commission* v. *P. Lorillard Company*,[1] Judge Manton, sitting in the District Court for the Southern District of New York, has recently elaborately reviewed the statutes and authorities defining or limiting the power of the Federal Trade Commission to compel private corporations to submit their papers to its examination. In that case, the petition of the Commission, which was denied, set forth facts legally indistinguishable from those alleged in the one at bar. Here, as there, the resolution of the Senate conferred upon the Commission no authority not already given by law. See *United States* v. *Louisville & Nashville R. R.*, 236 U. S. 329.

The Federal Trade Commission act does empower the Commission, upon the direction of the President or either House of Congress, "to investigate and report the facts relating to any alleged violation of the anti-

[1] 283 Fed. 999.

trust acts by any corporation." The resolution cited in the instant case does not suggest any breach of these acts. The question here is whether the statute creating the commission entitles it to the inspection for which it asks, and if so, whether the act in that respect is valid.

Paragraph A of section 6 of the statute authorizes the commission "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, * * * and its relation to other corporations and to individuals, associations, and partnerships."

Paragraph H provides that the commission may, upon its own motion, "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. * * *"

Section 9 declares "That for the purpose of this act, the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purposes of examination and the right to copy, any documentary evidence of any corporation being investigated or proceeded against. * * *"

The measure originated in the House of Representatives, and the committee which reported it was familiar with what the Supreme Court had said in *Harriman* v. *Interstate Commerce Commission*, 211 U S. 407, and it said that in order that the proposed Trade Commission "may have powers of subpœna and production of books and papers the language" of the bill "has been expressly made broad enough to permit a full exercise of that power in connection with any kind of investigation which may be undertaken." (Report of Committee on Interstate and Foreign Commerce, No. 533, 63d Congress, 2d session.)

The Senate Committee on Interstate Commerce, while recognizing that in "the conduct of such special investigations as the commission may deem necessary it is indispensable that it should have extensive powers of inquiry with the right to subpœna witnesses, and require the production of books and papers," concluded that those conferred upon it were practically the same as were then possessed by the Interstate Commerce Commission and by the Bureau of Corporations. (Report Senate Committee on Interstate Commerce, No. 597, 63d Congress, 2d session.)

The legislative history of the act may suggest that Congress did not intend that the powers of the commission to investigate should be confined to cases in which a complaint had been made, or might have been, but there is no reason to suppose that Congress thought that in

other respects it was giving any authority which the Interstate Commerce Commission did not possess.

The precise question here to be decided is whether the statute confers upon the commission the right to inspect and copy the papers of any private corporation engaged in interstate or foreign commerce whenever, in the judgment of the commission, such inspection may furnish information of value to an inquiry it is making as to some economic or commercial problem and when it has no reason to believe that any violation of law has been committed. There can be no question of the timeliness of an investigation into the causes of the marked difference between the prices received by the grain grower and those paid by the ultimate consumer. Many of the farmers have long been convinced that in some way they were victimized by the railroads and the middlemen. The feeling of resentment has become so strong among them that in some of the wheat-growing States it has forced a realignment of political parties and has resulted in the demand for many laws and the enactment of a number of them as to the wisdom of which there is still grave difference of opinion.

The problems involved are of unusual perplexity. The causes of the evils most complained of are still obscure to many. Congress and the people need all the light they can get. The more thorough the inquiry, the more valuable its results should be, provided the investigators do not gather so much material that they will be unable to see the woods for the trees.

That is one side of the question. There is another. The respondents in these cases are private corporations, by which various individuals more conveniently carry on that trade of corn merchants which antedates the beginning of recorded history. They have and exercise no franchises other than that of being corporations. They are not engaged in rendering public service except in the sense that such service is rendered by every one who follows any useful calling. To them the demand that they shall be compelled to let strangers, officials though they be, go through not only their books of account but their correspondence files as well seems outrageous. In their belief the gain to the public from anything which such an inquiry can probably or possibly reveal seems slight as compared with the annoyance and sense of wrong it will cause them. If they are right, the search and seizure asked for would be unreasonable and therefore forbidden. The prohibition of unreasonable and the sanction of reasonable search and seizure is simply a practical compromise between two conflicting rights.

For upward of a century and a half there has been no doubt that general warrants are forbidden. No official can be given authority to rummage through the papers

of an individual without the latter's consent, in the hope that something or other may be discovered useful for some public purpose. A corporation's rights as against the sovereign which created it, or permits it to do business within its borders, are not, it is true, the same as those of a natural person. It is the creature of the State. He is not. The State may exclude it, while he may freely come in. As a condition of obtaining a charter or, under some circumstances, of retaining it or doing business under it, it is probable the State might reserve a right to an unlimited inspection of all corporations' books and papers. But that question is not here presented. As was said in *Silverthorne Lumber Co.* v. *United States*, 251 U. S. at 392, "The rights of a corporation against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way."

It is not necessary for the purposes of the instant case to inquire whether the United States may exercise over a corporation engaged in interstate or foreign commerce all the powers which are possessed by the State which chartered it. Even if it may, the wording of the statute, broad and general as in some respects it is, does not suggest that Congress intended to strike down as respects private corporations engaged in interstate commerce all the limitations which for 150 years or more had protected private papers from searches under general warrants. Nor is there anything in the legislative history of the act to suggest that the legislators supposed that they were taking so radical a step, or that they were raising a constitutional question of serious and far-reaching character. Unquestionably some of them wanted to authorize the compulsory examination of the papers of a corporation, although no complaint of a specific violation of law was pending against it, or was in contemplation. Very possibly that much could be done, some of the things which were said in *Harriman* v. *Interstate Commerce Commission*, *supra*, to the contrary notwithstanding. *Smith* v. *Interstate Commerce Commission*, 245 U. S. 44. But so far as concerns nonpublic service corporations, at least, the inquiry in which the commission is engaged, whatever it is, must be more or less definite and restricted in its character, so that the activities of its minor agents, to whom in practice the actual searching must necessarily be confided, can be kept within some bounds. Very possibly, to sustain any right of inspection and searching, it must also appear that there is some reasonable proportion between the public value of the information likely to be obtained and the private annoyance and irritation it will occasion.

With these general principles in mind, it will be noted that the act gives the Commission power "to invesigate the organization, business, conduct, practices, and man-

agement of any corporation engaged in [interstate or foreign] commerce and its relation to other corporations, and to individuals, associations, and partnerships," and that the right of access to papers and books is limited to those of a corporation being investigated or proceeded against. That much of a restriction the statute itself imposes. Whether it may, to that extent, authorize the examination of a private corporation's papers need not be here considered. These corporations are not being "proceeded" against. Are they, in the sense of the statute, being "investigated"? The investigation which the Commission has in hand, and for which it is here seeking information, is, strictly speaking, not of them or of the scores or, perhaps, hundreds of other corporations whose papers it wishes to inspect, but of the conditions affecting one of the most important branches of our national trade.

To make such an investigation scientifically complete, it may well be desirable to find out precisely how not only the corporations engaged in it conduct their business but to obtain the same fullness of information concerning the individuals or firms concerned in it; but the portions of the statute with which we are now dealing give no authority to inspect papers of any natural person. Is there not a fair presumption that the investigation mentioned in the statute was one of another character than the one now being carried on, and that it was to be an inquiry into the way the particular corporation itself conducted its business, having as its substantial object the ascertainment of facts concerning that corporation, and as its ultimate end the possibility that in some way such corporate body might be required to mend its ways? If that be not the true construction of the act, and if it really means that whenever the commission thinks best to make an inquiry into the way in which some great department of commerce is carried on it may send its employees into the office of every private corporation which does an interstate business in that line and empower them to go through the company's books, correspondence, and other papers, I am satisfied it goes beyond any power which Congress can confer, in this way at least.

It follows that the petitions for writs of mandamus must be denied.

FEDERAL TRADE COMMISSION v. CLAIRE FURNACE CO. ET. AL.[1]

(Court of Appeals of District of Columbia. Submitted May 22, 1922. Decided January 2, 1923.)

No. 3798.

1. EQUITY KEY NO. 262—PLEADING KEY NO. 8(13)—STATEMENTS AS TO POWERS OF CONGRESS AND TRADE COMMISSION ARE CONCLUSIONS NOT ADMITTED BY MOTION TO STRIKE.

Extensive arguments in the answer relative to the powers delegated by Congress to the Trade Commision and the power of Congress under the commerce clause of the Constitution (article 1, par. 8), are mere legal conclusions, not admitted by the motion to strike the answer.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—POWERS OF TRADE COMMISSION ARE LIMITED TO MATTERS DIRECTLY RELEVANT TO INTERSTATE COMMERCE.

The powers of the Trade Commission are limited to matters directly relevant to interstate commerce, so that the corporation under investigation must not only be engaged in such commerce; but the subject under investigation must be so related to interstate commerce that its regulation may be accomplished by an act of Congress, or so interwoven with interstate commerce that the whole subject is necessarily brought within the jurisdiction of Congress.

3. COMMERCE KEY NO. 3—INTERSTATE BUSINESS OF CORPORATIONS HELD SEPARABLE FROM INTRASTATE, AND NOT SUBJECT TO FEDERAL REGULATION.

Where corporations maintained manufacturing plants in a single State, but purchased their raw materials or produced them at points without the State, and had them shipped by interstate carriers to their plants, and then sold the manufactured product in interstate commerce, the intrastate portion of the business was separable from the interstate so as not to be subject to regulation by Congress.

4. COMMERCE KEY NO. 16—MANUFACTURE OR PRODUCTION IS NOT "COMMERCE."

The manufacture or production of goods is not "commerce."

5. COMMERCE KEY NO. 16—MANUFACTURE AND PRODUCTION MAY BE ACCESSORY TO INTERSTATE COMMERCE.

Where manufacture and production are a part of, and essential to, the operation of an instrumentality of interstate commerce, they may be so intimately associated with the instru-

[1] Writ of error to Supreme Court allowed March 17, 1923.

mentality itself as to be an accessory thereto, whose regulation is necessary to insure a regulation of the instrumentality.

6. COMMERCE KEY NO. 16—PURCHASE OR PRODUCTION OF RAW MATERIAL SHIPPED INTERSTATE IS NOT "INTERSTATE COMMERCE."

The purchase or production by a manufacturer in another state of the raw materials for his plant, which are then delivered to an interstate carrier for shipment to the plant, are not in themselves commerce, since the articles are not used in connection with an instrumentality of commerce.

7. COMMERCE KEY NO. 16—CONGRESS CAN NOT REGULATE MANUFACTURE OF RAW MATERIAL SHIPPED INTERSTATE INTO A PRODUCT FOR INTERSTATE SHIPMENT.

Except where the act of production or manufacture is directly related to the operation of an instrumentality of commerce, Congress can not regulate the manufacture of raw materials which have been shipped to the factory in interstate commerce into products which are to be shipped in interstate commerce.

8. COMMERCE KEY NO. 1—CONGRESS CAN NOT INDIRECTLY REGULATE WHAT IT CAN NOT DIRECTLY REGULATE.

If Congress may not regulate manufacture and production directly, because it is not a part of interstate commerce, it may not regulate it indirectly through the medium of publicity.

9. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY 80½, NEW, VOL. 8A KEY-NO. SERIES—STEEL AND IRON BUSINESS IS NOT AFFECTED WITH PUBLIC INTEREST.

The steel and iron business of the country is not affected with a public interest, such as to justify its regulation for the promotion of the public welfare.

10. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—TRADE COMMISSION HAS NO GENERAL VISITATORIAL POWERS.

The Federal Trade Commission is not invested by Federal Trade Commission Act, Par. 6 (Comp. St. Par. 8836f), empowering it to gather and compile information concerning corporations engaged in commerce, etc., with authority to inquire into any business of nation-wide extent, and has no visitatorial powers coextensive with the constitutional functions of Congress; but its activites are strictly limited to the field of interstate commerce, outside of the portions of that field occupied by the Act to Regulate Commerce and the Federal Reserve Act.

(The syllabus is taken from 285 Fed. 936.)

Appeal from the Supreme Court of the District of Columbia.

Suit by the Claire Furnace Company and others against the Federal Trade Commission and its members.

Decree for complainants, and defendants appeal. Affirmed.

J. Wallace Nichol, W. H. Fuller, and William T. Chantland, all of Washington, D. C., for appellants.

Levi Cooke and George R. Beneman, both of Washington, D. C., A. Leo Weil, of Pittsburgh, Pa., and William Wallace, Jr., of New York City, for appellees.

Before Smyth, Chief Justice, and Robb and Van Orsdel, Associate Justices, Smyth, Chief Justice, dissenting.

VAN ORSDEL, *Associate Justice:*

Appellee corporations filed a bill in the Supreme Court of the District of Columbia for an injunction to restrain appellant, Federal Trade Commission, from enforcing or attempting to enforce an order issued by the Commission against the complainant companies requiring them to furnish monthly reports of the cost of production, balance sheets, and other information in detail, upon a large variety of subjects relative to the business in which complainant corporations are engaged.

The authority under which the Commission assumes to act is expressed in a resolution, wherein it is stated that at a hearing held by a Committee of the House of Representatives the Commission was requested to suggest what might be done to reduce the high cost of living. In response the Commission recommended to the Committee "that it would be desirable to obtain and publish from time to time current information with respect to the 'production, ownership, manufacture, storage, and distribution of food stuffs, or other necessaries, and the products or by-products arising from or in connection with the preparation and manufacture thereof, together with figures of cost and wholesale and retail prices,' and particularly with respect to various basic industries, including coal and steel."

An appropriation of $150,000 was made available and the Commission resolved to "proceed to the collection and publication of such information with respect to such basic industries as the said appropriation and other funds at its command will permit; and that such action be started as soon as possible with respect to the coal industry and the steel industry, including in the latter closely related industries such as iron ore, coke, and pig iron industries."

The alleged purpose of this report was to compile in combined or consolidated form the data received from individual companies, and to issue currently in such form accurate and comprehensive information regarding changes in the conditions of the industry, both for the benefit of the industry and of the public. At the same time orders were issued to the complainant coal and

coke companies requiring them to report the "monthly costs of production for the several products designated and other data as specified in the form prescribed." Accordingly, the Commission issued to each of the complainant companies forms of reports, schedules, and questionnaires, calling for detailed information regarding the amount of products produced by the several complainants respectively, the sales and contract prices thereof, and orders booked by them, the amounts allocated by them to depreciation, and administrative and selling expenses, and also to file with the Commission quarterly income statements and balance sheets. In addition the Commission required complainants to submit their accounts and books for inspection to enable it to check the reports which complainants were required to furnish from time to time. Complainants were warned that upon failure to comply with the orders of the Commission the penalties prescribed by Section 10 of the Trade Commission Act would be imposed upon them.

Complainants allege, and it is not denied in the answer, that they "are engaged in producing, manufacturing, and making sales in the States wherein their producing and manufacturing operations are conducted, and all of them are conducting mining operations or manufacturing plants, or both." The location of the manufacturing and mining plants is given and it appears that the companies are engaged in producing pig iron, tin plate, strip steel, billets, slabs, ingots, blooms, and other products of iron and steel, finished and unfinished. It further appears that some of the companies are engaged in coal mining, manufacturing coke, and mining of ore. Defendant commission avers in its answer that with the exception of three companies named, "sixty-five per cent or more of the sales made by each of complainants is in interstate or foreign commerce, and that the greater portion of the principal raw materials of each concern is purchased and transported in interstate commerce to their converting plants."

The right of the Commission to make the inquiry here involved is based upon the power of Congress to secure information concerning any subject matter in regard to which it has been given the power to legislate, and upon the further proposition that when one phase of a subject matter is within the jurisdiction of Congress it possesses the power to secure information as to the whole of the subject matter as a guide to further legislation. It is also urged that power to obtain information is not limited to interstate commerce but includes intrastate commerce as well, when the two phases are a part of one subject; that the orders and report forms issued to complainants and others are for the purpose of inquiring into the whole of the steel industry of the United States, which industry, it is averred, includes both interstate

and intrastate commerce. The Commission then seeks to justify its proposed inquiry into complainants' business, both interstate and intrastate, upon the hypothesis that the publication and dissemination of the information obtained will benefit the public and furnish a guide for future legislation.

Complainants having failed and refused to make the reports, the Commission by written notice threatened the imposition of penalties for delay or failure to make due report as required. It is to restrain the Commission from carrying the threats into effect that the present injunction is sought.

The Commission answered the bill and complainants moved to strike out certain parts of the amended answer and to strike the entire amended answer from the files. The court ordered: "First. That the motion to strike out certain parts of the amended answer be overruled without prejudice to the right of the plaintiffs on any further hearings in said suit to raise objections to matters not properly pleaded. Second. That the second motion to strike the entire amended answer from the files be and the same is hereby denied except as to the ground that the said amended answer set forth no defense to the bill of complaint."

Defendants refusing to further plead or amend their answer, and expressing their willingness to stand upon their answer as a sufficient and complete defense, the court, treating the motion to strike as in the nature of a demurrer, entered a judgment making the temporary injunction final, from which decree this appeal was taken.

The extensive arguments set out in the answer relative to the powers delegated by Congress to the Commission; the power of Congress under the Commerce Clause of the Constitution; the authority of the Commission to investigate the business affairs of a shipper in interstate commerce; the delegated power to inquire into the production of any commodity in nation-wide use, and the constitutional power of the Commission to compel disclosure of the business methods employed by manufacturers and producers, are mere legal conclusions, not admitted by the motion to strike.

The statutory authority under which the Commission in this instance presumes to act is found in Section 6 of the Federal Trade Commission Act (38 Stat. 717), which provides: "That the commission shall also have power (a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships. (b) To require by general or special orders, corporations engaged in commerce,

excepting banks and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission."

The Act further authorizes the Commission "to make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use."

The word "commerce" as used in the Act is defined as "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

It will be observed that the inquiry instituted by the Commission originated from a discussion of a Committee of Congress relative to the high cost of living, and an appropriation by Congress of a lump sum to enable the Commission to conduct such investigations as it might deem proper. There was no specific direction by Congress to make an investigation of the steel, iron, or coal business. The Commission on its own motion and by resolution instituted this investigation.

The Commission is not proceeding upon any complaint filed before it, charging complainants with unfair competition or the violation of the Federal Trade Commission Act or the Antitrust Acts. Neither is it the expressed intention of the Commission to make an investigation relative to the operations of complainant companies in interstate commerce. The investigation seems to be more in the nature of a news-gathering expedition, in hope of securing something of public interest for publication, or possibly subject matter for future legislation by Congress. Common justice would seem to demand that before the business methods pursued by a corporation or an individual should be investigated, the party

should be apprised either by a formal charge or by notice of the extent of the purposed investigation, in order that a day in court may be accorded. This is essential to determine whether the Commission is acting within its jurisdiction and to meet the charges preferred.

This brings us to the point of determining whether in the present investigation the Commission was acting within its jurisdiction. The authority of the Commission, we think, is limited by the acts of Congress to investigating and reporting upon unfair methods of competition in interstate commerce, the enforcement of antitrust decrees and violations of the antitrust laws, and the making and publishing of reports thereon. The powers of the Commission are limited to matters directly relevant to interstate commerce. In other words, the corporation under investigation must not only be engaged in interstate commerce, but the subject under investigation must be so related to interstate commerce that its regulation may be accomplished by act of Congress. Where the operations of a corporation, engaged in both interstate and intrastate commerce, are so interwoven and intermingled as to be inseparable, it may be conceded that in order to regulate interstate commerce, the intrastate phases may be subjected to regulation and possible restriction, since the whole subject is thus brought within the jurisdiction of Congress.

But that is not this case. Here there is no intermingling in such manner as to render the interstate and intrastate features inseparable. Indeed, it is said of the iron and steel companies, in the brief of counsel for the Commission, that "appellees bring their raw material from other States into those States where their plants are situated, and when the conversion or fabrication is complete approximately 65% of the total of such converted products is sold and shipped into other States." Three separate and distinct operations are involved. First, the shipment of raw materials to the plants. If from outside of the State, the materials are in the nature of freight in interstate commerce from the time they are delivered to the carrier until they are delivered by the carrier at the plant. Second, the processes of manufacture by which the raw materials are converted into finished products, during which time the complainants are not engaged in commerce. Third, the sale and delivery of the finished product. If this is made outside of the State where the product has been manufactured, the product is in commerce as freight from the time of delivery to the carrier at the plant until the carrier in turn delivers it to the consignee at destination. Indeed the answer tacitly concedes the three operations by complainants—the assembling, the manufacture, and the sale of the manufactured article.

It, therefore, does not appear that complainants are common carriers or engaged in the operation of any of

the instrumentalities of commerce. They are mere shippers, and as such are engaged in commerce only from the time their products, whether it be raw material or the finished product, are delivered to the carrier and in turn by the carrier delivered to them or to their consignees. "When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State." *In re Green*, 52 Fed. 113; quoted with approval in *Hammer* v. *Dagenhart*, 247 U. S. 251, 272.

Nothing is more clearly established by a long line of decisions than that manufacture is not commerce. In *Kidd* v. *Pearson*, 128 U. S. 1, 20, the court said: "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation."

It is equally well established that the mere act of production is not commerce. As the court said in *Hammer* v. *Dagenhart*, *supra:* "However much the *Knight Case*, 156 U. S. 1, may be weakened by later decisions, its distinction between production and commerce is still effective to prevent direct congressional regulation of production as distinguished from sale and transportation."

Where manufacture and production are a part of and essential to the operation of an instrumentality of interstate commerce, they may become so intimately associated with the instrumentality itself that they may be treated as accessory thereto. In such a case inquiry into the conditions of manufacture and production may become necessary to insure intelligent regulation of the instrumentality. A coal mine or railroad shop maintained by the same company, or by a subsidiary company, to further the operation of a railroad or other instrumentality of interstate commerce, may be so closely associated with the operation of the road itself that their operation may be conducted in such a manner as to obstruct or burden the freedom of interstate commerce and therefore be within the regulatory power of Congress. But this condition has no application where the manufacture and production are independent of the operation of an instrumentality of commerce.

In the present case some of the complainants, either directly or through subsidiary companies, produce the coal, ore, and coke used in manufacturing their iron and steel products, while other complainants purchase these materials for similar use. In these circumstances the mere production or purchase is not commerce, since the articles are not used in connection with an instrumentality of commerce, but are delivered to common carriers for transportation, thus creating the relation merely of shipper and carrier. The mining of the coal and ore and the production of the coke precede and are independent of any act of commerce, just as manufacture is independent of commerce.

Except where the act of production or manufacture is directly related to the operation of an instrumentality of commerce and directly connected therewith the regulatory power of Congress over the commerce in shipping raw materials to the manufacturing plant and the commerce in shipping the product from the plant terminates with the assembling and begins again with the shipment of the manufactured product. It also follows that if Congress may not regulate manufacture and production directly it may not regulate it indirectly through the medium of publicity. No facts are alleged from which it may be inferred that the interstate commerce in which complainants are engaged, in assembling raw materials and in shipping the finished product, is affected even remotely by either the production of the raw materials or their manufacture into the finished product. As was said in the *Dagenhart case:* "The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof. * * * Over interstate transportation or its incidents the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation."

It is not even claimed that the proposed investigation is for the purpose of aiding Congress in the exercise of the Federal police power, or for the purpose of affecting a possible disclosure of some vague ground upon which Congress might be induced to attempt its exercise by legislation. The dividing line between a strictly private enterprise and a "business impressed with a public interest" has not been clearly defined. A corporation devoted wholly to the service of the public, and whose revenues are derived from fixed uniform charges for the various services rendered, as an insurance company, *German Alliance Insurance Co.* v. *Kansas*, 233 U. S. 389, or an elevator company, *Munn* v. *Illinois*, 94 U. S. 113, or a bank, *Noble State Bank* v. *Haskell*, 219 U. S. 104, may well be so impressed with a public interest as to justify

its regulation for the promotion of the public welfare. But this modern doctrine, so frequently invoked in justification of the assertion of the police power, has no application to the steel and iron business. There is no governmental power that can be invoked to compel the steel companies to serve the public, nor do they assume to render a public service.

The large percentage of their products go into the construction of the instrumentalities of transportation which are owned and employed by companies engaged in commerce, which, in their interstate aspect, are subject to Federal control; but that implies no authority in the Government to regulate the production of a mere commodity entering into an agency the management and control of which Congress has the delegated power to regulate. Complainant companies are engaged in a competitive productive industry similar to the woolen or cotton manufacturers and those engaged in numerous other industries, where the business is regulated by competition and supply and demand, and the product enters into the general volume of commerce, subject to all the natural laws and conditions which generally govern and affect trade.

Citation is made in brief of counsel of instances where private corporations submitted to requests of the Commission for so-called "war reports" and answered without objection. But the emergency caused by the war has passed and no test was made of the jurisdiction of the Commission to proceed even in those cases. It is unnecessary, therefore, to consider the authority of the Commission in a war emergency, since the question of jurisdiction was not raised and the circumstances which there obtained are not present here.

The cases relied upon by the Commission relate chiefly to the power of Congress, either directly or through the Commission, to regulate and inquire into the affairs of corporations engaged in the operation of instrumentalities of interstate commerce, or industries so closely allied as to form a part of the general business entering into such commerce and capable of being so conducted as to impose a burden on interstate commerce. They arose upon charges, in some instances civil and in others criminal, based upon violations of the Anti-Trust Act, or unfair methods of competition in commerce, or violations of the Federal Trade Commission Act, or of so conducting a business as to obstruct or burden interstate commerce. They are not pertinent, however, to this inquiry, since the manfacturing business of complainants is not commerce, and therefore not subject to regulation by Congress or investigation by the Commission.

Special reliance, however, is placed upon the recent decision of the Supreme Court of the United States in *Stafford et al.* v. *Wallace et al.*, and *Burton et al.* v.

Clyne, 258 U. S. 495, involving the validity of an act of Congress providing "for the supervision by Federal authority of the business of the commission men and of the live-stock dealers in the great stockyards of the country."

In an action for injunction to restrain the enforcement of the act, the court held that the plan of operation of the stockyards companies was so closely allied with interstate commerce as to amount to a scheme for monopolization thereof. The court basing its opinion upon the decision in *Swift & Co.* v. *United States*, 196 U. S. 375, said: "It is manifest that Congress framed the Packers and Stockyards Act in keeping with the principles announced and applied in the opinion in the *Swift case*. The recital in sec. 2, par. b of Title 1 of the Act quoted in the margin leaves no doubt of this. The act deals with the same current of business and the same practical conception of interstate commerce.

While in some instances the great volume of live stock passing in commerce through the stockyards of the country is transformed into dressed meat, the court was careful to distinguish the processes employed from manufacture in general. As was said in the *Swift case*: "Therefore, the case is not like *United States* v. *E. C. Knight Co.*, 156 U. S. 1, where the subject matter of the combination was manufacture and the direct object monopoly of manufacture within a State. However likely monopoly of commerce among the States in the article manufactured was to follow from the agreement it was not a necessary consequence nor a primary end. Here the subject-matter is sales and the very point of the combination is to restrain and monopolize commerce among the States in respect of such sales. The two cases are near to each other, as sooner or later always must happen where lines are to be drawn, but the line between them is distinct."

In *Hill et al* v. *Wallace*, 257 U. S. 310,[1] the court referring to the *Stafford case* "held it to be within the power of Congress to regulate business in the stockyards of the country and include therein the regulation of commission men and of traders there, although they had to do only with sales completed and ended within the yards, because Congress had concluded that through exorbitant charges, dishonest practices, and collusion they were likely, unless regulated, to impose a direct burden on the interstate commerce passing through." This again clearly distinguishes the *Stafford case*, since in the present case commerce does not pass through the plants where the processes of manufacture are conducted.

In these cases the court was dealing directly with the validity of statutes in which the purpose of Congress

[1] The citation apparently intended was 259 U. S. 44, where the case was considered on the merits, the matter quoted being found on p. 69.

was clearly expressed. In the present case, however, there is no statute, and no object has been even intimated by Congress, nor are we enlightened by any definite statement from the Commission of its purpose in making the investigation. The most that can be gathered from the answer is that a general survey of the coal, coke, steel, and allied industries is contemplated in a tentative search for information relative to the high cost of living. We are not impressed by the contention that the Commission is invested with authority to inquire into and regulate any business of nation-wide extent, or that the scope of its visitorial powers are coextensive with the constitutional functions of Congress. As already suggested, we think the activities of the Commission are strictly limited to the field of commerce, except so much thereof as has been occupied by the Act to Regulate Commerce and by the Federal Reserve Act.

The decree is affirmed with costs.

Chief Justice SMYTH, dissenting:

Being unable to concur in the opinion just announced, I state in a very general way the reasons for my dissent. For convenience, I shall speak of the defendants as the Commission.

This case does not call for a decision as to whether or not Congress or the Federal Trade Commission, acting by its authority, has the power to regulate manufacture or intrastate commerce. The order of the Commission which is challenged does not seek to regulate anything. It simply calls for information relative to the activities of the plaintiffs in manufacture and commerce, both interstate and intrastate. It bases its claim to that part of the information which relates to manufacture and intrastate commerce upon the postulate that it is necessary to enable Congress and the Commission to perform their respective duties with regard to commerce between the States, or at least that it is appropriate for that purpose.

The trial court sustained the plaintiffs' motion to strike the Commission's amended answer (hereafter called the answer), on the ground that it did not state a defense, and entered a decree for the plaintiffs. All its allegations, therefore, which are properly pleaded must be treated as admitted. Among other things, it alleges that plaintiffs are engaged in interstate commerce; that it is necessary that the Commission procure complete information as to all the business of each of the plaintiffs in order that it shall perform its duty as to their interstate commerce; that unless the information is produced the Commission will be unable to properly perform that duty, for the reasons that all of the plaintiffs, while engaged substantially in interstate commerce, have also certain activities which are performed intrastate, and which

activities are so interwoven with their interstate business that it is impossible to separate them, and that even if they could be separated the separation would render the result untrue and inaccurate and of little or no value in enabling the Commission to perform its regulatory duties as to the interstate business of the plaintiffs. The answer also alleges that the information sought is necessary to enable Congress to perform its duties with respect to regulating the interstate and foreign commerce of the plaintiffs.

It is argued that the allegations of the answer to the effect that the information sought is necessary to enable Congress and the Commission to perform their respective duties in regard to commerce between the States are mere conclusions of fact, and as such were not admitted by the motion; that the pleader should have set forth the facts from which it deduces the conclusion that the information is necessary. To this I can not accede. The purpose of the answer was to advise the plaintiffs as to what the Commission expected to prove. This purpose was sufficiently served by stating the ultimate or operative facts. It was not required that the evidence upon which the Commission relied to establish the facts should be set out. If the plaintiffs desired a more specific statement, it was their right to move for it under equity rule 20, promulgated by the Supreme Court of the United States. This they did not do. A general statement of the essential ultimate facts upon which the defense rests is enough. "It was not necessary to aver * * * all the minute circumstances which may be proven in support of the general statement * * *." The answer distinctly apprised the plaintiffs of the precise case they were required to meet. *St. Louis* v. *Knapp Co.*, 104 U. S. 658, 661. As was said by Mr. Justice Holmes, delivering the opinion of the court in *Swift and Company* v. *United States*, 196 U. S. 375, 395, "a bill in equity is not to be read and construed as an indictment would have been read and construed a hundred years ago, but it is to be taken to mean what it fairly conveys to a dispassionate reader by a fairly exact use of English speech." See also *United States* v. *United Shoe Machinery Co.*, 234 Fed. 127, 136. It is my opinion that the answer sufficiently alleged that the information sought was necessary or at least appropriate for the purposes indicated, and that the motion to strike admitted it.

Plaintiffs allege in variant forms that the Commission is not authorized by the act creating it to demand the information sought. Section 6 of the act is set out in the opinion of the court. It authorizes the Commission 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"; to require, "by general or special orders, corporations engaged in commerce * * * 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, [and] practices" of the corporations mentioned. And it is declared to be the duty of the Commission to "make public from time to time such portion of the information obtained by it * * * except trade secrets and names of customers as it shall deem expedient in the public interest, and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation," etc. The commerce spoken of is interstate.

In the answer it is alleged, and not denied, that all the plaintiffs are engaged in interstate commerce, and that sixty-five per cent of their business, save as to three, is such commerce. They belong, therefore, to the class of corporations "concerning" which the act authorizes the Commission to gather information. Does the information requested come within the purview of the act? It relates to the "business, conduct, practices, and management" of the corporate plaintiffs. It is called for in the form of special reports, and is sought for the purpose of making it public and of laying it before Congress with recommendations for additional legislation.

It is urged that, while the information relates to the business, etc., of the plaintiffs, this is not enough—that it must concern the interstate commerce features of that business. The answer, as we have shown, alleges, and the allegation is admitted, that the information is necessary in order that the Commission and Congress may perform their duties with respect to the interstate features of the business. Since this is true, it must concern those features, and therefore it is such as the Commission is authorized to gather.

The next inquiry is as to whether Congress had the power to confer upon the Commission authority to gather information with respect to the manufacturing and intrastate activities of corporations engaged in commerce between the States, to the end that it might regulate, either by legislation or otherwise, the commerce over which it has jurisdiction. The requiring of information concerning a business is not a regulation of that business. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, 211. In that case reports were called for by the Commission with respect to intrastate business. The corporation refused to supply it, on the ground that the Commission had no power to demand such information, because it related to intrastate business. But the

court said that, since the information was essential to enable the Commission to perform its required duties touching interstate commerce, the Commission had a right to require it. There are other decisions to the effect that Congress may enter the domain of intrastate activities whenever it is appropriate that it should do so in order that it may properly exercise its regulatory power with respect to interstate commerce. *Interstate Commerce Commission* v. *Cincinnati, New Orleans and Texas Pacific Railway Company*, 167 U. S. 479, 506; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 21; *The Minnesota Rate Cases*, 230 U. S. 352, 431.

One of the briefs for the plaintiffs admits that as soon as any concrete legislation should be submitted to or contemplated by Congress, "it would have full power to secure any and all information indispensable to a proper consideration and disposition of such proposed legislation." I think this concession is sound, but it is too restricted. May it not be essential that Congress should have information on a given phase of commerce before it formulates any concrete legislation or contemplates legislation with reference to it? And if so, why should it not have the same right to gather it as it would have, according to the concession, where legislation is actually pending? To say that it may authorize the procuring of all the facts necessary to the proper disposition of pending legislation but that it has no power to gather what may be appropriate to enable it to determine whether any legislation is necessary does not appeal to me as correct.

But it is argued that the regulatory power of Congress must be exercised through legislation, and that information desired for the mere purpose of publication may not be required by it. There is nothing in the Constitution which says how Congress shall exercise its regulatory power. This is left to its judgment. Former Senator Burton, of Ohio, in his work on Corporations and the State, 60, 61, after a very careful consideration of the matter, declared that "of all regulations which promise results publicity should be placed first."

It is beyond dispute that Congress has no general visitatorial powers over State corporations, but it has been decided that it has power to visit them for the purpose of seeing "that its own laws are respected." *Wilson* v. *United States*, 221 U. S. 361, 384. By a parity of reasoning may it not be said that if it is necessary to protect interstate commerce, or appropriate for that purpose, that Congress should enter the field of intrastate commerce, it may do so? *Houston & Texas Railway Company* v. *United States*, 234 U. S. 342. In that case the court said that Congress possesses "the power to foster and protect interstate commerce and to take all measures

necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled." Page 353.

The power of Congress to require the production of the information in question is defended by the Commission upon several grounds in addition to those I have mentioned, but I do not think it necessary for me to go further into the subject.

I am satisfied that the law requires that the information demanded be supplied, and therefore I think the decree of the lower court should be reversed and the bill dismissed.

FEDERAL TRADE COMMISSION v. CURTIS PUBLISHING CO.[1]

(Argued Nov. 17, 1922. Decided Jan. 8, 1923.)

No. 86.

1. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW VOL. 8A KEY-NO. SERIES—WHETHER METHOD IS UNFAIR COMPETITION, OR AGREEMENT TENDS TO CREATE MONOPOLY, IS FOR THE COURT.

The ultimate determination of what constitutes unfair competition in interstate commerce, and whether the leases, sales agreements, or understandings substantially lessen competition or tend to create monopoly, is for the court, and not for the Trade Commission.

2. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW VOL. 8A KEY-NO. SERIES—COURT NEED NOT REMAND TO COMMISSION FOR FURTHER FINDINGS, IF CIRCUMSTANCES SHOW JUSTICE REQUIRES DECISION.

Under the Federal Trade Commission Act (Comp. St., par. 8836a–8836k), making the findings of fact supported by evidence conclusive, but granting jurisdiction to the Circuit Court of Appeals to make and enter, on the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside an order of the Commission, the court can examine the whole record, and ascertain whether there are material facts not reported by the Commission, and if there is substantial evidence relating to such facts, from which different conclusion reasonably might be drawn, the matter should be remanded to the Commission to make additional findings; but if, from all the circumstances, it clearly appears that in the interest of justice the controversy should be decided without further delay, the court has full power to do so.

3. MONOPOLIES KEY NO. 17(2)—CONTRACTS WITH DISTRIBUTORS HELD AGENCY AND NOT SALES AGREEMENTS.

Contracts between a publisher and a large number of distributors, some of whom had been wholesale dealers in maga-

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[1] 260 U. S. 568.

zines and others not, whereby the distributors agreed to requisition from the publisher the number of magazines required for their territory, title to remain in the publisher until sold, and to train and supervise boys who were to sell the magazines, are contracts of agency and not of sale on condition, so that they do not violate Clayton Act, paragraph 3 (Comp. St., par. 8835c), prohibiting lease or sale contracts which prohibit the lessee or buyer from handling the product of competitors, even though the contracts contained clauses prohibiting the distributors from handling other magazines, unless with the consent of the publisher.

4. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW VOL. 8A KEY-NO. SERIES—EMPLOYMENT OF EXCLUSIVE AGENTS IS NOT "UNFAIR COMPETITION."

The employment of competent agents obligated to devote their entire time and attention to developing the principal's business, to the exclusion of all others, where nothing else appears, is not unfair competition, within Federal Trade Commission Act par. 5 (Comp. St., par. 8836e).

(The syllabus is taken from 43 Sup. Ct. 210.)

On writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Complaint by the Federal Trade Commission against the Curtis Publishing Company. An order of the Commission requiring the company to desist from entering into certain contracts or enforcing certain provisions of outstanding contracts was set aside by the Circuit Court of Appeals (270 Fed. 881), and the Commission brings certiorari. Affirmed.

Mr. Chief Justice Taft and Mr. Justice Brandeis, doubting.

Mr. Solicitor General Beck and Adrien F. Busick, both of Washington, D. C., for petitioner.

Mr. John G. Milburn, of New York City, for respondent.

Mr. Justice MCREYNOLDS delivered the opinion of the court.

The court below entered a decree setting aside an order of the Trade Commission, dated July 21, 1919, which directed respondent Publishing Company to cease and desist from entering into or enforcing agreements prohibiting wholesalers from selling or distributing the magazines or newspapers of other publishers. 270 Fed. 881. And the cause is here by certiorari.

The Commission issued an original complaint July 5, 1917, based mainly on a restrictive clause in existing contracts with so-called district agents. Thereafter, re-

spondent changed its agreement. An amended complaint followed, which amplified the original allegations and attacked the second contract and consequent conditions.

The first section of the amended complaint declares there is reason to believe that respondent has been and is using unfair methods of competition contrary to section 5, act of Congress approved September 26, 1914, c. 311, 38 Stat. 717,[1] and specifically charges: That respondent, a Pennsylvania corporation with principal place of business at Philadelphia, has long engaged in publishing, selling, and circulating weekly and monthly periodicals in interstate commerce. That with intent, purpose, and effect of suppressing competition in the publication, sale, and circulation of periodicals it now refuses and for some months past has refused to sell its publications to any dealer who will not agree to refrain from selling or dis-

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[1] SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. * * * If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. * * *

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. 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.

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.

tributing those of certain competitors to other dealers or distributors. That with the same intent, purpose, and effect it is making and for several months last past has made contracts with numerous wholesalers to distribute its periodicals as agents, and not to distribute those of other publishers without permission. That wholesalers so restricted are the principal and often the only medium for proper distribution of weekly and monthly periodicals in various localities throughout the United States, and many of the so-called agents formerly operated under contracts with respondent which abridged their liberty of resale.

The second section declares there is reason to believe respondent is violating section 3, act of Congress approved October 15, 1914—Clayton Act—c. 323, 38 Stat. 730,[2] and specifically charges: That respondent publishes, sells, and circulates weekly and monthly periodicals in interstate commerce. That for some months past, in such commerce, it has sold and is now selling and making contracts for the sale of its publications and periodicals for use and resale and is fixing the price charged on condition, agreement, or understanding that the purchaser shall not sell other publications or periodicals, thereby substantially lessening competition and tending to create a monopoly.

Respondent replied to the notice to show cause why it should not be required to desist "from the violations of law charged in this complaint." It denied unlawful conduct and claimed that the parties contracted with as agents were such in fact; that their services were necessary for the maintenance of the plan originated by it of distributing publications through schoolboys, who require special superintendence; and further, that such agents had lawfully agreed to abstain from other connections and devote their time and attention to superintending the boys and to the general upbuilding of sales. Copies of respondent's first and second agreements with distributors accompanied the answer. The first had then been superseded and largely discontinued.

The second contract provides that upon requisition respondent will consign its publications to the agent as he

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[2] 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.

Section 11 authorizes the Trade Commission to enforce section 3, with certain exceptions, and directs that this shall be done as prescribed by the act establishing the commission, *supra*, with like power of review in the courts.

may require, retaining title until they are sold; that the agent will supply the demand of boys and dealers at specified prices; will use reasonable efforts and devote all necessary time to promoting the sales of such publications; "that without the written consent of the publisher he will not display, deliver, or sell any copies of any one of said publications before the authorized publication date, as specified in the printed requisition blanks, or dispose of any copies of said publications in the territory of any other district agent or special agent of the publisher, or *act as agent for or supply at wholesale rates any periodicals other than those published by the publisher*, or directly or indirectly furnish to any other publisher or agent the names and addresses of the persons to whom the publisher's publications are sold or delivered"; that subject to the principal's direction and control the agent shall train, instruct, and supervise an adequate force of boys for distributing the publications; and that he will return unsold copies, their cover pages, or headings.

After taking much testimony—2,500 pages—the Commission made a brief and rather vague report of two pages, containing findings and conclusions based on the second contract with dealers and without direct reference to the earlier one. The substance of the report follows.

"PARAGRAPH 1. Respondent, a Pennsylvania corporation with principal place of business at Philadelphia, is engaged in publishing, selling and distributing weekly and monthly periodicals among the States.

"PAR. 2. That in the course of such commerce, the respondent has entered into contracts with certain persons, partnerships, or corporations to sell or distribute its magazines, by the terms of which contracts, such persons, partnerships, or corporations have agreed among other things, *not to 'act as agent for or supply at wholesale rates any periodicals other than those published by the publisher*[8]*—the respondent herein—without the written consent of such publisher; that of such persons, partnerships, or corporations approximately four hundred forty-seven (447), hereinafter referred to as 'dealers,' are and previous to entering into such contracts with respondent were regularly engaged in the business of wholesale dealers in newspapers or magazines, or both, and as such are as aforesaid engaged in the sale or distribution of magazines, or newspapers, or both, of other publishers; that many of said four hundred forty-seven (447) dealers, and many others who have become such wholesale dealers since entering into such contracts, bound by said contract provisions as aforesaid, have requested respondent's permission to engage also in the sale or distribution of certain publications competing in the course*

[8] These words are quoted from the second contract.

of said commerce, with those of respondent, which permission as to said competing publications has been uniformly denied by respondent; that in enforcing said contract provision as to said dealers, and in denying them said permission, respondent has prevented and now prevents certain of its competitors from utilizing established channels for the general distribution or sale of magazines or newspapers, or both, of different and sundry publishers; that such established channels are in most instances the principal and most efficient, and in numerous cases, the only medium for the distribution of such publications in the various localities of the United States; that such method of competition so employed by respondent in the course of such commerce, as aforesaid, has proved and is unfair.

"PAR. 3. That in the course of such commerce, the respondent has made sales of its magazines to or entered into contracts for the sale of the same with certain persons, partnerships, or corporations, by the terms of which sales or contracts for such sales, such persons, partnerships, or corporations have agreed, among other things" (here follow, without material change, the words of paragraph 2 printed, *supra*, in italics); "that the effect of said contract provision has been, and is, to substantially lessen competition with respondent's magazines and tends to create for the respondent a monopoly in the business of publishing magazines of the character of those published by respondent."

The Commission concluded that the method of competition described in paragraph 2 of the report violates section 5, act of September 26, 1914, and that the acts and conduct specified in the third paragraph violate section 3, act of October 15, 1914. And it thereupon ordered: That the respondent cease and desist, while engaged in interstate commerce, from entering into any contracts, agreements, or understandings which forbid persons, partnerships, or corporations already engaged in the sale or distribution of magazines or newspapers, or both, of other publishers from acting as agents for, selling, or supplying to others at wholesale rates periodicals other than respondent's without its consent; from contracting with those already engaged in the sale or distribution of magazines or newspapers, or both, of other publishers, forbidding them from selling or distributing or continuing to sell or distribute the same; and from enforcing any provision of an outstanding contract whereby one now engaged in the sale or distribution of magazines or newspapers, or both, of other publishers is forbidden to sell or distribute the same without respondent's permission.

The statute provides (sec 5) that when the Commission's order is duly challenged it shall file a transcript of the record, and thereupon the court shall have jurisdiction of the proceedings and the question determined

therein and shall have power to make and enter, upon the pleadings, testimony and proceedings, a decree affirming, modifying, or setting aside the order; but the Commission's findings as to the facts, if supported by evidence, shall be conclusive. The court is also empowered to order the taking of additional evidence for its consideration.

We have heretofore pointed out that the ultimate determination of what constitutes unfair competition is for the court, not the Commission; and the same rule must apply when the charge is that leases, sales, agreements, or understandings substantially lessen competition or tend to create monopoly. *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427.

Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter, upon the pleadings, testimony, and proceedings, a decree affirming, modifying or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission. If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think should be remanded to the Commission—the primary fact-finding body—with direction to make additional findings, but if from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay the court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the interstate commerce act. *Louisville and Nashville Railroad Company* v. *Behlmer*, 175 U. S. 648, 675, 676; *Interstate Commerce Commission* v. *Clyde Steamship Company*, 181 U. S. 29, 32; and *Interstate Commerce Commission* v. *Chicago, Burlington and Quincy Railroad Company*, 186 U. S. 320, 340, while helpful as to proper practice, do not determine the present problem.

Here we find a vague general complaint charging unfair methods of competition and also sales and contracts for sales on condition that the purchaser shall not deal in other publications. This is followed by an answer setting out the original agreement with dealers and also the substituted form. The findings of fact make no reference whatever to the first agreement, but do show that respondent had entered into the second (quoting its language) with "certain" (no number is given but there were 1,535) persons, partnerships, and corporations, approximately 447 of whom before making such contracts were wholesale dealers in newspapers and magazines. Further, that many of this 447, as well as other parties to such contracts, have been denied permission to dis-

tribute the periodicals of other publishers. And that in these ways the most efficient established channels of distribution have been closed to competitors, competition lessened, and a tendency to monopoly established.

The present record clearly discloses the development of respondent's business, how it originated, the plan of selling through school boys, the necessity for exclusive agents to train and superintend these boys and to devote their time and attention to promoting sales, and also contracts with 1,535 such agents. The Commission's report suggests no objection as to 1,088 of these representatives who, prior to their contracts, had not been engaged in selling and distributing newspapers or periodicals for other publishers. There is no sufficient evidence to show that respondent intended to practice unfair methods or unduly to suppress competition or to acquire monopoly, unless this reasonably may be inferred from making and enforcing the second or substituted agreement with many important wholesale dealers throughout the country.

Judged by its terms, we thing this contract is one of agency, not of sale upon condition, and the record reveals no surrounding circumstances sufficient to give it a different character. This, of course, disposes of the charges under the Clayton Act.

The engagement of competent agents obligated to devote their time and attention to developing the principal's business, to the exclusion of all others, where nothing else appears, has long been recognized as proper and unobjectionable practice. The evidence clearly shows that respondent's agency contracts were made without unlawful motive and in the orderly course of an expanding business. It does not necessarily follow because many agents had been general distributors, that their appointment and limitation amounted to unfair trade practice. And such practice can not reasonably be inferred from the other disclosed circumstances. Having regard to the undisputed facts, the reasons advanced to vindicate the general plan are sufficient.

Effective competition requires that traders have large freedom of action when conducting their own affiairs. Success alone does not show reprehensible methods, although it may increase or render insuperable the difficulties which rivals must face. The mere selection of competent, successful, and exclusive representatives in the orderly course of development can give no just cause for complaint, and, when standing alone, certainly affords no ground for condemnation under the statute.

In the present cause the Commission has not found all the material facts, but considering those which it has found and the necessary effect of the evidence, the order to desist is clearly wrong and should be set aside without further delay.

Affirmed.

Mr. Chief Justice Taft, doubting.

The sentence in the majority opinion, which makes me express doubt, is that discussing the duty of the court in reviewing the action of the Federal Trade Commission when it finds that there are material facts not reported by the Commission. The opinion says:

"If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the Commission—the primary fact-finding body—with directions to make additional findings, but if from all the circumstances, it clearly appears that in the interest of justice the controversy should be decided without delay, the court has full power under the statute so to do."

If this means that where it clearly appears that there is no substantial evidence to support additional findings necessary to justify the order of the Commission complained of, the court need not remand the case for further findings, I concur in it. It is because it may bear the construction that the court has discretion to sum up the evidence pro and con on issues undecided by the Commission and make itself the fact-finding body, that I venture with deference to question its wisdom and correctness. I agree that in the further discussion of the evidence, the reasoning of the opinion of the court would seem to justify the view that it does not find in the evidence sufficient to support additional findings by the Commission justifying its order. I only register this doubt because I think it of high importance that we should scrupulously comply with the evident intention of Congress that the Federal Trade Commission be made the fact-finding body and that the court should in its rulings preserve the board's character as such and not interject its views of the facts where there is any conflict in the evidence.

I am authorized to say that Mr. Justice Brandeis concurs with me in this.

APPENDIX III.

RULES OF PRACTICE BEFORE THE COMMISSION.

[Adopted June 17, 1915. As amended to Jan. 14, 1924.]

I. SESSIONS.

Principal office.

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. 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.

Commission may exercise power elsewhere.

Hearings as ordered.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Sessions for orders and other business.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.

Quorum.

Orders signed by Secretary.

All orders of the Commission shall be signed by the Secretary.

II. COMPLAINTS.

Who may ask complaint.

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Form of application.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Commission to investigate.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at

Issuance and service of complaint.

Notice. a place therein fixed, at least 40 days after the service of said complaint.

III. ANSWERS.

Time allowed for answer. Within 30 days from the service of the complaint, unless such time be extended by order of the Commission, the defendant shall file with the Commission an answer

Form of answer. to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. It shall specifically admit or deny or explain each of the facts alleged in the complaint, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Answers in typewriting must be on one side of the paper only, on

Size of paper, margin, etc. paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide. Three copies of such answers must be furnished.

IV. SERVICE.

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the Commission, either (*a*) by delivering a copy thereof to

Personal, or the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director, of the corporation or associa-

By leaving copy, or tion to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, part-

By registered mail. nership, corporation, or association; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its prin-

Return. cipal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

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.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

Notice to counsel.

IX. OBJECTIONS TO EVIDENCE.

To state grounds of objection, etc.

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

X. MOTIONS.

To briefly state nature of order applied for, etc.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS.

By single commissioner.

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

General counsel or assistant to conduct hearing.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

XII. HEARINGS BEFORE EXAMINERS.

Examiner to take testimony.

When issue in the case is set for trial, it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same

Testimony to be completed within 30 days except for good cause.

unless, for good cause shown, the Commission shall extend the time. The examiner shall, within 10 days after the receipt of the stenographic report of the testimony, make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument on exceptions.

When, in the opinion of the trial examiner engaged in taking testimony in any formal proceeding, the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel at the close of the taking of testimony announce to the attorneys for the respondent and for the Commission that the examiner will receive at any time before he has completed the drawing of the "Trial Examiner's Report upon the Facts" a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

Examiner under certain circumstances to receive from each side statement of its contentions after testimony and before his report.

These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Any tentative draft of finding or findings submitted by either side shall be submitted within 10 days after the closing of the taking of testimony and not later, which time shall not be extended.

Time allowance for submission of tentative findings.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Commission may order.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Before any person designated.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the depo-

Applications for depositions.

sition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

Testimony of witness. The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Deposition to be forwarded.

And filed. Copy to defendant or his attorney.

Size of paper, etc. Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

Notice. No deposition shall be taken except after at least six days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

Limitations as to time. No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

XIV. DOCUMENTARY EVIDENCE.

Relevant and material matter only to be filed. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evi-

dence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

XV. BRIEFS.

Time of filing.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. If briefs are filed, the exceptions, if any, to the examiner's report must be incorporated in the briefs. The presiding Commissioner or examiner shall fix the time within which briefs shall be filed and service thereof shall be made upon the adverse parties.

Filed with secretary with proof of service.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Twenty copies of each brief shall be furnished for the use of the Commission, unless otherwise ordered.

Applications for extension of time

Application for extension of time in which to file any brief shall be by petition in writing, stating the facts upon which the application rests, which must be filed with the Commission at least five days before the time for filing the brief.

Form of brief.

Every brief shall contain, in the order here stated—

(1) A concise abstract or statement of the case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Requirements if more than 10 pages.

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.

Size of type, paper, etc.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10½ inches, with inside margins not less than 1 inch wide and with double-leaded text and single-leaded citations.

Oral arguments.

Oral arguments will be had only as ordered by the Commission.

XVI. ADDRESS OF THE COMMISSION.

Federal Trade Commission, Washington, D.C.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.

TABLE OF COMMODITIES.

INDEX.

[1] For index by commodities involved, rather than practices, see Commodities Index.

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