

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JANUARY 1, 1944, TO JUNE 30, 1944

IN THE MATTER OF

A. P. W. PAPER COMPANY, INC.

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

Docket 4747. Complaint, Apr. 11, 1942—Decision, Jan. 7, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of various brands of toilet tissues and paper towels—

Represented or implied, through use of the words "Red Cross" and a red Greek cross prominently displayed on such products and featured in advertising in periodicals of nationwide circulation that its "Red Cross Toilet Tissue" and "Red Cross Towels" were endorsed or approved by the Red Cross, that latter was financially interested in the sale thereof, that it used said products, that they were made in accordance with standards set up by it, or that it had some other connection with them; and printed on its letterheads "Makers of Red Cross Towels and Tissue," with a red cross following the words "Red Cross";

When in fact there was no connection of any kind between said corporation's products and the Red Cross organization, work and interests of which were solely of a charitable nature, and which had no connection with any commercial enterprise, endorsed or approved no articles, derived no benefit from the sale thereof and set up no standards, sanitary or otherwise, for commercial products;

With tendency and capacity to mislead a substantial portion of the public into such mistaken belief as to products in question, and thereby cause it to purchase substantial quantities thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

As respects alleged misleading use of the name "Red Cross" and the mark of the Greek red cross to designate seller's products, through use thereon and in extensive advertising thereof: other statements that the products were made by the seller and that the name or mark was registered in the patent office, did not serve to correct the erroneous and misleading impression created through the use of the trade name and mark in question.

As regards contention with respect to the alleged misleading use of a red cross on seller's products, that the use of such a cross as an emblem or insignia dates back several centuries and long antedated the Red Cross organization: the use of a red cross in the particular form and coloration involved in the instant proceeding, i.e., a Greek red cross on a white ground, had its origin in the Geneva Convention of 1864, whereas the red cross used prior thereto was usually in the form of an ecclesiastical cross or differed otherwise.

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The contention in a proceeding involving the alleged misleading use of the words "Red Cross" and the Red Cross emblem, that the saving proviso in an Act of Congress of 1910, which excepted from the prohibited use of the word and emblem those who had actually made use thereof "for any lawful purpose prior to January 5, 1905" constituted a bar to proceedings by the Commission is unsound, since the primary purpose of said proviso was to save those coming within its terms from the penalties provided by the particular act. Furthermore, whatever the effect might be in a proceeding based upon said statute or in litigation involving conflicting trade-mark claims between private parties, the provision has no application in a proceeding under the Federal Trade Commission Act where the principal inquiry is as to the effect of the Red Cross name and mark upon the general public, since the Act, by way of contrast to the prior much more restricted legal concept of trade practice legality, with its emphasis on competitive rather than public effect, recognizes the interest of the general public in unfair trade practices, and particularly so under the 1938 amendment prohibiting unfair and deceptive acts and practices irrespective of the effect thereof on competition.

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. Marshall Morgan for the Commission.
Sullivan & Cromwell, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that A. P. W. Paper Company, Inc., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, A. P. W. Paper Company, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, having its principal offices and place of business at the foot of Bridge Street in the city of Albany, N. Y. Branch offices are maintained by respondent in a number of the principal cities of the various States of the United States. Respondent company was incorporated originally on July 19, 1877, as Albany Perforated Wrapping Paper Company. On June 6, 1930, respondent changed its corporate name to its present title.

PAR. 2. Respondent is now, and for more than five years last past has been, engaged in the manufacture, offering for sale, sale and distribution of toilet tissues and paper towels for household and institutional use. Said products are sold and distributed under various brand names and trade-marks. Respondent causes and has caused this toilet tissue and paper towels, when sold by it, to be transported from its said place of business in Albany, N. Y., to the purchasers thereof at their respective points of location in the various States of the United States other than the State of New York, in the District of Columbia, and in foreign countries. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said toilet tissues and paper towels in commerce between and among the various States of the United States, in the District of Columbia, and with foreign countries.

PAR. 3. On August 8, 1864, a diplomatic conference was convoked at Geneva Switzerland, attended by representatives of some 26 European governments. The outcome of this conference was the Geneva convention of August 22, 1864, known as the Red Cross convention for the "Amelioration of the Condition of the Wounded in Time of War."

Article VII of this convention provided that a distinctive and uniform flag should be adopted for hospitals, ambulances and evacuations, such flag to be accompanied on every occasion by the National flag. Arm-badges (brassards) were allowed for individuals neutralized. It was further provided in this article:

The flag and the arm-badge shall bear a red cross on a white ground.

Twelve European countries were signatories to this convention and some thirty-eight countries throughout the world, including the United States, gave their adherence to the convention and thereby became parties thereto.

As a result of a further international convention concluded at Geneva, Switzerland, on October 8, 1868, the provisions of the original Red Cross Convention were adapted and made applicable to Naval warfare. Hospital ships were to make themselves known by hoisting, together with their national flag, "the white flag with a red cross provided by the Geneva Convention."

Leading world powers, including the United States, "animated by a desire to lessen the inherent evils of warfare as far as within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of the wounded in armies in the field," concluded a further international Red Cross convention at Geneva on July 6, 1906.

This convention enlarged, extended and clarified former provisions of the original 1864 convention and more clearly defined the responsibilities of belligerents with respect to the sick and wounded.

Article 18 of Chapter VI of the 1906 convention provided:

Out of respect to Switzerland, the heraldic emblem of the red cross on a white ground formed by the reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

Articles 19, 20, 21 and 22 of Chapter VI, provided respectively: That this emblem was to appear on flags and brassards as well as upon all material appertaining to the sanitary service; that protected personnel should wear attached to the left arm brassards bearing a red cross on a white ground; that the distinctive flag of the convention could only be displayed over the sanitary formations and establishments which were given protection, and that the sanitary formations of neutral countries should fly the flag of the convention. Articles 23 and 27 of this convention prohibited, or undertook to prohibit, commercial use of the Red Cross name or emblem.

Article 27 of Chapter VII of the 1906 convention, entitled "Repression of Abuses and Infractions," provided as follows:

The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers

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Article 27 of Chapter VII of the 1906 convention, entitled "Repression of Abuses and Infractions," provided as follows:

The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers

the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

Article 30 of the convention provided that it shall become operative, as to each power, six months after the date of deposit of its ratification. Article 31 provided that the convention, when duly ratified, should supersede the convention of August 22, 1864, in the relations between the contracting States, the 1864 convention to remain in force between the parties who signed it but who may not also ratify the 1906 convention.

Article 33 of the 1906 convention provided that each of the contracting parties should have the right to denounce the convention, but that this denunciation should only become operative one year after a notification in writing should have been made to the Swiss Federal Council, which should forthwith communicate such notification to all the other contracting parties, such denunciation to become operative only in respect to the power giving it.

The Government of the United States adhered to the original Red Cross convention of 1864 on March 1, 1882. The convention of July 6, 1906, was ratified by the Senate December 19, 1906, ratified by the President January 2, 1907, ratification was deposited February 9, 1907, and the convention was proclaimed August 3, 1907. The 1906 convention became operative as to the United States six months from February 9, 1907, that is, in August, 1907. This convention has never been denounced by the United States either in whole or in part.

The United States became a party signatory to a new and still further Red Cross Convention concluded at Geneva on July 27, 1929, by some 45 countries of the world "equally desirous of diminishing, so far as lies within their power, the evils inseparable from war, and wishing to perfect and complete, for this purpose, the provisions agreed upon at Geneva, August 22, 1864, and July 6, 1906, to ameliorate the condition of the wounded and the sick of armies in the field." This Convention, after broadening and making more definite existing treaty provisions relating to the foregoing, including the rights and duties of belligerents in such relation, provides in Article 19 that "out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by a reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies."

Article 20 of this Convention provides that this emblem shall appear on flags and brassards as well as upon all materiel appertaining to the sanitary service.

Article 24 provides that the emblem of the red cross on a white ground and the words Red Cross or Geneva Cross may be used, whether in time of peace or war, only to protect or designate sanitary formations and establishments, the personnel and materiel protected by the Convention.

Article 25 provides that the provisions of the Convention shall be respected by the high contracting parties under all circumstances.

Articles 28 to 30 inclusive, of Chapter VIII, deal with "The Repression of Abuses and Infractions." Article 28 provides that the Governments of the high contracting parties whose legislation may not now be adequate

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shall take or shall recommend to their legislatures such measures as may be necessary at all times:

(a) to prevent the use by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or the name of the Red Cross or Geneva Cross, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes.

Sub-paragraph (b) of article 28 obligates each state to enact legislation prohibiting the use of the arms of the Swiss confederation or any imitation thereof as a trade-mark, label, or in any way contrary to commercial ethics or under conditions wounding Swiss pride. It is provided in sub-paragraph (c) that these respective prohibitions shall take effect from the time set in each act of legislation or at the latest five years after the convention goes into effect, and that after such going into effect it shall be unlawful to take out a trade-mark or commercial label contrary to such prohibitions.

The United States Senate ratified this convention January 7, 1932; it was ratified by the President on January 16, 1932, ratifications were deposited at Geneva February 4, 1932; and on August 4, 1932, the convention was proclaimed by President Hoover "to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof."

Thus the United States in 1906 and in 1932 respectively, if it had not already done so, obligated itself by solemn treaty to enact legislation prohibiting commercial use and exploitation of the Red Cross name and emblem.

The United States on June 20, 1936, carried out the obligation undertaken in paragraph 28 (b) of the convention of July 27, 1929, as to the Swiss flag, by enacting a law prohibiting the commercial use of the coat of arms of the Swiss Confederation.

Nearly all countries of the world have now adhered to the Geneva convention as revised in 1906 and 1932 by diplomatic conferences. Conferences held at the Hague in 1899 and 1907 extended to sea warfare the principles of the Geneva conventions. The white flag bearing the red cross has now become the protecting symbol of the Red Cross throughout the world.

Red Cross Societies have been established in all civilized countries as a result of the international conferences at Geneva.

From 1866 on down to the present time, the Red Cross Service has been employed in ministering to sick and wounded military forces throughout the world. The ministrations of this service, particularly in the United States, have also been extended to cover relief and succor to victims of great peacetime disasters.

PAR. 4. The introduction and development of the Red Cross movement into the United States were chiefly due to the zeal and activities of Clara Barton, known as the founder of the American branch of the organization. The American National Association of the Red Cross was first incorporated in July, 1881 under the laws of the District of Columbia. It was reincorporated April 17, 1893, again under the laws of the District of Columbia, and on June 6, 1900, the organization was incorporated by Act of Congress as the American National Red Cross. The Act recited that whereas a permanent organization or agency was needed in every nation to carry out and execute the humane objects and purposes con-

templated by the Geneva Convention of 1864, with the power to adopt and use the distinctive flag and arm badge provided in Article 7 of that Convention, which should be the sign of the Red Cross, it was believed that the importance of the work demanded a reincorporation by the Congress of the United States. The new corporation succeeded to all the rights and property which had been hitherto held, and to all the duties which had theretofore been performed, by the American National Red Cross as a corporation organized under the laws of the District of Columbia, which organization was thereby declared dissolved.

Under the 1900 Act it was made a misdemeanor for any person to falsely and fraudulently hold himself out as, or to represent, or pretend himself to be, a member of, or an agent for, the American National Red Cross for the purpose of soliciting, collecting or receiving money or material, or to wear, or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he was a member of or an agent for the American National Red Cross.

The Act further provided that the American National Red Cross should on the first day of January of each year transmit to Congress an itemized report of all receipts and expenditures and of its proceedings during the preceding year and should also give such information concerning its transactions and affairs as the Secretary of State might from time to time require, and that in respect of all business and proceedings in which it might be concerned in connection with the War and Navy Departments of the Government it should make reports to the Secretary of War and to the Secretary of the Navy, respectively. Congress reserved the right to repeal, alter, or amend this Act at any time.

The United States being one of the signatory powers of the Treaty of Geneva guaranteeing the neutrality of persons caring for the sick and wounded and all supplies for the same, and the American National Red Cross being the official organization in the United States existing under this treaty, and so recognized by the International Red Cross Committee of Geneva, it became important to place the American organization under Government supervision, which the charter of June 6, 1900, had not provided. All the well-organized, foreign Red Cross societies had already been placed under government control, being generally subordinate to the war or navy departments of such governments. This was particularly true in the case of Great Britain, France, Germany, Austria, Italy and Japan.

The American National Red Cross was nationally incorporated by an Act of Congress of January 5, 1905, which repealed the prior Congressional Act of June 6, 1900. The Act of 1905 undertook to give statutory protection to the Red Cross emblem, which was then being used by the American National Red Cross and the medical societies of the Army and Navy. Among other powers confirmed was that "to have the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek Red Cross on a white background, as the same has been described in the Treaty of Geneva, August twenty-second, Eighteen Hundred and Sixty-Four, and adopted by the several nations acceding thereto." The Society was authorized to act in matters of relief arising under that convention by furnishing volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the Geneva Conference, and a provision in the 1905 Act extended the national and international relief to be carried on by the Society to, that of investigating the sufferings caused by pestilence,

famine, fire, floods and other great national calamities, and to devising and carrying on measures for preventing the same.

The Act of 1905 also made it unlawful for any person within the jurisdiction of the United States to falsely hold himself out as, or to represent or pretend himself to be a member of, or an agent for, the American National Red Cross Society, for the purpose of soliciting, collecting or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he was a member of, or an agent for, the American National Red Cross. This section then proceeded to prohibit commercial use of the Red Cross name and emblem by declaring it to be unlawful within the territory of the United States and its exterior possessions, for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States, to use the emblem of the Greek Red Cross on a white background, or any sign or insignia made or colored in imitation thereof, or the words "Red Cross" or "Geneva Cross" or any combination of these words, for the purpose of trade or an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose. This section further provided that any one violating its provisions should be guilty of a misdemeanor and be liable to a fine of not less than one or more than five hundred dollars, or imprisonment of a term of not more than one year, or both, the fine so collected to be paid to the American Red Cross.

By Act of June 23, 1910, Congress amended Section 4 of the Red Cross Statute of 1905 so as to read:

* * * It shall be unlawful for any person, corporation, or association other than the American Red Cross and its duly authorized employees and agents the army and navy sanitary and hospital authorities of the United States for the purpose of trade or as advertisement to induce the sale of any article whatsoever or for any business or charitable purpose, to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white background, or any sign or insignia made or colored in imitation thereof, or the words "Red Cross" or "Greek Cross" or any combination of these words: Provided, however, that no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia or words for any lawful purpose prior to June fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods * * *

This amending act retained the same penalties that had been previously enacted into Section 4 of the original Red Cross Act.

PAR. 5. In pursuance of the organic act of 1905 chartering the American National Red Cross "Under Government supervision" the organization became and has continued to be a great charitable association, quasi-governmental in character and in respect of the duties assigned to it. Under that act the society was created as a permanent organization to carry out the purposes of the Geneva Treaty, especially to send supplies and to execute the humane objects contemplated by the treaty.

Under Section 5 of the organic act the President of the United States names not only the chairman of the Central Committee or governing body of the organization but also designates certain members of the committee,

one each to be named by him from the Departments of State, War, Navy, Treasury and Justice.

This organic act designates the Secretary of War to have authority and supervision over the organization and its accounts. A copy of the society's annual report to the Secretary of War must also be transmitted to Congress.

In pursuance of its by-laws the President of the United States shall, upon his acceptance, be ex-officio President of the American National Red Cross. He shall preside at the annual meetings and make such appointments and perform such duties as may be prescribed.

Under Section 12 of the Act the Secretary of War was authorized to permit the Red Cross to erect and maintain on any military reservation within the jurisdiction of the United States buildings, etc.

The American Red Cross being a quasi-governmental organization, operates under Congressional Charter, is officered in part, at least, by governmental appointment, disburses its funds under the security of a government audit, and is designed by Presidential order for the fulfillment of certain treaty obligations into which the Government has entered. The American Red Cross owes to the Government which it serves the distinct duty of discharging all those functions for which it was created.

The American Red Cross has become and is a great charitable institution, of both national and world-wide reputation. It has experienced a tremendous growth and development throughout the years of its history. Its individual membership comprises many million persons; was over 20,000,000 at the close of the World War. It has sent its trained representatives into the United States and throughout the world to aid and succor those who have suffered from such national calamities as war, epidemics, fire, flood, volcanic eruptions, earthquakes, mine disasters and hurricanes.

It has expended and continues to expend hundreds of millions of dollars on behalf of stricken humanity. In one Mississippi River flood 300,000 homeless individuals were cared for by the American Red Cross.

PAR. 6. The Red Cross name and emblem as provided by the Geneva convention of 1864 soon became heralded throughout the world. Various manufacturers and commercial houses in the United States were quick to capitalize on its popularity and public appeal. In a few years following the conclusion of the Geneva convention, American manufacturers began to use trade-marks employing the Red Cross name and emblem, and articles of commerce bearing the Red Cross name and emblem began appearing all over the United States. This practice began as early as 1872, soon became indiscriminate, and has continued. Most of the articles so sold under the Red Cross emblem and name in no way related to or suggested any article or thing that might be employed by the Red Cross in carrying out its humane and charitable work, and most of the articles now sold do not bear any relation to any article or thing that the Red Cross employs or has ever employed in its great relief work. The first registered trade-mark employing the Red Cross name and emblem covered wines, liquors, beers and mineral waters. Then followed throughout the succeeding years Red Cross marks covering such products as cambrics, hermetically sealed goods, oysters, fruits and vegetables; hydraulic hose, domestic lye, medicine for skin diseases, portland cement, bitters, flour, spices, coffee, baking powder, hard soap, crackers, candy;

stoves, ranges and furnaces; flavoring extracts, cough syrups, velvets and plushes; wood wool and padding; vinegar, tools, meat extracts, sausage coloring, cotton fabrics; tripe, hocks, feet and tongues; yarns and thread, kindling wood, pills, malt liquors, button fasteners; boots, shoes and shoelaces; bathrobes, white flour; rubber goods, sheep casings, salt, condensed milk, bicycles, thermometers, peanuts, stationery; pile remedies, elastic goring, antiseptic dressing, plasters, macaroni, brooms, wheeled vehicles, bottles and syringes, shears and scissors, disinfectants, windmills, spoons, whiskey; brushes, insect powder, fishnetting; shirts, collars and cuffs; musical instruments, wiring, olive oil, advertising cabinets, surgical silk, coal, flavoring extracts, fabric hose, skin preparations, canned fish, mineral paint, cereals, laundry blueing, toilet paper, toothbrushes, beef extract; mattresses, suspensory bandages, catheters and bougies; safety pins, metal absorbents, fertilizers, washboards, and numerous other articles claimed to be of the same respective class of goods as that for which the user of the Red Cross mark employed it, such use also being claimed to be for the same purpose.

The foregoing widespread indiscriminate commercial use of the Red Cross name and emblem early resulted in general confusion and misunderstanding on the part of the public concerning the activities, aims and purposes of the American Red Cross. Members of the consuming public became convinced thereby that the Red Cross manufactured or was financially backing the manufacture of, products sold under its name, and derived financial benefit therefrom. Quack medicines, even alcoholic preparations, were sold under the Red Cross name and insignia. Manufacturers repeatedly sought to enlist the Red Cross in various commercial ventures, offering division of profits in connection with the use of the society's name and emblem, such offers being occasioned by the publication and circulation of advertisements of others using the Red Cross name and emblem.

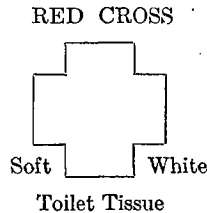
PAR. 7. On December 16, 1908, respondent (then known as Albany Perforated Wrapping Paper Company) applied at the United States Patent Office for registration of a Red Cross Trade-mark for packages of toilet paper. This mark consisting of a pictorial representation of the Greek Cross with the words "RED CROSS" appearing over it in conspicuous capital letters, was granted registration on June 13, 1911. It was recited in the application for this trade-mark that the mark had been continuously used in the applicant's business since the year 1897. It was further recited in the application that "the class of merchandise to which this trade-mark is appropriated is Class 37. Paper and stationery, and the particular description of goods comprised in said class on which the trade-mark is used is packages of toilet paper."

On October 4, 1933, respondent A. P. W. Paper Company, Inc., filed two applications with the United States Patent Office for registration of its Red Cross trade-mark so as to cover "Paper for Toilet Purposes—namely, paper towels—in class 37, Paper and Stationery . . ." and the containers or cartons of paper towels. It was recited that the company had adopted and used the trade-mark for paper towels since September 21, 1933. Registration was granted to these applications March 13, 1934.

In the course and conduct of its aforesaid business described in Paragraph 2 herein, respondent A. P. W. Paper Company, Inc., for the purpose of inducing the purchase of its said toilet tissue and paper napkins between and among the various States of the United States, has made and

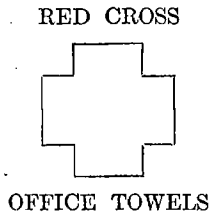
is now making certain advertising representations concerning its said products. In advertisements appearing in nationally known magazines of general circulation, on letterheads and invoices circulating in commerce, on wrappers of packages of toilet paper and paper towels and on cases and cartons in which said products are distributed in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries, and by various other means in such commerce, respondent uses and has used, for more than five years last past, and prominently displays, and has displayed, the emblem of the American National Red Cross Society and the words "Red Cross."

On wrapping, cartons and containers for its said toilet tissue appears the following:



The words "Red Cross" are printed in large heavy capital letters and the facsimile of the Red Cross of the Geneva convention is produced in red coloring. The words "Toilet Tissue" below the red cross also appear in large conspicuous letters.

On wrappings, cartons and containers used for its paper towels appears the following:



Here the words "Red Cross" are printed in large red capital letters again over a heavy facsimile of the red cross of the Geneva convention. The words "office towels" below the red cross are also printed in heavy red capital letters. In other instances the words "Individual Fold Double Towels" are used with the Red Cross design for towels.

In other places on its wrappers and containers for its said products respondent employs and has employed a facsimile of the red cross together with the words "Red Cross." In other instances wrappers for said products contain designs of smaller red crosses.

Through the aforesaid use of the Red Cross name and emblem in advertising, trade-marking, marking, and branding its said products, as described in Paragraph 7 of the complaint herein, respondent variously represents and implies and has represented and implied to customers and to prospective customers:

That there is some connection between the American National Red

Cross Society, hereinafter referred to as the Red Cross, and the respondent company; that the Red Cross is financially interested in the sale of respondent's said products and obtains a royalty or percentage thereon; that respondent's said products are endorsed, approved, or sponsored by the Red Cross, and are put on the market with the approval of the Red Cross; that respondent's said products are used by the Red Cross; that respondent's said products are manufactured in accordance with sanitary standards prescribed by the Red Cross, or manufactured in mills operated by the Red Cross; and that respondent company is financially connected or affiliated with and receives financial support from the Red Cross.

PAR. 8. The aforesaid acts and practices used and employed by respondent and the aforesaid representations and implications made and disseminated by respondent as aforesaid, are false, misleading, deceptive and confusing, for in truth and in fact respondent is not connected or associated with the Red Cross in any way, financially, contractually or otherwise; the Red Cross has not endorsed, sponsored or approved respondent's aforesaid products sold and distributed under the Red Cross name and emblem; the Red Cross is not now engaged in and has never been engaged in any commercial enterprise with respondent company and the Red Cross is not now and has never been interested directly or indirectly in the sale of any product or products sold by respondent under a Red Cross brand or otherwise; the Red Cross does not prescribe and has never prescribed any sanitary or other standard for any article of commerce produced by respondent; no article of commerce manufactured or distributed by respondent is now or ever has been sold with the approval of the Red Cross and the Red Cross has not given respondent permission to use the Red Cross name and emblem for commercial purposes.

In truth and in fact, the American Red Cross has never been engaged in any kind of commercial enterprise, directly or indirectly; has never been engaged directly or indirectly in the sale of any product; has never prescribed any sanitary or other standard for any article of commerce; no article of commerce is now or ever has been sold with the approval of the Red Cross, and the Red Cross has never given any manufacturer, wholesaler, retailer or other dealer, permission to employ the Red Cross name or emblem as a trade-mark or otherwise in advertising, branding, labeling or marking any product.

PAR. 9. Respondent's aforesaid acts, practices and representations in connection with the sale of its products have had and now have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that respondent has some association, connection or affiliation with the Red Cross, that respondent's products are approved, sponsored or endorsed by the Red Cross, that the Red Cross is interested financially in the sale of respondent's products and that the use by respondent of the Red Cross name and emblem indicates that respondent is manufacturing its said products according to standards prescribed by the Red Cross. By reason of said beliefs, engendered as above stated, a substantial number of the consuming public have been and are being induced to purchase substantial quantities of respondent's said products.

Furthermore, the extension of the use of the Red Cross name and emblem so as to cover and apply to paper towels as well as toilet tissue is not and never has been a use for the same purpose and the same class of goods, and is an unlawful use of said name and emblem.

PAR. 10. Said acts and practices of respondent as described herein are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of, and are in violation of, the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 11, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, A. P. W. Paper Company, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion based thereon;

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, A. P. W. Paper Company, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at the foot of Bridge Street, Albany, N. Y. In addition to its main office in Albany, respondent maintains a number of branch offices in various cities throughout the United States. The company was originally incorporated in 1877 under the name of Albany Perforated Wrapping Paper Company, but in 1930 the corporate name was changed to A. P. W. Paper Company, Inc. The corporation is engaged in the manufacture, sale, and distribution of toilet tissues and paper towels.

PAR. 2. In the course and conduct of its business, respondent causes and has caused its products, when sold, to be transported from its principal place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the various brands of toilet tissues and paper towels manufactured and sold by respondent are certain brands designated by it as "Red Cross Toilet Tissue" and "Red Cross Towels." The toilet tissue was placed on the market by respondent in 1897 and the paper towels in 1933. Both products have been and are widely advertised in periodicals having nation-wide circulation. On each package or roll of toilet tissue and towels the words "Red Cross" are prominently displayed, and in connection with the name there is also prominently displayed a Greek red cross. Both the trade name and the cross are also

featured in respondent's magazine advertisements, and on respondent's letterheads there appear the words "Makers of Red Cross Towels and Tissue," the words "Red Cross" being immediately followed by a red cross similar to that which appears on the packages and in the advertisements. Both the trade name and the mark of the cross have been registered by respondent in the United States Patent Office.

PAR. 4. The organization known as the Red Cross had its beginning in August, 1864, when diplomats representing a number of European nations met in Geneva, Switzerland, for the purpose of drafting a treaty looking to the alleviation of the suffering of soldiers wounded on the battlefield. Among the articles adopted by the convention was Article VII, which provided that:

A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority.

The flag and the arm-badge shall bear a red cross on a white ground.

Some two years after the Geneva convention, certain individuals in the United States who had followed with interest the work of the convention organized in New York City an association known as "The American Association for the Relief of the Misery of Battlefields," which it was hoped would be the beginning of a permanent Red Cross organization in this country. The Association adopted as its emblem the same one as that which had been adopted by the Geneva convention, that is, a Greek red cross on a white ground. The United States, however, had not at that time ratified the treaty of Geneva and the Association remained active for only about two years.

PAR. 5. In July, 1881, there was incorporated, under the laws of the District of Columbia, an association designated "The American Association of the Red Cross." One of the principal organizers of the Association was Miss Clara Barton, who had, since the Geneva convention, been very active in the movement to effect a permanent Red Cross organization in the United States and to obtain the ratification by this country of the Geneva treaty. In the meantime, there had been held at Geneva in 1868 a second convention, which extended the articles adopted by the original convention so as to include naval warfare. Among the objects of the Association, as set forth in the articles of incorporation, were the following:

1st. To secure by the United States the adoption of the treaty of August 22, 1864, between Italy, Baden, Belgium, Denmark, Holland, Spain, Portugal, France, Prussia, Saxony, Wurtemberg, and the Federal Council of Switzerland.

* * * * *

3d. To organize a system of national relief and apply the same in mitigating the sufferings caused by war, pestilence, famine and other calamities.

PAR. 6. The treaty of Geneva was formally ratified by the United States in March, 1882, and in April, 1893, the Red Cross organization which had been incorporated in 1881 was reincorporated under the laws of the District of Columbia under the name "The American National Red Cross." During the period of time which had intervened between the original incorporation in 1881 and the reincorporation in 1893, the organization had been very active, particularly with respect to the relief of

distress caused by a series of calamities, including the Mississippi floods of 1882; the Ohio floods of 1883, the Mississippi cyclones of 1883, the Ohio and Mississippi floods of 1884, the Texas drought of 1886, the Charleston earthquake of 1886, the Florida yellow-fever epidemic of 1888, and the Johnstown disaster of 1889.

PAR. 7. On June 6, 1900, the organization was incorporated under the same name (The American National Red Cross) by Act of Congress (31 Stat. 277-280), and on January 5, 1905, it was reincorporated by Congress under the same name (33 Stat. Part I, pp. 599-602). It appears that the principal purpose of the reincorporation was to provide more definitely for the supervision of the organization by the Federal Government. Under the Act of 1905, six of the eighteen members of the Central Committee, which is the governing body of the Red Cross, are appointed by the President of the United States. One of the six members so appointed is designated by the President as Chairman, and one of the six is named by the President from each of the Departments of State, War, Navy, Treasury, and Justice. The organization is required to transmit to the Secretary of War each year a full report of its receipts and expenditures for the preceding fiscal year, which report is audited by the War Department and a copy transmitted by that Department to Congress. The by-laws of the organization provide that the President of the United States shall, upon his acceptance, be *ex officio* president of the organization.

PAR. 8. From the time of its first incorporation under the laws of the District of Columbia in 1881 down to the present time, the American Red Cross has not only used the words "Red Cross" as a part of its name and in connection with its various activities, but has also used the emblem adopted by the Geneva convention, the Greek red cross on a white ground. All of the Acts of Congress having to do with the organization have recognized this emblem and have provided penalties for its misuse. Thus, Section 4 of the Act of 1900 provided:

That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the red cross, or any insignia colored in imitation thereof, for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. If any person violates the provisions of this section he shall be guilty of a misdemeanor, and shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross. * * * (31 Stat. 279)

The corresponding section in the Act of 1905 was as follows:

That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be, a member of, or an agent for, the American National Red Cross, for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross, or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of, or an agent for, the American National Red Cross. Nor shall it be lawful for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in

imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever. If any person violates the provisions of this section, he shall be guilty of a misdemeanor and shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross. (33 Stat. Part 1, pp. 600-601)

In 1910 this section was further amended by Congress to read as follows:

That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof or of the words "Red Cross" or "Geneva Cross" or any combination of these words: Provided, however, That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods. If any person violates the provision of this section, he shall be deemed guilty of a misdemeanor and, upon conviction in any federal court, shall be liable to a fine of not less than one or more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. (36 Stat. Part I, p. 604)

PAR. 9. From a relatively small membership in 1881 the American Red Cross has grown until it now numbers fifteen million adult members and fourteen million junior members. It has an active chapter in practically every county in the United States. Its reputation as a great charitable institution is of world-wide, as well as national, scope. It has expended and continues to expend many millions of dollars annually on behalf of stricken humanity. In one Mississippi River flood, it cared for 300,000 homeless individuals. It has sent its trained representatives throughout the world to aid those suffering from such calamities as war, epidemics, fire, flood, volcanic eruptions, earthquakes, mine disasters, and hurricanes. It is particularly active in time of war, now having representatives attached to every American Army task force throughout the world. Both the name "Red Cross" and the emblem of the Greek red cross on a white ground have long been familiar to the American public and are associated in the minds of the public with the Red Cross organization.

PAR. 10. The Commission finds that the use by respondent of the words "Red Cross" and of the mark of the Greek red cross to designate its products has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public, in that such name and mark represent or imply that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in

the sale of the products; that the products are used by the Red Cross; that the products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is some other connection between the products and the Red Cross. Not only are these, in the opinion of the Commission, reasonable inferences to be drawn from the use of the name and mark, but the record affirmatively shows that the name and mark are in fact so understood and interpreted by many members of the public. Twenty-nine members of the public testified at the hearings, and it was stipulated between counsel for the Commission and counsel for respondent that if twenty-five other prospective public witnesses had been introduced their testimony would have been substantially the same as the testimony of those who were actually introduced. Of the twenty-nine witnesses who testified, some fifteen, upon examining samples of respondent's products and advertising, stated that they would understand from the trade name and mark that there was some connection between the products and the Red Cross organization, although they did not agree as to the exact nature of such connection. Some interpreted the name and mark as implying that the products were sponsored, endorsed, or approved by the Red Cross; others, that the products conformed with sanitary standards set up by the Red Cross; others, that the products were used by the Red Cross, etc.

There is no connection of any kind between respondent's products and the Red Cross organization. In fact, the Red Cross has no connection with any business or commercial enterprise. It does not sponsor, endorse, or approve any articles of merchandise nor derive any benefit from the sale thereof. It does not set up standards, sanitary or otherwise, for commercial products. The work and interests of the organization are solely of a charitable nature.

PAR. 11. While there appear on respondent's products, in addition to the name "Red Cross" and the mark of the cross, other words stating that the products are made by respondent and that the trade name and mark are registered in the United States Patent Office, the Commission is of the opinion and finds that these additional words do not serve to correct the erroneous and misleading impression created through the use of the trade name and mark.

PAR. 12. It is insisted by respondent that the use of a red cross as an emblem or insignia dates back several centuries and that such use long antedated the Red Cross organization. The record indicates, however, that the use of a red cross in the particular form and coloration here involved—a Greek red cross on a white ground—had its origin in the Geneva convention of 1864. The emblem was formed by reversing the colors of the flag of Switzerland. The red cross used prior to that time was usually in the form of an ecclesiastical cross or in some other form differing from the Greek red cross.

PAR. 13. It is further urged by respondent that the provision of the Act of Congress of 1910 reading,

No person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods,

constitutes a bar to this proceeding. The Commission is of the opinion, however, that this position is unsound. Among the considerations leading

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the Commission to this view is that the Act in question is a penal statute. The primary purpose of the quoted provision was to save those coming within its terms from the penalties provided by this particular Act.

Moreover, the provision expressly states that the use must be for a "lawful purpose." At the time of the passage of this Act the legal concept with respect to unfair trade practices was much more restricted than at the present time. Then the legality of a trade practice depended largely, if not entirely, upon its effect on competition, the effect upon the general public being given little, if any, consideration. Since that time there has been enacted the Federal Trade Commission Act, which recognizes the interest of the general public in unfair trade practices. Particularly is this true under the 1938 amendment to the Federal Trade Commission Act, which prohibits unfair and deceptive acts and practices in commerce, irrespective of their effect on competition.

Whatever effect the provision relied upon by respondent might have in a proceeding based upon the 1910 statute, or in litigation involving conflicting trade-mark claims between private parties, the Commission is of the opinion that the provision has no application in a proceeding under the Federal Trade Commission Act, where the principal inquiry is as to the effect of the Red Cross name and mark upon the general public.

No finding is made as to whether the paper towels made by respondent are of the same class of goods as its toilet tissue.

PAR. 14. The acts and practices of the respondent have the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in the sale of the products; that the products are used by the Red Cross; that the products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is some other connection between the products and the Red Cross, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This matter having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the Respondent, A. P. W. Paper Company, Inc., a corporation, and its officers, agents, representatives, and employees,

directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's toilet tissues and paper towels in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Red Cross" or any abbreviation or simulation thereof, either alone or in combination or connection with any other word or words, to designate, describe, or refer to respondent's products.

2. Using or displaying on respondent's products or in any advertisement of such products the mark of a Greek red cross, or any other mark, emblem, sign, or insignia simulating or resembling such cross.

3. Representing in any manner or by any means, directly or by implication, that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in the sale of said products; that said products are used by the Red Cross; that said products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is any other connection between said products and the Red Cross.

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