

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS AND ORDERS OF THE FEDERAL TRADE COMMISSION

JULY 1, 1921, TO MAY 21, 1922

PUBLISHED BY THE COMMISSION

VOLUME IV



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MEMBERS OF THE FEDERAL TRADE COMMISSION.

(As of May 21, 1922.)

NELSON, B. GASKILL, *Chairman.*

Took oath of office January 31, 1920.

VICTOR MURDOCK, *Vice Chairman.*

Took oath of office September 4, 1917, and October 4, 1918.¹

JOHN F. NUGENT.

Took oath of office January 15, 1921.

HUSTON THOMPSON.

Took oath of office January 17, 1919, and September 26, 1919.¹

J. P. YODER, *Secretary.*

Took oath of office April 1, 1919.

During the period July 1, 1921, to May 21, 1922, there also served as a commissioner—

JOHN GARLAND POLLARD.

Took oath of office March 10, 1920. Term expired September 25, 1921.

¹ Second term.

PREFACE.

This, the fourth volume of the Commission's decisions, covers the period from July 1, 1921, to May 21, 1922, inclusive. It will be observed that the plan of issuing one volume for each fiscal year, which was followed in the publication of the second and third volumes, has been discontinued. It is believed that the publication in the future of a volume of decisions as often as their number and bulk require, without reference to calendar dates, will be preferable.

It will also be noted that the annotations to the acts from which the Commission derives its powers, which were included in volumes 2 and 3, have been dispensed with. This is due to the fact that the Commission has recently published an index-digest of the three first volumes of its decisions, containing annotations of Federal cases to April 30, 1922.

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

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FEDERAL TRADE COMMISSION

v.

ROYAL BAKING POWDER COMPANY.

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

Docket 539—July 2, 1921.

SYLLABUS.

Where a concern exclusively engaged in the manufacture and sale of cream of tartar baking powders, under the well-known trade-mark and name (among others) of "Dr. Price's Cream Baking Powder," long and extensively advertised and alleged (1) that it used only cream of tartar in its product, (2) that cream of tartar was the only wholesome acid ingredient available for the manufacture of baking powder, (3) that phosphate and alum for that purpose were unwholesome and injurious to the health, and (4) that no cream of tartar baking powder contained phosphate and no phosphate baking powder contained cream of tartar, whereby it was enabled to sell large quantities of its cream of tartar baking powder in competition with the cheaper phosphate and alum baking powders; and thereafter,

- (a) With the intent and effect of deceiving the public, labeled a phosphate powder, which it commenced to manufacture and which it called "Dr. Price's 'Cream' Baking Powder," with labels substantially similar to those of its "Dr. Price's Cream Baking Powder," and sold the same in containers expressly made to resemble those in which it had theretofore sold its aforesaid cream of tartar brand;
- (b) Extensively and elaborately advertised a reduction in "DR. PRICE'S Baking Powder," using such statements as "Low Cost Shakes Hands with High Quality in DR. PRICE'S Baking Powder. Now reduced to about one-half of the former cost * * * Does not Contain Alum * * * Always Wholesome. A name famous for sixty years is your Guarantee," emphasizing the much lower price of the new powder, but failing in most instances to disclose prominently or at all the change in ingredient from cream of tartar to phosphate; with the tendency thereby to mislead the public into mistaking the new product for the original Dr. Price's Baking Powder, and with the result, at the expense of competitive products, that sales of the new phosphate powder greatly exceeded former sales of the cream of tartar brand;

All with a tendency unfairly to hinder competing manufacturers of cream of tartar, and of phosphate, powders:

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

COMPLAINT.

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

PARAGRAPH 1. That the respondent, the Royal Baking Powder Co., is a corporation organized under the laws of New Jersey in 1899, and was a consolidation of four preexisting corporations, one of which was Price Baking Powder Co.; that its constituent companies before its organization and the respondent since its organization were and has been and still is engaged in manufacturing and selling, in interstate commerce, and in competition with many other concerns similarly engaged, baking powders not only under its own name but in the names of its constituent companies and particularly the Price Baking Powder Co. It has for many years asserted, advertised, and emphasized the fact that its baking powders contained for their necessary acid ingredient cream of tartar, or tartaric acid, a fruit product, represented as made of grapes, of high food value, pure, safe, and healthful; that the baking powders of its competitors contained as their necessary acid ingredient alum or phosphate, and that these ingredients rendered such powders unhealthful, impure, deleterious, and dangerous to their users and consumers. It and its predecessor and constituent, the Price Baking Powder Co., have spent large sums in advertising their products along these lines and built up a large trade and valuable good will for their cream of tartar baking powders, and especially for "Dr. Price's Cream Baking Powder," under and by that trademark and name, as of particular excellence and high quality. It put up these powders in cans under distinctive designs, brands, and labels, and a registered trade-mark as "Dr. Price's Cream Baking Powder," with printed directions for use and the statement that they do not contain ammonia, lime, or alum, and the formula "pure grape cream of tartar, tartaric acid (from grapes), bi-carbonate soda and corn starch." It had a wide and large sale of these powders at standard retail prices of 40 to 50 cents per can of 12 ounces, and other sizes in like proportions, while its competitors' powders, so much denounced by it as cheaper, inferior, unwholesome, etc., sold at much less prices.

PAR. 2. That the respondent, the Royal Baking Powder Co., in 1919, with the intent and effect of unfairly competing and interfering

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with and restraining its competitors' business and promoting the sales of its own products, compounded and manufactured baking powders in which it substituted for cream of tartar, or tartaric acid, formerly used and so much advertised, phosphate, a much cheaper ingredient, and put the same on the market in lieu of and under the trade name and trade-mark of Dr. Price's Cream Baking Powder at about one-half the price formerly prevailing for said Dr. Price's Cream Baking Powder. It put up and sold said powders in containers similar to those formerly used for Dr. Price's Cream Baking Powder under the same designs, brands, labels, and trade name and mark, with a stamp on the reverse side of the container to this effect: "A pure phosphate powder. This powder is composed of the following ingredients and none other: carbonate of soda, phosphate, corn starch." It continued for some time the sale of these substitute powders under those old designs, labels, brands, and trade name and mark, and then substituted gradually a new label on its containers of similar dress, design, and color, and containing substantially the same devices, directions, and matters of the old labels, using the same trade mark and name, "Dr. Price's Cream Baking Powder," "registered U. S. Patent Office," to which was added at the foot "A pure phosphate powder, new label," and substituting on the reverse of the container as the formula of these powders the substance of the stamp hereinbefore quoted, thus in substance and in fact misbranding and confusing these new or substitute phosphate powders for and with the former well-known and well-established Dr. Price's Cream Baking Powders.

PAR. 3. That respondent, the Royal Baking Powder Co., in connection with the sale of these new or substituted phosphate baking powders, entered upon and conducted and continues a general campaign of false and misleading advertising of the same by means of advertisements inserted in public newspapers and periodicals, by billboards, circulars, posters, handbills, and in various other forms, to promote the sales and distribution of these new or substitute phosphate powders as and for and in the name of said Dr. Price's Cream Baking Powders to this effect: The price of Dr. Price's Baking Powder has been reduced nearly one-half the former price; Dr. Price's Baking Powder, a name famous for 60 years, is a guarantee of quality; millions of women know Dr. Price's Baking Powder, the name has been a household word for 60 years; there is no longer any excuse for using a doubtful baking powder because it is cheap; new prices, 25 cents for 12 ounces, 15 cents for 6 ounces, 10 cents for 4 ounces, full weight cans, the price is right; Dr. Price's Baking Powder is now sold for 25 cents for a full weight 12 ounce can instead of 50 cents as formerly; Dr. Price's Baking Powder contains no alum, leaves no

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bitter taste, always wholesome; and much more to the same and similar effect. These prices so advertised, although about half the former prices of Dr. Price's Cream Baking Powder (genuine), were still much in excess of the current and reasonable prices of phosphate baking powders such as the respondent was in fact under these advertisements selling as a substitute for and in lieu of Dr. Price's Cream Baking Powders. Thus respondent is injuring and restraining the business of its competitors and deceiving and misleading purchasers and consumers.

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, Royal Baking Powder 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, Royal Baking Powder Co., before Mr. Byron L. Shinn and Mr. Baldwin B. Bane, examiners of the Federal Trade Commission, theretofore duly appointed.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Royal Baking Powder Co., is a corporation organized under the laws of the State of New Jersey in the year 1899, and has been continuously since its organization and now is engaged in the manufacture of baking powders and in the sale and shipment thereof throughout the various States of the United States and to foreign countries, in competition with many other partnerships and corporations similarly engaged.

PAR. 2. In said year, 1899, the respondent acquired by purchase the entire capital stock of three other corporations then and theretofore engaged in the manufacture of baking powders and in the sale thereof among the various States of the United States, to wit, Price Baking Powder Co., Cleveland Baking Powder Co., and a former corporation also known as Royal Baking Powder Co.

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PAR. 3. The baking powder manufactured by Price Baking Powder Co. was known as "Dr. Price's Cream Baking Powder"; that manufactured by Cleveland Baking Powder Co. was known as "Cleveland's Superior Baking Powder"; and that manufactured by the former Royal Baking Powder Co. was known as "Royal Baking Powder"; and after the acquisition of the stock of said three corporations by respondent as aforesaid, the manufacture and sale of said three brands of baking powder was continued by respondent.

PAR. 4. From 1899 to 1917 the respondent manufactured and sold said "Dr. Price's Cream Baking Powder" under the name of said Price Baking Powder Co., but in 1917 respondent acquired all the property and assets of said Price Baking Powder Co. and thereafter continued, up to September, 1919, the manufacture and sale of said baking powder under its own name.

PAR. 5. Baking powder consists of (1) a carbonate, usually bicarbonate of soda, mixed with (2) an acid ingredient capable of reacting with the alkaline carbonate, when moistened, and setting free carbonic acid gas, which gas raises the dough, and (3) a filler, usually flour or cornstarch, which tends to prevent any premature reaction caused by the moisture in the air.

PAR. 6. Baking powders are known and distinguished by the public, the trade, and the United States Government according to their respective acid ingredients, and those having for such acid ingredient cream of tartar or tartaric acid are known as "Cream of tartar" baking powders; those having phosphate for their acid ingredient are known as "Phosphate" baking powders; and those having any compound of aluminum for their acid ingredient are known as "Alum" baking powders. Baking powders containing both compounds of aluminum and phosphate are sometimes referred to as "Alum-phosphate" baking powders.

PAR. 7. The three brands of baking powder mentioned in paragraph 3, which were acquired by respondent in 1899, as aforesaid, were all cream of tartar baking powders, having for their acid ingredient cream of tartar, or tartaric acid, a condensed form of cream of tartar, and this respondent had never, prior to September, 1919, nor had any of its predecessors, manufactured any baking powder other than "Cream of tartar" powders.

PAR. 8. The baking powder known as "Dr. Price's Cream Baking Powder" was originated in or about the year 1853 by Dr. Vincent J. Price, a physician, and was manufactured by him, and by various firms of which he was a member, up to the year 1884, when the Price Baking Powder Co., an Illinois corporation, acquired the business and continued the manufacture and sale of said baking powder

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until said business was taken over by the respondent herein, as aforesaid, and during all of said time and until September, 1919, said baking powder was a cream of tartar baking powder, and was advertised and sold exclusively as such. Dr. Price ceased to have any interest in or connection with the manufacture of said baking powder in 1891 and has since died. Said Dr. Price never manufactured a phosphate baking powder.

PAR. 9. For a period of over 60 years prior to September, 1919, said "Dr. Price's Cream Baking Powder" had been marketed and advertised exclusively as a cream of tartar baking powder, and for at least 35 years (1884-1919) the respondent and its predecessor, Price Baking Powder Co., had carried on an extensive advertising campaign, throughout 22 States in the middle and western sections of the country, where said baking powder was sold, to establish in the minds of consumers the superiority, especially from the point of view of healthfulness, of its cream of tartar baking powder, and the inferiority of the baking powders manufactured and sold by competitors and containing phosphate or alum, or both, as their acid ingredients, which competing powders were represented by respondent to be unwholesome and deleterious.

PAR. 10. Through circulars, pamphlets, cook books, newspapers, and other forms of advertising, respondent for many years prior to September, 1919, made a practice of warning the purchasing public against the use of phosphate baking powders, and asserted that cream of tartar was the only acid ingredient which should be used in baking powder. It emphasized the wholesomeness and food value of cream of tartar and maintained that phosphate was unwholesome and dangerous as an ingredient, was produced either by dissolving bones in oil of vitriol, or from rocks formed by the action of the excreta of birds and animals on limestone. It referred to phosphate as "bone-acid" or "lime phosphate," and alleged that it was of purely mineral origin, left objectionable mineral residues in the food, and many other statements to the same or similar effect. Respondent further asserted that it had never manufactured any but exclusively cream of tartar powders, that no cream of tartar baking powder ever contained phosphate, and that no phosphate powder ever contained cream of tartar.

PAR. 11. By means of such advertising respondent was able to sell large quantities of its cream of tartar baking powder, under the name "Dr. Price's Cream Baking Powder," in competition with phosphate baking powders and alum baking powders selling for about one-half and one-fourth, respectively, of the selling price of respondent's said cream of tartar baking powder.

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PAR. 12. Prior to the year 1915, following a difference of opinion among physiologists as to the healthfulness of inorganic phosphate in food products, a Dr. Marshall published an article in the Journal of the American Medical Association which convinced the chief chemist of respondent that inorganic phosphate was entirely unobjectionable as a baking powder ingredient. Respondent continued up to May 28, 1919, to publish and circulate disparaging advertisements concerning baking powders containing such phosphate.

PAR. 13. At the same time that it was warning the public against the use of phosphate baking powders and claiming that cream of tartar was the only healthful acid ingredient, respondent was engaged in manufacturing and selling in Canada, through a company controlled by it, a phosphate baking powder known as "Magic Baking Powder"; and contemporaneously with its campaign of disparagement of phosphate baking powders, also owned 49 per cent of the capital stock of the Provident Chemical Works of St. Louis, Mo., a corporation engaged in the manufacture of phosphate for use in baking powders and in selling the same to manufacturers of phosphate baking powders, being sold in competition with respondent.

PAR. 14. In or about the month of July, 1919, because of the scarcity and increased cost of cream of tartar, respondent determined to change Dr. Price's Cream Baking Powder, which had been well-known for 60 years as a cream of tartar baking powder, to a phosphate powder, and to conserve the available supply of cream of tartar for its other brands. Cream of tartar had increased in price until at that time it cost more than five times as much as phosphate.

PAR. 15. Respondent put this new phosphate powder on the market at 25 cents per can of 12 ounces, under the long-established and well-known Dr. Price label, and so announced in a circular letter to the grocery trade, stating that the new goods should have a very large sale. Respondent estimated that it would have to sell three and one-half times as many pounds of the phosphate powder at the above-mentioned price in order to make the same profit which it had previously made on the cream of tartar powder at 60 cents a pound.

PAR. 16. In a "News Item for Trade Papers" respondent asserted that in view of the high cost and scarcity of cream of tartar, the growing demand for a pure baking powder at a lower price, and recent scientific developments in phosphate which permitted the manufacture of a pure high-grade phosphate baking powder containing no deleterious or objectionable substances at a

very much lower price, it had decided to change its well-known Dr. Price brand from a cream of tartar powder to a straight phosphate baking powder to be sold at approximately one-half its former price after November 1, 1919.

PAR. 17. After some alterations in its Chicago factory, respondent began the manufacture of said phosphate powder, about September 15, 1919, and put the same on the market about the middle of November, 1919, in the States of Illinois, Wisconsin, Missouri, and part of Kansas. The label on the new goods was the same as had been previously used on the cream of tartar powder, except that a small circular "World's Fair Award" sticker was omitted from the front panel and a clause headed "A Pure Phosphate Powder" was printed in red diagonally across the back panel, giving the new ingredients, "Bi-Carbonate of Soda, Phosphate, Cornstarch." There was retained on this label the declaration in heavy black type, more conspicuous than the red overprint, that the powder contained "Pure Grape Cream of Tartar, Tartaric Acid." The first lot of these so-called "overprint" labels (Exhibit 30)¹ was made by printing the "phosphate clause" on the old Dr. Price labels still in stock, but early in August, 1919, respondent placed an order for the printing of 1,600,000 of the old form cream of tartar labels on the back of which it ordered that this "phosphate clause" should be added. Altogether some 6,000,000 of this variety of labels were used in the States named above in which the new product was first offered for sale to the wholesale trade.

PAR. 18. On August 9, 1919, respondent had ordered from its printer 18,000,000 of the labels which it intended to use as the regular or permanent label for this new phosphate baking powder. These labels were to be delivered not later than October 15, 1919. Later the printer informed respondent that it would take 16 weeks, due to conditions in the printing and paper industries, to print these new labels.

PAR. 19. All of the distinctive features of the old cream of tartar labels were retained on these new labels, including the name "Dr. Price's," which had been advertised for many years as denoting exclusively a cream of tartar powder and not a phosphate powder, made from burned bones treated with oil of vitriol, etc., as aforesaid. Quotation marks were placed around the word "Cream," registered as a trade-mark by respondent, and the design of a cornucopia containing clusters of grapes was modified by changing the grapes to flowers, but retaining the general contour. At the bottom of the front panel the legend "Perfectly Pure" was replaced by the words "A Pure, Phosphate Powder" in the same

¹ Not printed.

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size of type, "Standard for 60 Years" became "Makers for 60 Years," and various other minor changes were made.

PAR. 20. These new permanent labels (of which Commission's Exhibit 31¹ is a sample) were so like the labels previously used by respondent on the cream of tartar powder (of which Commission's Exhibit 1¹ is a sample), in arrangement of lettering and design, in coloration and general appearance, as to cause the one to be mistaken for the other and to confuse and mislead purchasers familiar with the former product as to the character of the contents of the new cans. In its efforts to avoid, as far as possible, any striking modification of the general appearance of the containers, respondent caused the bottoms of the new cans to be forced up to make allowance for the smaller bulk of the phosphate goods. Respondent's president regarded any change in the general appearance or coloration of the label as inadvisable.

PAR. 21. On October 4, 1919, and before any goods had been put out under the new label, the Illinois food authorities questioned the use by respondent of the so-called "overprint" label on the phosphate powder, but, after conferences, the use of this label was permitted in that State, with the understanding that it should be discontinued as soon as new labels could be obtained. Respondent sent blue prints of the new labels to the food authorities of Illinois and ordered the printing suspended until their objections could be straightened out. On November 3, 1919, respondent finally directed the printer to proceed with printing the new labels, and deliveries thereof were begun on or about December 12, 1919, at which time the "overprint" label was discontinued, and all shipments of goods were thereafter made under this label throughout the 22 Middle Western States in which "Dr. Price's Baking Powder" had been sold. In January, 1920, the Illinois food officials ruled that the "new" label was illegal, but respondent secured a temporary injunction in the district court at Chicago which prevented further action by the said food authorities.

PAR. 22. Proceedings were instituted or objections raised to the use of the "overprint" label or "new" label, or both, on the new phosphate powder in the following States: Arkansas, Montana, Wyoming, Colorado, Minnesota, South Dakota, Kansas, Idaho, Louisiana, Texas, and Tennessee. In Arkansas, Montana, and South Dakota, where respondent secured injunctions against the local food authorities in the Federal courts, these courts in every case decided that the so-called "new" labels constituted misbranding under the

¹ Not printed.

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various States' statutes, and the ruling of the district judge in the Arkansas case was affirmed by the Circuit Court of Appeals for the Eighth Circuit. In many of the other States mentioned respondent has enjoined the State officials from interfering with its sales under the "new" label, or the officials have voluntarily withheld prosecutions pending decision of the question by the courts. Respondent was also cited by the Federal food authorities for the purpose of inquiring into the legality, first, of the "overprint" label and subsequently of the "new" label. An informal conference or hearing was held in Washington on December 9, 1919, before the Assistant Chief of the Bureau of Chemistry of the United States Department of Agriculture. As a result the order of the assistant chief directing withdrawal of the label was countermanded on respondent's agreeing to discontinue shipment of any further cans bearing the "overprint" label after December 12, 1919. The United States Department of Agriculture never passed upon the legality of the new label; because that question, as well as the question of the propriety of respondent's advertising, was then the subject of an investigation by this Commission.

PAR. 23. The new phosphate powder was introduced first in the States of Illinois, Wisconsin, Missouri, and a portion of Kansas in November, 1919, and at the same time respondent began an advertising campaign in newspapers, trade journals, and on billboards, window posters, card displays, motion-picture films, etc. In all of these advertisements the fact that the new powder was to be offered to the public at about one-half of the former price was given emphasis. In some instances the advertisements failed to make any mention whatever of the change from cream of tartar to phosphate as the acid ingredient. In other instances a reference was made in the body of the advertisement to the use of "new methods of production with pure phosphate." No mention of phosphate appeared in the headings of any of the advertisements prior to the beginning of this proceeding (February 4, 1920), except that three of the advertisements, known as "Series D," bore the caption "The 'Cream' of Phosphate Baking Powders." These were published in the Chicago papers in January, 1920. These advertisements were not published outside of Chicago until March, 1920, and were followed by "Series F and G," in which the mention of phosphate was again relegated to the body of the advertisements. A few advertisements in trade papers and small dailies and weeklies stating that phosphate was used instead of cream of tartar were published in March, 1920.

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PAR. 24. The following are examples of respondent's advertisements of the new powder which contained no mention of phosphate:

"Low cost Shakes Hands with
High Quality in
DR. PRICE'S
Baking Powder

Now reduced to about one-half of
the former cost.

Here are the new Prices:

25¢ for 12 oz.

15¢ for 6 oz.

10¢ for 4 oz.

Full weight Cans.

The price is Right

Does not Contain Alum—Leaves No
Bitter Taste—

Always Wholesome

A name famous for 60 years is your Guarantee."

"What One Neighbor
Told Another

'Have you heard the good news?

The price of Dr. Price's Baking Powder
has been reduced nearly one-half. When
the grocer told me, I just threw away
that alum mixture I have been using, and
ordered a can of

DR. PRICE'S
Baking Powder

A name famous for 60 years is a guarantee of
quality," etc.

"Don't Increase

The High Cost of Living

By spending your shrunken dollar and risking
your health, for doubtful baking powder when
you can now get

DR. PRICE'S
Baking Powder

At about one-half the former cost

A name famous for 60 years assures quality
and dependability."

"Putting More In The
Market Basket

The greatly reduced price of Dr. Price's Baking Powder
enables you to put more good things in your market basket.
The saving will help pay for the flour and other things you
put in your cakes, and besides, you are assured of the whole-
someness of

DR. PRICE'S
Baking Powder

A name famous for quality for 60 years."

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The following are some examples of advertisements which made mention of "new methods of production with pure phosphate," prior to the commencement of this proceeding:

"Save Nearly one-half
Means More Today Than Ever

When the usual rule is higher and higher prices, it means a lot to hear of a price change that helps to reduce the high cost of living.

No more timely or welcome announcement could be made than that new methods of production with pure phosphate make it possible to reduce by nearly one-half the price of

DR. PRICE'S
Baking Powder
NOW—25¢ for 12 oz.,” etc.

“PRICE

The Price of Dr. Price's Baking Powder has been cut Nearly in Half.

Do you realize what such a message means?

Ask your grocer. He will tell you that it ends the folly of using baking powder cheapened with alum.

Ask the Doctor. He will tell you that it is a good reason for more home baking—the best food for you and yours.

New Methods of production with pure phosphate give you the advantage of the great reduction in the price of

DR. PRICE'S
Baking Powder

A name famous for quality for 60 years.”

Several advertisements in trade publications of the retail grocery trade contained no mention of the substitution of phosphate for cream of tartar. Other trade paper advertisements contained a reference to phosphate, usually in the last paragraph. The newspaper and trade journal advertising ultimately covered the entire Price territory—22 States.

PAR. 25. Billboard posters were erected in the 22 States in which "Dr. Price's Cream Baking Powder," a cream of tartar baking powder, had previously been sold. These posters when first put out in Illinois, Wisconsin, and Missouri, read as follows:

Reduced in Price Nearly One-Half (Reproduction
DR. PRICE'S of Can)
Baking Powder
No alum—No Bitter Taste. NOW 25¢

The only mention of the new ingredient, phosphate, was that contained on the label of the reproduction of the can, which contained the words "A Pure Phosphate Powder" in letters much smaller than those in which the reduction in price was announced. At first a

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bunch of grapes showed on this label, and in this form the poster was exhibited in the three States mentioned, but afterwards the poster was corrected by means of a sticker showing flowers, and thereafter the posters were used in the balance of the territory. In all, several thousand of these billboard posters were used. On December 18, 1919, some two weeks after the sending out of the posters, and after action had been taken by the food authorities of Illinois and by the Federal Bureau of Chemistry, instructions were given to the concern having this advertising in charge to have a paper strip bearing the words "A Pure Phosphate Powder" pasted on those posters already erected and on all others subsequently posted.

PAR. 26. A large window poster or streamer was also sent out about the same time to retail grocers throughout the Dr. Price territory to be displayed in their store windows. These streamers were similar to the billboard posters and gave prominence to the fact that Dr. Price's Baking Powder had been reduced in price nearly one-half, but were entirely silent as to the change in ingredient. There was no reproduction of the new label on these streamers. Later, as in the case of the billboard posters, after the Illinois food officials had questioned the propriety of this method of advertising, a new streamer was prepared and sent out bearing the added words "Now Made with Pure Phosphate." A reproduction of the original uncorrected poster was, however, published in a number of trade papers throughout the entire Dr. Price territory during the month of December, 1919. Display cards for use in street railway cars were also prepared and sent out by respondent in Illinois, Wisconsin, and Missouri, and later in some of the other States in the Dr. Price territory. These cards showed a reproduction of a can bearing the new label with grapes in the central vignette, and, as in the case of the billboard posters, a sticker containing flowers was added to such of the cards as had been already sent out. There was no mention in the body of these street railway cards, as originally prepared and sent out to a number of States, of the fact that phosphate had been substituted for cream of tartar as the acid ingredient. The uncorrected and unrevised cards were displayed in the following, among other, large cities: Chicago, St. Louis, Milwaukee, Kansas City, Dallas, and Vancouver. Later these street railway cards were changed by substituting new ones bearing the additional legend printed near the bottom of the cards in letters considerably smaller than those announcing the reduction in price, "Now Made with Phosphate."

PAR. 27. Motion-picture slides similar in wording to the billboard posters, window streamers, and street-car advertisements were fur-

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nished to and exhibited in a total of 433 moving-picture houses or theaters in the States of Illinois, Wisconsin, and Missouri. These bore in large letters the usual announcement "Reduced in Price Nearly One-Half. Now 25¢." They also contained a comparatively small reproduction of the new label, but no other allusion to the fact that the new powder was a phosphate baking powder. After February 15, 1920, and subsequent to the beginning of this proceeding, a new slide was prepared and used in other States to which was added a line reading "Now Made with Phosphate." This revised slide was not substituted for the old in the States in which the latter was exhibited. Another form of advertising used by respondent for this new phosphate powder was what is known as "can inserts" which were inclosed inside of the packages of the new powder and contained no reference to the change of ingredient except the vague statement: "This reduction in price is made possible by changes in method and formula and is in line with the popular effort to reduce the high cost of living, which will be appreciated by all consumers." It was also stated that the new powder "contains no alum or other objectionable ingredients."

PAR. 28. Respondent's methods of advertising, as aforesaid, tended to create the belief on the part of the public that the new product was in fact the Dr. Price's Baking Powder which had been well known for 60 years as a cream of tartar powder, and to conceal or obscure the fact that it was a radically different powder.

PAR. 29. Retailers in the Dr. Price territory advertised and offered for sale this phosphate powder as "Dr. Price's Baking Powder," showing the price reduced about one-half without disclosing the reason for the lower prices, viz, the change in ingredient.

PAR. 30. In spite of the interference of food officials, State and National, and the fact that there were competing brands of phosphate baking powders selling at lower prices, respondent sold more than twice as much of its new phosphate powder in the first nine months after it had been put out as it had ever sold of the cream of tartar baking powder in any corresponding period. This increase of 100 per cent in respondent's sales, there being no claim or showing that the total consumption of baking powders in the Price territory had increased to a corresponding extent, was effected, in part, by the attraction of the users of competing brands by means of said misleading labels and advertising as aforesaid.

PAR. 31. Respondent's said advertising was false and misleading in representing to the public that the price of said new phosphate baking powder had been reduced to about one-half its former cost, when in fact the price of said powder had been at all times the same;

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and respondent's use on a phosphate baking powder of a brand which had by its own efforts become identified exclusively with a cream of tartar powder as opposed to a phosphate power, which latter type of powders respondent had for many years denounced as undesirable and unhealthful, was calculated and designed to deceive and did deceive the public, and especially such part of the public as was accustomed to obtain a pure cream of tartar baking powder under the well-known brand, "Dr. Price's Baking Powder."

PAR. 32. Respondent's said advertising and its said conduct in using said well-recognized brand or name upon a phosphate baking powder tended, under the circumstances hereinbefore set forth, unfairly to hinder and obstruct the business of competitors engaged in manufacturing and selling cream of tartar baking powders, at their normal prices, which were approximately double the prices asked by respondent for said phosphate powder. Said method of advertising and branding also tended unfairly to hinder and obstruct the business of respondent's competitors engaged in the manufacture and sale of phosphate baking powders in competition with said phosphate baking powder of respondent selling at an alleged reduced price under a name used for 60 years on an exclusively cream of tartar powder.

CONCLUSIONS.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondent, Royal Baking Powder Co., its officers, directors, agents, servants, and employees, cease and desist from:

1. Using on the new phosphate baking powder manufactured by it the so-called "overprint label" or the so-called "new label" (Ex-

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hibit 31), heretofore used by it, or any label simulating or resembling in coloration, design, or general appearance the labels formerly used by respondent on its "Dr. Price's" brand of cream of tartar baking powder;

2. Selling, or advertising for sale, said phosphate baking powder under the name "Dr. Price's" or "Price's" unless the word "cream" is omitted, and the word "phosphate" is incorporated, as part of the name of said baking powder, on the labels thereof and in the advertisements relating thereto;

3. Advertising or representing, in connection with the sale of said phosphate baking powder, that respondent's "Dr. Price's" cream of tartar brand of baking powder has been reduced in price;

4. Representing, by advertising or otherwise, that said phosphate baking powder is the baking powder sold by respondent for many years under its "Dr. Price's" brand.

And it is further ordered, That the respondent, Royal Baking Powder Co., file a report in writing with the Commission 90 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

Complaint.

FEDERAL TRADE COMMISSION

v.

PAUL FORBRIGER AND AUGUST BENTKAMP, PARTNERS,
STYLING THEMSELVES PAUL FORBRIGER & COM-
PANY.

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

Docket 692—July 9, 1921.

SYLLABUS.

Where a corporation engaged in the importation and sale, chiefly to wholesalers, of a certain brand of Swiss watch, to the importation of which it had the exclusive right,

- (a) Fixed prices below which said watches should not be resold, and enforced maintenance thereof by verbal agreements and assurances procured from the majority of its customers, usually as a condition precedent to acceptance of an order;
- (b) Endeavored to ascertain and to cut off from certain customers, who had secured independently a supply of said watches and were advertising and selling the same at prices below those fixed by it, their source of supply;
- (c) By threats of damage and infringement suits and by intimidation induced such customers to sell to it the larger part of their said watches, thereby taking them off the market;
- (d) By further threats and intimidation attempted to prevent such customers from advertising such watches for sale in trade journals at said lower prices; and
- (e) Attempted to and did induce publishers of certain trade periodicals to refuse the advertisements of such customers listing said watches at such lower prices:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from the preliminary investigation made by it, that Paul Forbriger and August Bentkamp, partners, styling themselves Paul Forbriger & 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 of Paul Forbriger & Co., and are engaged in the business of selling watches at

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wholesale, causing watches sold by them to be transported to the purchasers thereof, from the State of New York, through and into various 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, purchase from a manufacturer in Switzerland, watches known as the "Inventic," under an agreement with such manufacturer that respondents would have the exclusive right to sell such watches to the jobbing trade in America; which watches they resell to jobbers at prices of about \$1.35 and \$1.40 each, and require jobbers to whom they sell such watches to maintain the prices of about \$1.65 and \$2.00 in reselling same to retail dealers, and undertake to maintain and enforce such retail prices by refusing to sell additional watches to jobbers who fail or refuse to resell such watches to retail dealers at the prices fixed by respondents.

PAR. 3. That certain jobbers to whom respondents had sold "Inventic" watches were able to secure from a dealer in London, England, a quantity of the "Inventic" watches, and proceeded to resell same at prices below those sought to be maintained by respondents as aforesaid, whereupon respondents attempted to cut off from such jobbers their foreign source of supply by intimidation and threats of suits for damages, and have prevented such jobbers from advertising the sale of such watches at the lower prices in certain trade journals, by inducing the publishers of such journals to refuse the advertisements of such jobbers.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Paul Forbriger and August Bentkamp, partners, styling themselves Paul Forbriger & 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 appearances by their attorney, a hearing was had, and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondents before an examiner of the Federal Trade Commission duly appointed.

And thereupon this proceeding comes on for final hearing, the Commission and respondents having, through their respective attorneys, waived the filing of briefs as to the law and the facts in such proceeding, and also waived oral argument before the Commission on the law and the facts, and respondent Paul Forbriger having personally stipulated of record that the Commission might forthwith proceed to make its findings and order, and the Commission, having carefully considered the record and being fully advised in the premises, now makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondents, Paul Forbriger and August Bentkamp, were, for a period of more than two years prior to August, 1920, partners, carrying on business in the city of New York, N. Y., under the firm name and style of Paul Forbriger & Company, and were engaged in the importation and sale of watches, shipping such articles in commerce, in and among the several States of the United States, in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That respondents, in the course of their business, during the period above indicated in paragraph 1, purchased from one Ed. Kummer, Ltd., of Bettlach, Switzerland, a manufacturer, watches known as the "Inventic," under an agreement with such manufacturer that respondents should have the exclusive right to sell such watches to the jobbing trade in America. That respondents' marketing policy was to distribute the watches so procured and imported from Switzerland through wholesalers or jobbers and not through retailers, and that during the said period substantially all such articles were sold by them directly to jobbers and wholesalers throughout the United States, some of whom were themselves engaged in interstate commerce.

PAR. 3. That during a period of more than two years prior to August, 1920, respondents pursued a practice of establishing minimum resale prices, hereinafter called simply resale prices, below which wholesale customers were required not to sell the watches procured from respondents; that a schedule or list of said resale prices was issued annually or more frequently and furnished by respondents to its wholesale customers, and that said customers had notice from respondents and generally understood that respondents' practice was to sell only to those wholesalers maintaining the resale prices.

PAR. 4. That for the purpose of enforcing the maintenance of such resale prices by their wholesale customers, during the period aforesaid, respondents procured from a majority of their customers verbal

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agreements and assurances in connection with orders submitted to respondents for goods, whereby said customers expressly promised not to resell respondents' watches, either directly or indirectly, at lower prices than the resale prices indicated by respondents; that the effecting of such an understanding or agreement was in many instances a condition precedent to respondents' acceptance of an order for goods; and that respondents' said policy of price maintenance was generally acquiesced in by their customers and such resale prices were generally maintained.

PAR. 5. That during the times hereinbefore mentioned, to wit, in the latter part of 1919, certain jobbers and wholesalers—among whom were Singer Bros., New York City; N. Shure Co., Chicago; and Samuel Weinhaus, Pittsburgh, Pa.—all customers to whom respondents had sold Inventic watches, secured from a dealer in London, England, a quantity of the Inventic watches and proceeded to advertise and sell same at prices below those established by respondents as aforesaid; that thereupon respondents attempted to ascertain and to cut off from such jobbers their foreign source of supply, and by intimidation and threats of suits for damages and infringement of alleged patents induced such jobbers to sell the bulk of such watches to respondents, thereby taking them off the market. That during the same period respondents attempted by further threats and intimidations to prevent such jobbers from advertising such watches for sale in trade journals at the lower prices, and attempted to and did induce publishers of certain trade periodicals—notably, The Novelty News and The Jewelers Circular—to refuse the advertising of such jobbers listing Inventic watches at prices lower than those established by respondents.

PAR. 6. That in August, 1920, respondent August Bentkamp retired from the firm of Paul Forbriger & Co., selling his interest therein to respondent Paul Forbriger; that respondent Paul Forbriger thereupon continued said business in New York City, N. Y., under the former firm name, and has since August, 1920, imported and sold Inventic watches in the United States, in the same manner and upon the same terms and conditions as heretofore, and has continued to require jobbers and wholesalers to whom such watches are sold, to maintain the resale prices set by respondent, in selling same to retail dealers.

PAR. 7. That respondent Paul Forbriger, through his attorney, voluntarily made the following stipulation of record:

“That respondent personally consents that an order may be made in this proceeding to the following extent:

“1. In the nature of a finding that there has been attempted interference with trade advertising on the part of competitors.

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"2. And a finding to the effect that there was an attempt to establish resale prices of watches referred to in this proceeding."

CONCLUSION.

That the methods of competition set forth and described in the foregoing findings of fact in paragraphs 3, 4, 5, and 6 constitute, under the circumstances set forth therein, unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

It is ordered, That the respondents, Paul Forbriger and August Bentkamp, their agents, representatives, servants, and employees, cease and desist, directly or indirectly:

(1) From indicating to wholesalers or jobbers the prices at which "Inventic" watches shall be re-sold;

(2) From entering into or requiring purchasers to enter into any agreement or understanding whatever to the effect that in reselling such watches the purchaser shall adhere to, obey, or observe prices fixed or established by respondents;

(3) From interfering or attempting to interfere with the advertising and sale of such watches by others lawfully acquiring same, at prices lower than those established by respondents;

(4) From carrying out a resale price maintenance policy by any other means.

It is further ordered, That the respondents, Paul Forbriger and August Bentkamp, shall within 60 days from the date of service of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint.

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FEDERAL TRADE COMMISSION

v.

MORGAN RAZOR WORKS.

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

Docket 703—July 12, 1921.

SYLLABUS.

Where an individual engaged in the manufacture and sale of razor strops under the brands "WILDBERD," "IMPORTED NIZHENINOVGOROD POODS," and "NORTHERN LIGHT," which brands as trade names for such products were first adopted and applied by him and which had come, through his advertising and the efforts of his salesmen, to be well and favorably known to the trade generally, and to individual users, so that a demand was created therefor, and he acquired the exclusive right to the use of said names west of the Rocky Mountains, and thereafter a competitor wrongfully appropriated and applied said trade names to its own products;

With the effect of enabling it to obtain the benefit of said individual's reputation and advertising and to forestall the extension of his trade in such brands:

Held, That such wrongful appropriation and use of brands or trade names, 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 Morgan Razor Works, 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 as follows:

PARAGRAPH 1. That the respondent, the Morgan Razor Works, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, having its principal office and place of business in the city of Portland, State of Oregon, and is now and since the latter part of 1917 has been engaged in selling razors and razor strops and in the shipment thereof from its place of business in Portland to purchasers in other States of the United States, and in foreign countries, in competition with other persons, firms, copartnerships, and corporations similarly engaged, and particularly in competition with the J. S. Torrence Sales Co.

Findings.

PAR. 2. That the J. S. Torrence Sales Co., an unincorporated company having its principal office and place of business in the city of San Francisco, State of California, is now and since the summer of 1914, has been engaged in selling razors and razor strops and in the shipment thereof from the State of California to purchasers in other States of the United States; that during the years 1914, 1915, and 1916, the J. S. Torrence Sales Co. adopted and commenced to market razor strops under the unregistered trade names of "WILDBIRD," "IMPORTED NIZHNI-NOVGOROD POODS," and "NORTHERN LIGHT," and since that time has built up and established under those names a valuable good will and business in such products.

PAR. 3. That the respondent, the Morgan Razor Works, in the course of its business as aforesaid, with full knowledge of the existence of the J. S. Torrence Sales Co., and well knowing that this company had established and built up a valuable good will and business in razor strops under the aforesaid names, shortly after beginning business in 1917 adopted said names for its products, and has ever since continued to use, brand and sell razor strops under those names; that the use of said names by the respondent is calculated and designed to and does deceive the trade and general public and customers and prospective customers and mislead them into the belief that the razor strops sold by the respondent are the products of the said J. S. Torrence Sales Co. and to hinder and embarrass the said J. S. Torrence Sales Co. in the conduct of its business in interstate commerce.

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, Morgan Razor Works, 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 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, Morgan Razor Works, 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 J. S. Torrence Sales Co. is an unincorporated company having its principal office and place of business in San

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Francisco, Calif., and J. S. Torrence, the proprietor, conducts his business as an individual, under the designation above. He also does business under the name of Manganese Fiber Razor Strop Co., which is also unincorporated, and under these names Torrence is engaged in the business of manufacturing and selling razor strops and in shipping same from San Francisco, Calif., to purchasers in the states of Oregon, Washington, Idaho, Utah, and Nevada.

PAR. 2. The Morgan Razor Works is a corporation organized under the laws of the State of Oregon, with its principal office and place of business in the city of Portland, Oreg. J. Canby Morgan is the president, its business being the manufacture of razors and razor strops and the selling and shipping same in interstate and foreign commerce to the Orient, to Canada, and to various States of the United States west of the Rocky Mountains. The company was organized in the year 1917.

PAR. 3. In the year 1914, J. S. Torrence Sales Co. adopted and commenced to market razor strops under the unregistered trade names of "WILDHERD," "IMPORTED NIZHNI-NOVGOROD POODS," and "NORTHERN LIGHT," and advertised these names in magazines and by printed circulars and by letters to individual customers and prospective customers, and circulated the same by means of the United States mail among the various States of the United States west of the Rocky Mountains.

PAR. 4. On or about September 9, 1915, the J. S. Torrence Sales Co. employed as the superintendent or foreman of its manufacturing plant, one Charles P. Wagner, the said Wagner being an expert razor-strop manufacturer, and the said Wagner remained in the employ of the Torrence Sales Co. until about June, 1917, when the said Wagner resigned and severed his connection with the Torrence Sales Co., and entered the employ of the Morgan Razor Works, where he remained in the capacity of superintendent until about March, 1919, and on or about that time he severed his connection with the Morgan Razor Works and commenced the manufacture of razor strops for himself under the name of Wagner Razor Strop Co.

PAR. 5. Shortly after Wagner entered the employ of the Morgan Razor Works, the latter company commenced to manufacture razor strops bearing the names "WILDHERD," "NORTHERN LIGHT," and "NIZHNI-NOVGOROD POODS," and sold and transported the same between and among the various States of the United States west of the Rocky Mountains.

PAR. 6. The J. S. Torrence Sales Co. through its advertising and the efforts of its salesmen, during the years 1915 and 1916, had caused its brands "WILDHERD," "NORTHERN LIGHT," and "IMPORTED

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NIZHNI-NOVGOROD POODS" to be well and favorably known to the trade generally, to its customers and prospective customers, and to individual users in the various States of the United States, west of the Rocky Mountains, and had created a demand for its goods under these three brands.

PAR. 7. In September, 1917, having learned that the respondent was using the three brands, the J. S. Torrence Sales Co. wrote the Morgan Razor Works, asserted a prior right on behalf of the J. S. Torrence Sales Co. to the use of the three names in question, and requested the respondent to desist from using said three brands. The Morgan Razor Works, however, continued to use the said three brands until some time in the year 1920, when after an investigation commenced by the Federal Trade Commission, the respondent ceased to use the said three brands.

PAR. 8. The J. S. Torrence Sales Co. and the Morgan Razor Works are engaged in active competition in interstate commerce with each other and with other persons, firms, copartnerships, and corporations engaged in the manufacture and sale of razor strops.

PAR. 9. That the J. S. Torrence Sales Co. first adopted and used the brands "WILDBERD," "NORTHERN LIGHT," and "IMPORTED NIZHNI-NOVGOROD POODS" as distinctive trade names for its products, namely, razor strops, and that through its advertisements, the efforts of its salesmen, and the quality of its goods, put out under such brands, the J. S. Torrence Sales Co. acquired a right to the exclusive use of said brands or trade names in the various States of the United States west of the Rocky Mountains.

PAR. 10. That the appropriation and use of said brands or trade names by the respondent was wrongful, and enabled the respondent to obtain the benefit of the reputation and advertisement and to forestall the extension of the trade in such brands acquired by the J. S. Torrence Sales Co.

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

ORDER TO CEASE AND DESIST.

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

Memorandum.

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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, Morgan Razor Works, and its agents, servants, and employees and each and every one of them do *cease and desist* from directly or indirectly labeling, marking, or branding razor strops manufactured by it with the names, "WILD-HERD," "NIZHNI-NOVGOROD POODS," and "NORTHERN LIGHT," or any or either of such names, and sold between and among the various States of the United States west of the Rocky Mountains.

It is further ordered, That the respondent, Morgan Razor Works, shall, within 30 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.

The Commission has also issued a similar order in the case of Wagner Razor Strop Co. (of San Francisco, Calif., Docket 704), decided July 12, 1921, involving the same wrongful appropriation and use of the same brands or trade names as in the preceding case.

Complaint.

FEDERAL TRADE COMMISSION

v.

CONSOLIDATED OIL COMPANY.

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

Docket 706—July 12, 1921.

SYLLABUS.

Where a corporation dealing in paints, oils, turpentine, and adulterated linseed oil and turpentine, designated a product which it manufactured and sold and which contained no graphite or free carbon, but was composed chiefly of coal tar with a small amount of deoderants, as "Graphite Carbon Roof Paint" and later "Carbon Roof Paint," with the effect of misleading and deceiving the public:

Held, That such false and misleading designation of product, 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 Consolidated Oil Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

PAR. 2. That respondent is engaged in the business of dealing in paints, oils, turpentine, adulterated linseed oil and turpentine, or substitutes for pure linseed oil and turpentine, and causes said commodities to be transported to the purchasers thereof from the State of Ohio through and into other States of the United States, and carries on portions of its business under the trade names of Manchurian Linseed Oil Co., Standard Linseed Co., Southern States Turpentine Co., and Standard Paint & Lead Co., 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, sells a product which it designated as "Glidden Core Oil"; that the Glidden Co. is a well-known paint manufacturer

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at Cleveland, Ohio, of high repute, and manufactured and sold a core oil which was well and favorably known to the trade and purchasing public, but said Glidden Co. discontinued the manufacture and sale of said core oil on or about January 1, 1920; that the product sold by respondent since January, 1920, as "Glidden Core Oil" was not the product of the Glidden Co., but was inferior to the core oil formerly manufactured by the Glidden Co. and was designated by respondent as "Glidden Core Oil" in order that it might sell same to the trade and purchasing public as and for the product of the said Glidden Co.

PAR. 4. That respondent further, in the course of its business as described in paragraph 2 hereof, sells a product which it originally designated as "Graphite Carbon Roof Paint," and later designated it as "Carbon Roof Paint," which paint is composed of 98 per cent coal tar and 2 per cent deodorants to disguise or conceal the coal tar as its principal constituent material, and which paint contains no graphite or free carbon; that roof paint, the chief constituent material of which is graphite or free carbon, is more expensive and of better quality than paint the chief constituent material of which is coal tar, and is preferred by the purchasing public over a paint made of coal tar; that the use of the words "graphite" or "carbon" in the name applied to said roof paint by respondent, as aforesaid, was calculated to and did mislead and deceive the purchasing public.

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, Consolidated Oil Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, and appearing by J. J. McCormick, Esq., its attorney, witnesses were examined and evidence received in support of the allegations of the complaint, before the Honorable Huston Thompson, the Federal Trade Commissioner theretofore duly appointed.

And at the conclusion of the said examination of witnesses and at the close of the evidence respondent, by its attorney, in a stipulation made a part of the record, admitted all of the facts alleged in the

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complaint subject to certain exceptions, and consented that the Commission should forthwith, upon said admissions and the evidence adduced, make its report, stating its findings as to the facts, and enter its order disposing of this said cause without further production of evidence or oral argument before the Commission or the filing of written briefs.

And thereupon this proceeding came on for final action by said Commission, and it having considered the complaint, the answer thereto, the evidence adduced, and the said stipulation, 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 is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the city of Cleveland, in the said State.

PAR. 2. That respondent is engaged in the business of dealing in paints, oils, turpentine, adulterated linseed oil and turpentine, or substitutes for pure linseed oil and turpentine, and causes said commodities to be transported to the purchasers thereof from the State of Ohio through and into other States of the United States and carries on portions of its business under the trade names of Manchurian Linseed Oil Co., Standard Linseed Co., Southern States Turpentine Co., and Standard Paint & Lead Co., and in the conduct of such business is in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondent, in the course of its business as described in paragraph 2 hereof, manufactured a certain product which it sold in commerce and which it originally designated as "Graphite Carbon Roof Paint" and later designated it as "Carbon Roof Paint," which product so manufactured and sold by the respondent is composed of 98 per cent coal tar and 2 per cent deodorants to disguise or conceal the coal tar as its principal constituent material, and which product, so manufactured and sold, contains no graphite or free carbon; that roof paint, the chief constituent material of which is graphite or free carbon, is more expensive and of better quality than the so-called "Graphite Carbon Roof Paint" or "Carbon Roof Paint" so manufactured and sold by respondent, the chief constituent material of which is coal tar, and is preferred by the purchasing public over a paint product made from coal tar; that the use of the words "graphite carbon" or the word "carbon" in the name applied to said product, manufactured and sold by the respondent as aforesaid, was calculated to and did mislead and deceive the purchasing public.

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PAR. 4. That the charges of unfair methods of competition in interstate commerce, as alleged in paragraph 3 of the complaint, are not sustained by the evidence.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in paragraph 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 the testimony and evidence, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Consolidated Oil Co., its officers, representatives, agents and servants, do cease and desist:

1. From selling, offering for sale, or advertising the sale of any product, in interstate commerce, as "Graphite Carbon Roof Paint," unless the chief constituent material of such product be graphite and free carbon;

2. From selling, offering for sale, or advertising the sale of any product, in interstate commerce, as "Carbon Roof Paint," unless the chief constituent material of such product be free carbon;

It is further ordered, That the charges of unfair competition in interstate commerce, as alleged in paragraph 3 of the complaint herein, be and the same hereby are dismissed.

It is further ordered, That the respondent shall file with the Commission, within 60 days from the date of service upon it of this order, its report in writing, stating in detail the manner and form in which it has complied with the terms of this order.

Syllabus.

FEDERAL TRADE COMMISSION

v.

LOUIS WOLPER, JACOB WOLPER, AND ALBERT WOLPER,
PARTNERS, STYLING THEMSELVES ALBEN-HARLEY.

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

Docket 523—July 14, 1921.

SYLLABUS.

Where a firm engaged in the sale of groceries, exclusively in combination orders so priced as greatly to exceed the sum of such prices as retailers would usually obtain for the different items composing the same, in advertising said orders

- (a) Listed certain staple products, such as sugar and flour, at less than cost, but other items in the assortment at figures sufficiently high to afford a satisfactory profit on the order as a whole, thereby deceiving customers as to prices of all;
- (b) Headed one of its advertisements with the words "SUGAR 3¢ a LB." and "ALL CHARGES PREPAID," and made therein such statements as "SUGAR 3¢ a lb.—say it over again * * * A FEW LEADERS IN OUR CATALOG, [Its "Introductory Bargain Book," "sent only to those who have manifested their interest by sending for a trial order"] SUGAR \$3.00 per 100 lbs. * * * FLOUR \$7.00 per barrel * * * OTHER CATALOG BARGAINS, Uneda Biscuits, per pkg., .02, Quaker Oats, per pkg., .06," prices less than cost, when in fact it sold none of said articles at any such prices, but only in combinations, as stated;
- (c) Featured in said advertisement its "INTRODUCTORY ORDER NO. 2 x 200," including therein "1 bargain catalog free," "1 can sardines in pure oil," "1 lb. baking powder (very best)," and other items, "Wholesale—our price, \$1.82," "Estimated value \$2.82, YOU SAVE APPROXIMATELY \$1.00," the facts being that said "pure oil" was peanut oil, not olive oil, that said "very best" baking powder was an alum and phosphate, not cream of tartar, powder, that other items were also misdescribed as to value or otherwise, and that all of the items in said "Introductory order" could be purchased from retail stores at from 85 cents to \$1.02;
- (d) Made the false statement in said advertisement that, "thousands have been satisfied," and also made therein such statements as, "READ EVERY WORD OF THIS! * * * We must please you or we do not want your money. The Golden Rule is sacred in our establishment. Our enormous business has been built upon it * * *";
- (e) Misrepresented also in catalogs and other advertisements the values, qualities, quantities and kinds of the various articles sold and offered for sale by it in combination with the staples above referred to, and made false and misleading statements regarding its business, and the benefits which would be derived from trading with it; and
- (f) During the period when sugar was difficult to obtain at retail stores, and it was unable to secure it, continuously advertised said staple as one of the articles it was selling, and filled orders so secured, except as to said staple, the estimated value of which as set forth in the particular advertisement it remitted to purchasers:

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Held, That such false and misleading advertising and such 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 Louis Wolper, Jacob Wolper, and Albert Wolper, partners, styling themselves Alben-Harley, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

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

PAR. 2. That said respondents, in the course of their said business, make use of catalogues and other advertising matter, which is given general circulation throughout the States and Territories of the United States and in the District of Columbia, which said catalogues and advertisements contain certain false and misleading statements concerning respondents' said business and alleged benefits which the public might derive from trading with respondents; that among such false and misleading statements are statements to the effect that thousands have been satisfied and more are taking advantage of the extraordinary offer of respondents to sell sugar at 3 cents per pound; that sugar is only one of many leaders in respondents' Introductory Bargain Book; that best flour is sold by respondents at \$7 per barrel; that the Uneda Biscuits are sold at 2 cents per package, and Quaker

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Oats at 6 cents per package; that in respondents' introductory order No. 2 x 200, the estimated value of the several items is \$2.82 and that the purchaser saved approximately \$1 by purchasing said order at \$1.82, the price named by respondents; whereas the prices obtained by respondents for the goods sold in combination lots or assortments as a whole are substantially the same or greater than the prices which retail grocers generally obtain for like assortments as a whole, and respondents do not possess any advantage in buying grocery products which enable them to sell such products at prices lower than those of other dealers.

PAR. 3. That in making up the several combination lots or assortments of grocery products which are advertised and sold by respondents, they list certain staple products at prices below the current wholesale prices for such products, as in the case of sugar, which is advertised by respondents at 3 cents per pound, whereas sugar is a staple on the market and price concessions for large-quantity purchases, or for any other reason, are unobtainable, and the wholesale price for same is approximately 10 cents per pound; and flour, another staple, is advertised by respondents at \$7 per barrel, whereas the wholesale price for same is approximately \$12.75 per barrel, but when these items are included in the combination lots offered by respondents, other items in said combinations are listed at prices greater than the current retail prices for same, as in the case of coffee, tea, spices, baking powder, canned sardines, etc., so that the sale of the combination or assortment as a whole yields to respondents a satisfactory profit without letting the customers know that sugar and flour were being sold on any other basis than that of the other commodities.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Louis Wolper, Jacob Wolper, and Albert Wolper, partners, styling themselves Alben-Harley, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances by their attorney, John F. Rosen, and filed their answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Mr. Walter B. Wooden, an examiner of the Federal Trade Commission theretofore duly appointed.

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And the respondents having waived the introduction of testimony in their behalf, this proceeding came on for final hearing and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents, Louis Wolper, Jacob Wolper, and Albert Wolper, as partners, from August 1, 1919, to June 20, 1920, operated a business in the city of Chicago, Ill., under the firm name and style Alben-Harley, which business consisted of the sale in commerce among the several States and Territories of the United States and the District of Columbia, of sugar, flour, cereals, canned goods, spices and other grocery products in combination lots or assortments at stated prices for the several items contained in each of the said assortments; but respondents refused to sell any of the single items in any of the said assortments, separately, at the prices quoted therefor, but in all cases customers were required to purchase all of the items in one of the several assortments. The respondents, during the period aforesaid, caused said grocery products to be transported, when sold, from their place of business in Chicago, State of Illinois, through and into various other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 2. Said respondents, in the course of their said business, made use of catalogues and other advertising matter, which were given general circulation throughout the States and Territories of the United States and in the District of Columbia, which said catalogues and advertisements contained certain false and misleading statements regarding respondents' said business and the alleged benefits which the public would derive from trading with respondents.

PAR. 3. That one of the said advertisements generally circulated as aforesaid was the following:

DON'T
send a
PENNY

SUGAR 3c a LB.

ALL
CHARGES
PREPAID

SUGAR 3c a LB.—Say it over again.

Sounds Impossible—but it costs only a 2c stamp to prove it. Thousands have been satisfied and more are taking advantage of this extraordinary offer every day.

Sugar is only ONE of the many leaders in our Introductory Bargain Book. By taking advantage of the Introductory trial order offered in this advertisement you become one of our regular customers.

The Object of this trial order is to prove to you that we actually sell High Grade Standard Merchandise at these prices. Even though you don't believe it possible, we ask you to let us prove that we speak the truth. With your order, we will send

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Free, our Introductory Bargain Book, which is sent only to those who have manifested their interest by sending for a trial order.

This bargain book is brimful of unusual Bargains in groceries, shoes, clothing, and other necessary articles.

A FEW LEADERS IN OUR CATALOG:

SUGAR \$3.00 per 100 Lbs

Best Granulated Sugar, per 100 lbs..... \$3.00

Best Granulated Sugar, per 10 lbs..... .30

FLOUR \$7.00 Per Barrel.

Our Best Flour, per bbl..... \$7.00

Our best Flour, per 24½ lbs..... .88

OTHER CATALOG BARGAINS:

Uneda Biscuits, per pkg..... .02

Quaker Oats, per pkg..... .06

REMEMBER:

Our Don't Send a Penny All Charges Prepaid offer is your protection. Just think, without any investment on your part, as soon as we receive the order coupon filled out, we will send you the Introductory Trial Order and our Bargain Book charges prepaid. We want you to become one of our regular customers, and know that after you receive your order you will be glad to be considered a regular customer of the House of Alben-Harley.

IMPORTANT: This trial order is only sold Complete as it stands—no items sold separately. However, you may order as many as 5 trial orders, which is the limit to one customer.

GUARANTEE: Every item you buy from us is guaranteed to be of the highest grade and to please you in every respect or you can return the goods and your money will be refunded at once.

READ EVERY WORD OF THIS!

If we don't satisfy a customer we don't satisfy ourselves. Your good will is worth more to us than your order. We must please you or we do not want your money. The Golden Rule is sacred in our establishment. Our enormous business has been built upon it. No business can succeed without it. We never neglect a customer. All orders shipped at once—no delays—no waiting—no disappointment and we insist that you return any part of the shipment at our expense if the goods do not more than delight you

INTRODUCTORY ORDER NO. 2x200.

	Estimated Value.	Whole—our sale price.
1 lb. Sugar (Pure Granulated).....	\$0.13	\$0.03
1 can Sardines in Pure Oil.....	.25	.19
1 Tube of Concentrated Vanilla Flavor.....	.45	.29
1 lb. Baking Powder (Very Best).....	.60	.39
1 pkg. Ecc-Kon-Omy (Used in place of eggs for cooking and baking. 1 pkg. equals 3 doz. fresh eggs).....	.25	.20
1 Large Box Face Powder (Extra Fine).....	.75	.49
1 Tube Dental Paste (Unexcelled).....	.39	.23
1 Bargain Catalog Free.....	
	<u>\$2.82</u>	<u>\$1.82</u>

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YOU SAVE APPROXIMATELY \$1.00.

ACT NOW. Cut the high cost of living from this minute on—fill out and mail this order today, and the goods and our Introductory Bargain Book will be sent to you by Parcel Post Prepaid.

REFERENCES: Our satisfied customers or any bank in Chicago.

ALBEN-HARLEY.

Dept. 2x200, Van Buren St. & Racine Ave., Chicago, Ill.
Order Coupon.

Alben-Harley, Dept. 2x200,

Van Buren St., & Racine Ave., Chicago, Ill.

Gentlemen: You may send me your Introductory Trial Order No. 2x200, by prepaid parcel post and include a FREE copy of your Introductory Bargain Book. When the order arrives I will pay my postman \$1.82. It is understood however that if after trying your goods I am not satisfied I can return the balance to you and you will refund my money.

Name.....
ADDRESS.....
CITY..... STATE.....

PAR. 4. The statement in the said advertisement that "thousands have been satisfied" was false, because at the time of the publication of the said advertisement respondents did not have as many as a thousand customers. The statement in said advertisement that "Sugar is only one of the many leaders in our Introductory Bargain Book" was misleading because, while the said advertisement had a tendency to create the impression that sugar might be purchased from respondents at 3 cents per pound, sugar was not sold by the respondents at 3 cents per pound, but in combination with other articles, the total price of which, charged by the respondents, was much greater than the price usually received by retailers for all of the items in the said combination. The statement in said advertisement that "best flour" is sold by respondents at \$7 per barrel was false, because flour was not sold by respondents at \$7 per barrel, but in combination with other articles at an aggregate to cost greater than that at which all of the articles could be purchased for from an ordinary retailer. The statements in the said advertisement that Uneda Biscuits are sold at 2 cents per package and Quaker Oats is sold at 6 cents per package were false, because Uneda Biscuits were not sold for 2 cents per package and Quaker Oats was not sold for 6 cents per package, but in combination with other articles, the total price of which, charged by the respondents, was much greater than the price usually received by retailers for all of the items in said combinations. The statements that the estimated value of the several items in respondents' introductory order No. 2x200 is \$2.82, and that the purchaser saved approximately \$1 by purchasing said order at \$1.82, the price named in said advertisement, were false and

misleading, because the real value of the aggregate of the said items ranged from 85 cents to \$1.02, and because all of the items in the said introductory order No. 2x200 could be purchased from retail stores at a price ranging from 85 cents to \$1.02.

PAR. 5. The sardines offered for sale and sold under the above mentioned advertisement, were canned in peanut oil, which is a cheaper oil than olive oil, generally used in canning sardines in oil. The baking powder offered for sale and sold under the above-mentioned advertisement was not of a quality generally termed as being of the "very best," and the price, 60 cents, in the said advertisement appearing under the words "Estimated value," had a tendency to lead and did lead purchasers and prospective purchasers to believe that such baking powder so offered for sale was a cream of tartar baking powder, whereas in truth and in fact, the baking powder sold by respondents was of a cheaper grade, the predominating ingredients being phosphate and alum. The box of face powder offered for sale and sold by respondents in the combination known as their introductory order No. 2x200, was not a large box of face powder, but was of a net weight of only 2.5 ounces. The dental paste offered for sale and sold by respondents in the combination known as their introductory order No. 2x200, was not an unexcelled dental paste, but was made of cheap ingredients, and there are sold generally throughout the United States, for less than 29 cents, dental pastes better than that sold and offered for sale by the respondents in said advertisement.

PAR. 6. The above-mentioned and other advertisements circulated by respondents as aforesaid, misrepresented the values, qualities, quantities, and kinds of the various articles sold and offered for sale by respondents in combination with sugar, flour, Uneeda Biscuits, and Quaker Oats.

PAR. 7. The statement in the said advertisement that the respondents sold sugar at \$3 per 100 pounds was false and misleading because respondents sold 100 pounds of sugar only in combination with other items for which combination the purchaser was required to pay \$139.20.

PAR. 8. That in making up the several combination lots or assortments of grocery products which were advertised and sold by respondents, they listed certain staple products at prices below the then current wholesale prices for such products, as in the case of sugar which was advertised by respondents at 3 cents per pound, whereas sugar was a staple on the market and price concessions for large-quantity purchases, or for any other reason were unobtainable and the wholesale price for the same was approximately 10 cents per pound; and flour,

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another staple, was advertised by respondents at \$7 per barrel whereas the wholesale price for the same was \$12.75 per barrel, but when these items—that is to say, sugar and flour—were included in the combination lots offered by respondents, other items in said combinations were listed at prices greater than the current retail prices for the same as in the case of coffee, tea, spices, baking powder, canned sardines, etc., so that the sale of the combination or assortment as a whole yielded to respondents a satisfactory profit and enabled the respondents to obtain for such combination prices greater than the items could be purchased for at an ordinary retail store; but the advertisements so circulated as aforesaid, were worded in such a manner as to mislead purchasers and prospective purchasers into believing that the items other than flour, sugar, Uneeda Biscuits, and Quaker Oats, were offered for sale by the respondents in such combinations at prices below cost, as in the cases of sugar, flour, Uneeda Biscuits, and Quaker Oats.

PAR. 9. During the period from August 1, 1919, to June 20, 1920, when the respondents were engaged in business as aforesaid, sugar was difficult to obtain at retail stores throughout the United States and although the respondents continuously advertised sugar as one of the articles which they were selling at numerous times in the period aforesaid, they did not have a supply of sugar and were unable to secure sugar to fill the orders received by them in answer to their various advertisements and in such cases the respondents filled such orders excepting as to sugar and remitted to purchasers the estimated value of the sugar as set forth in the particular advertisement.

PAR. 10. The business conducted by the respondents under the firm name, Alben-Harley, was a continuation of the same business conducted under each of the following trade names, to wit: Errant Knight Company, Lewis Grocery Company, and Ira-Lester Company. The trade name Errant Knight Company was abandoned in May, 1919, and the trade names Lewis Grocery Company and Ira-Lester Company were abandoned in August, 1919. The business conducted under the respective trade names Errant Knight Company, Lewis Grocery Company, and Ira-Lester Company was similar to the business conducted under the trade name Alben-Harley, and the methods of doing business and the methods of advertising used under those prior trade names was similar to that used under the name Alben-Harley, excepting that the Errant Knight Company, Lewis Grocery Company, and Ira-Lester Company advertised sugar at 5 cents per pound instead of 3 cents per pound.

The Federal Trade Commission, after having made a preliminary investigation of the methods of competition in commerce used by the

Order.

Errant Knight Company, Lewis Grocery Company, and Ira-Lester Company, issued on the 2d day of September, 1919, its complaint against such said firms charging them with a method of competition similar to that charged in the complaint in this proceeding.

CONCLUSIONS.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of the respective respondents, the testimony and evidence, and the Commission having made its findings as to the facts with its conclusions, that the respondents have violated the provisions of 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, Louis Wolper, Jacob Wolper, and Albert Wolper, and each of them, doing business under the firm name and style of Alben-Harley, or under any other trade name, or individually, or in association with anyone, do cease and desist from:

1. Advertising through newspapers or circulars, catalogues, magazines, or by any other means whatsoever, any article for sale in interstate commerce, at a price advertised unless they sell such article at such advertised price.

2. Falsely representing through newspapers, circulars, catalogues, magazines, or by any other means, the value, quantity, quality, or kind of any article advertised for sale in interstate commerce and falsely representing the price generally charged by retailers for such article.

3. Publishing or circulating or causing to be published or circulated advertising matter or catalogues or other printed matter of any kind whatsoever, wherein there is offered for sale in interstate commerce, at a definite price, any combination or assortment consisting of well-known staple articles and also little-known articles in which combination or assortment the known staple articles are quoted at reduced prices with the intent, tendency, or effect to mislead and deceive the

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public into believing that the prices quoted for the little-known articles in the said combination or assortment are likewise reduced, when as a matter of fact such last-named prices as quoted are higher than would ordinarily be charged by retailers for the said little-known articles and high enough to more than offset the alleged reduced prices quoted for the said well-known staple articles.

And it is further ordered, That the said respondents, and each of them, shall within sixty (60) days from the day of the date of the service upon them of a copy of this order file with the Commission a report in writing setting forth the manner in which this order has been conformed to.

Complaint.

FEDERAL TRADE COMMISSION

v.

THE SILVEX CO. AND AIRCRAFT & MOTOR PRODUCTS CO.

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

Docket 535—July 19, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of spark plugs, made the false and misleading claim, in advertising its product, that the same was the first officially approved for the Liberty motor; and

Where a concern dealing in said corporation's spark plug, made the false and misleading claim, in advertising said product, that the same was "the final result of more than a year's hard and conscientious labor on the part of the engineers of the Bureau of Aircraft Production to find a spark plug that was worthy of the wonderful Liberty motor * * *";

With the effect of embarrassing and discrediting competitors and with the intent and capacity to deceive the trade and the general public:

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

COMPLAINT.

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

PARAGRAPH 1. That the respondent the Silvex Co. is now, and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of business at South Bethlehem in said State, and is now and for more than two years last past has been engaged in the business of manufacturing spark plugs and then selling them to various customers throughout the different States and Territories of the United States and the District of Columbia and foreign countries, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, co-partnerships, and corporations similarly engaged.

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PAR. 2. That the respondent the Silvex Co., in the conduct of its business, manufactures, moves, and distributes its spark plugs to, from, and among the State of Pennsylvania and other States and Territories of the United States, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in such spark plugs between and among the various States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the respondent Aircraft & Motor Products Co. is now and was at all times hereinafter mentioned a New York corporation, having its principal office and place of business in the city of New York in said State, and is now and for more than two years last past has been engaged among other things in the sale and distribution of Silvex Co.'s spark plugs to various customers throughout the different States of the United States and the District of Columbia, and that at all times herein mentioned respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in such spark plugs between and among the various States of the United States, the District of Columbia, and foreign countries.

PAR. 4. That the respondents and each of them, with the purpose and effect of embarrassing and discrediting competitors within two years last past, have published and circulated in various periodicals, magazines, trade journals, catalogues, and pamphlets certain advertisements wherein it is represented that:

(a) The first plug officially approved for use in Liberty motor was built by the Silvex Co., of Bethlehem.

(b) The Silvex Co.'s plug was adopted by both the Army and Navy.

(c) The spark plug of the Silvex Co. is the result of Government tests for the Liberty motor.

(d) The claim of a competitor that its spark plug was approved as standard by the Government has in fact no basis.

(e) "It uses the celebrated Frenchtown 775 porcelain, which, under Government tests, has proven itself to be stronger mechanically and electrically than any other porcelain either domestic or foreign. This test was made by the Bureau of Standards at Washington"—

and that such representations unfairly tend to discredit competitor's spark plugs and are misleading and calculated and designed to deceive the trade and general public.

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 each of the respondents herein, the Silvex Co. and Aircraft & Motor Products Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their several appearances in their own proper persons and having filed their answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondents, before F. C. Baggarly, an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereafter, and upon the 4th day of May, 1921, respondent Aircraft & Motor Products Co., by Elton E. Sullivan, its vice president and treasurer, entered and filed in the above cause its stipulation, waiving further appearance and the privilege of introducing further testimony herein, and waiving the privilege of oral argument before the Commission and of filing written briefs herein, and consenting that further proceedings might be had without notice to or appearance by it, the said respondent, and that the Commission should proceed forthwith upon the complaint and answer of said respondent and the testimony and evidence herein to enter its findings as to the facts and its order disposing of this said cause as regards it, said Aircraft & Motor Products Co.; and thereafter and upon the 9th day of May, 1921, respondent the Silvex Co., by E. H. Schwab, its president, entered and filed in this said cause on behalf of the Silvex Co., a stipulation similar in all respects to the stipulation filed by said Aircraft & Motor Products Co., on May 4, 1921, as aforesaid; all as will more fully appear from the files and records of this cause.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent the Silvex Co. for upward of five years prior to about September, 1920, was a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business in South Bethlehem, Pa. At said time, to wit, about September, 1920, said corporation, the Silvex Co., was succeeded and taken over by another corporation, the Bethlehem Spark Plug Co. Respondent the Silvex Co. for upward

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of five years prior to said time, to wit, about September, 1920, was engaged in the manufacture and sale of spark plugs for gasoline motors under the name of "Bethlehem spark plugs"; and during all of such period caused said spark plugs to be transported to the purchasers thereof in and through the several States and Territories of the United States, the District of Columbia, and foreign countries; and during all of such period was in direct and active competition with other persons, partnerships, and corporations similarly engaged. The Bethlehem Spark Plug Co. aforesaid is now and has been since said time, engaged in the manufacture of said spark plugs under said name, and causes and has caused same to be transported to the purchasers thereof in and through the several States and Territories of the United States, the District of Columbia, and foreign countries, in direct and active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. Respondent Aircraft & Motor Products Co. is and has been since about January 13, 1919, a corporation organized under and by virtue of the laws of the State of New York, with its principal business office in the city of New York in said State. Said corporation was organized for the purpose of manufacturing and selling airplanes and airplane parts and accessories and other commodities. Said corporation, soon after its organization, made a contract with the Silvex Co. aforesaid, whereby the Silvex Co. was to manufacture and sell spark plugs to said Aircraft & Motor Products Co. under the private brand of the latter, to wit, "Aero-Auto." Several thousand spark plugs were manufactured and sold under said brand to said Aircraft & Motor Products Co. by the Silvex Co. aforesaid, in accordance with said contract. A vigorous advertising campaign was started in the early part of 1919 by said Aircraft & Motor Products Co., and several advertisements of said "Aero-Auto" spark plugs were placed by said Aircraft & Motor Products Co. in magazines and other publications, and a large number of circulars, circular letters, folders, and pamphlets were sent out to the trade and general public in several of the United States. The enterprise did not prove to be successful, and all advertising and selling efforts were discontinued by the latter part of 1919, and no advertising or selling of said "Aero-Auto" spark plugs has been done by said Aircraft & Motor Products Co. since that time. Since the latter part of 1919 said company has not engaged in business in any way nor sold, offered for sale, or advertised any goods, wares, or merchandise. Said company, however, has retained its corporate charter and has paid all corporation and license taxes thereon, the intention of its officers being to actively engage in business again if the manufacture and

sale of airplanes or their parts or accessories ever becomes commercially practicable.

PAR. 3. A certain type of aviation motor popularly known as the "Liberty" motor was manufactured in several automobile factories for the aviation service of the United States Army and Navy during the late war against the Central Powers. Other types of aviation motors were bought and used by the United States Government in said aviation service during said war.

No particular make of spark plug was ever officially approved by the United States Government for said Aviation Service or for use in said Liberty motor during said war, except that certain spark plugs of certain manufacturers were officially accepted and purchased by the War and Navy Departments of the United States Government for use in said Liberty motors and other aviation motors. The first several thousand of said Liberty motors were equipped under specific and official instructions from the Bureau of Aircraft Production of the United States War Department, not with the spark plug manufactured by the Silvex Co. aforesaid, but with the spark plug manufactured by another and competing manufacturer.

The spark plugs manufactured by the Silvex Co. aforesaid were, however, officially accepted and purchased by the said War and Navy Departments at divers times during the said war for use in aviation motors (including the Liberty motor) used in the Aviation Service of the United States Army and Navy. The spark plugs manufactured by divers other manufacturers were also officially accepted and purchased by said War and Navy Departments at divers times during the war for said use.

PAR. 4. Respondent the Silvex Co. published and distributed to the jobbing trade and their salesmen, and to its own salesmen, a circular advertisement under the name of "Bethlehem Sparks." This publication was a house organ, and was printed and distributed by said respondent as aforesaid, from time to time. Under date of January 15, 1919, said respondent published and distributed as aforesaid, in the latter part of January, 1919, an issue of said Bethlehem Sparks wherein, in an article entitled "Silvex Co.'s part in war," the following statement appeared:

When the world was thrilled with the dramatic announcement that out of the work of a number of America's foremost engineers had been created the powerful Liberty motor, no mention was made of the fact that the first spark plug officially approved for use in the Liberty motor was built by the Silvex Co., of Bethlehem.

Said article, "Silvex Co.'s part in war," was reprinted from the January 21, 1919, issue of the Bethlehem Globe, a newspaper of general circulation, published in South Bethlehem, Pa. Said article

in said Bethlehem Globe was the report of an interview with the president of the Silvex Co.

Said statement from said article in said advertisement Bethlehem Sparks was false and misleading because the first spark plug officially approved by the United States Government for use in the Liberty motor, if any were so approved, was not the spark plug manufactured by the Silvex Co., but the spark plug of another and competing manufacturer, as aforesaid. Said false and misleading statement had the tendency and effect of embarrassing and discrediting competitors of the Silvex Co., and unfairly tended to discredit the spark plugs manufactured by such competitors, and said statement was calculated and designed to deceive the trade and the general public.

Said false and misleading statement appeared only in the aforementioned publications, to wit, said Bethlehem Sparks and said Bethlehem Globe, and only in the aforementioned numbers or issues of said publications, and said statement has not been used since in the advertising of said respondent, the Silvex Co.

PAR. 5. The Silvex Co. aforesaid had not published or circulated in any periodical, magazine, trade journal, catalogue, or pamphlet, or otherwise, any advertisement wherein it is represented that:

The Silvex Co.'s plug was adopted by both the Army and Navy—

or that—

The spark plug of the Silvex Co. is the result of Government tests for the Liberty motor—

or that—

The claim of a competitor that its spark plug was approved as standard by the Government has in fact no basis—

or that it (the spark plug manufactured by the Silvex Co.)—

uses the famous Frenchtown 775 porcelain, which, under Government tests, has proven itself to be stronger mechanically and electrically than any other porcelain, either domestic or foreign. That test was made by the Bureau of Standards at Washington.

The allegations of the complaint in this cause that the Silvex Co. aforesaid published and circulated in various periodicals, magazines, trade journals, and pamphlets said advertisements, are not sustained by the testimony and evidence in this case.

PAR. 6. Said Aircraft & Motor Products Co. has not published or circulated in any periodical, magazine, trade journal, catalogue, or periodical, or otherwise, any advertisement wherein it is represented that:

The first plug officially approved for use in the Liberty motor was built by the Silvex Co. at Bethlehem.

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The allegation of the complaint in this cause, that said Aircraft & Motor Products Co. published and circulated in various periodicals, magazines, trade journals, catalogues, and pamphlets certain advertisements wherein the said representation was made, is not sustained by the testimony and evidence in this case.

PAR. 7. Said Aircraft & Motor Products Co. distributed to certain automobile dealers in various States of the United States certain circular letters under date of January 27, 1919, advertising its said Aero-Auto spark plugs, in which letters appeared, among others, the following statement or representation:

The Silvex Co.'s plug was adopted by both the Army and Navy.

Such statement or representation also appeared in a full-page advertisement of said Aircraft & Motor Products Co. for said Aero-Auto spark plugs in the April 17, 1919, issue of Motor Age, a magazine devoted to automobiles and accessories and of general circulation among the trade and public. Said statement or representation also appeared in a full-page advertisement of said Aircraft & Motor Products Co. for said Aero-Auto spark plugs in the April 2, 1919, issue of Motor World, a magazine also devoted to automobiles and accessories and of general circulation among the trade and public.

As hereinbefore set forth in paragraph 3 hereof, said spark plugs of the Silvex Co. aforesaid were officially accepted and purchased by the War and Navy Departments of the United States Government at divers times during the aforesaid war, and said statement or representation is therefore true. The allegations of the complaint in this cause, that said Aircraft & Motor Products Co. published and circulated said statement is therefore sustained by the testimony and evidence; but the allegation of said complaint that such statement and representation discredited competitors' spark plugs or was misleading and calculated and designed to deceive the trade and general public is not sustained by the testimony and evidence.

PAR. 8. Said Aircraft & Motor Products Co., during the early part of 1919, distributed to certain automobile dealers in various States of the United States a certain folder or circular, advertising its said Aero-Auto spark plug, in which folder appeared among others the following statements or representations:

AERO-AUTO (A-A) SPARK PLUG.

THE RESULT OF THE UNITED STATES GOVERNMENT'S TESTS AND INVESTIGATIONS FOR THE LIBERTY MOTOR.

This circular will introduce to the motoring world the A-A spark plug. This plug is the final result of more than a year's hard and conscientious labor on the part of the engineers of the Bureau of Aircraft Production to find a spark plug that was worthy of the wonderful Liberty motor and upon which our aviators could stake their lives in actual combat work. The success of airplane motors depends almost

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entirely upon spark plugs, and every spark-plug manufacturer was given an opportunity for development work with the idea of finding a perfect spark plug. The most trustworthy spark plugs used by the United States Army and Navy Air Service were furnished the Government by the Silvex Co., of South Bethlehem, Pa. Orders were placed with this company for more than 2,000,000 plugs for use in combat work overseas. The Silvex Co. has assigned to the Aircraft & Motor Production Co. a very appreciable portion of their facilities for the manufacture of the A-A spark plug. Our own engineers and the engineers of the Silvex Co. have adapted this plug to meet the peculiar requirements of the automobile. But it will still retain the basic principles of design and construction that made it the most efficient of all spark plugs used in the war.

The Aero-Auto spark plug was manufactured by the Silvex Co. aforesaid for said Aircraft & Motor Products Co., and said spark plug was a modified design of the spark plug sold by the Silvex Co. aforesaid to the United States Army and Navy Departments for aviation service during the aforesaid war. Said spark plug so sold by the Silvex Co. aforesaid was tested by Government engineers on official Government tests; and some of these tests were performed by certain engineers of the Bureau of Aircraft Production of the United States War Department. The said engineers of the said Bureau of Aircraft Production worked for over a year on a series of tests on spark plugs for aviation motors for the purpose of securing a satisfactory spark plug for aviation motors. The Silvex Co. aforesaid, as well as many other spark-plug manufacturers during the aforesaid war, was constantly working to improve its spark plug, modifying various features of design or materials or workmanship to overcome the faults disclosed by said Government tests. However, said Government engineers did not invent, design, improve, modify, or alter the spark plugs of the Silvex Co. aforesaid in any way at any time; and said spark plugs, properly speaking, were not the result of the labors of the said Government engineers nor of their tests, but instead were the result of the labors of the agents and employees of the Silvex Co. aforesaid.

In said statements and representations in said folder or circular, it is stated that the Aero-Auto spark plug was the result of Government tests for the Liberty motor, but immediately thereafter, it is stated that the Aero-Auto spark plug was the product of the Silvex Co.; said statements and representations taken in their entirety were unfairly embarrassing and discrediting to competitors of said Aircraft & Motor Products Co. and tended to discredit the spark plugs manufactured by such competitors; and said statements and representations were misleading and calculated and designed to deceive the trade and general public. As aforesaid, said folder or circular was only distributed during the first part of 1919 and has never been distributed or used in any way by said Aircraft & Motor Products Co. since said time.

Findings.

PAR. 9. Said Aircraft & Motor Products Co. in its said circular letter of January 27, 1919, hereinbefore referred to in paragraph 7 hereof, made the following statement or representation:

The claim of a competitor that its spark plug was approved as standard by the Government has no basis.

Said statement or representation was ambiguous in that it did not name the competitor referred to nor otherwise disclose the said competitor's identity. Said competitor's identity was nowhere disclosed in any part of said circular letter nor in any of the other advertising matter whatsoever of said Aircraft & Motor Products Co. It is not shown by the testimony and evidence in this case that any member of the trade or general public who received said circular letters was misled or deceived by said statement or representation or was induced thereby to discredit any competitor of said Aircraft & Motor Products Co. or the spark plugs of any such competitors.

The allegations of said complaint that said Aircraft & Motor Products Co. published and circulated such statement is therefore sustained by the testimony and evidence; but the allegation of said complaint that such representation discredited competitors' spark plugs and was misleading and calculated and designed to deceive the trade and general public is not sustained by the testimony and evidence.

PAR. 10. The Aircraft & Motor Products Co., in its said folder or circular hereinbefore referred to in paragraph eight hereof, made the following statement or representation:

It [The Aero-Auto spark plug] uses the famous Frenchtown 775 porcelain, which, under Government tests, has proven itself to be stronger mechanically and electrically than any other porcelain either domestic or foreign. This test was made by the Bureau of Standards at Washington.

The porcelain used in said Aero-Auto spark plugs was manufactured by the Frenchtown Porcelain Co. under the name "Frenchtown 775." Said Frenchtown 775 porcelain was sold to and used by many different spark-plug manufacturers in many different makes of spark plugs during the aforesaid war and at all times since. It was at all times sold upon the open market to anyone who wanted to buy it and could pay for it. All of these facts were generally known to the trade. During said war said Frenchtown 775 porcelain was tested by the Bureau of Standards at Washington to determine its mechanical and dielectric strength and fitness for use in aviation motors. It is not shown by the testimony and evidence in this case that any member of the trade or general public who received said folder or circular was misled or deceived by said statement or representation or was induced thereby to discredit any competitor of said Aircraft & Motor Products Co. or the spark plugs of any such competitor.

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The allegation of said complaint that said Aircraft & Motor Products Co. published and circulated said statement is therefore sustained by the testimony and evidence; but the allegation of said complaint that such statement or representation discredited competitors' spark plugs, or was misleading and calculated and designed to deceive and mislead the trade and general public, is not sustained by the testimony and evidence.

CONCLUSIONS.

The practices of the said respondent the Silvex Co., under the circumstances and conditions severally described in paragraphs 1, 3, and 4 of the foregoing findings, and the practices of the said respondent, Aircraft & Motor Products Co., under the circumstances and conditions severally described in paragraphs 2, 3, and 8 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 and the answers of the respective respondents and the testimony and evidence, and the Commission having made its findings as to the facts with its conclusions that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled: "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered:

(1) As to the respondent the Silvex Co., that respondent the Silvex Co. and its officers, directors, representatives, agents, and servants, cease and desist from directly or indirectly advertising, publishing, circulating or distributing any circular, letter, advertisement, or other printed or written matter whatsoever, in which it is stated or held out that the first spark plug officially approved for use in the Liberty motor was built by the Silvex Co., of Bethlehem.

(2) As to respondent Aircraft & Motor Products Co., that respondent Aircraft & Motor Products Co. and its officers, directors, representatives, agents, and servants cease and desist from directly or indirectly advertising, publishing, circulating, or distributing any circular, letter, advertisement, or other printed or written matter whatsoever in which it is stated or held out that the spark plug of the Silvex Co. is the result of Government tests for the Liberty motor.

Complaint.

FEDERAL TRADE COMMISSION

v.

UNION PENCIL COMPANY, INC.

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

Docket 759—July 19, 1921.

SYLLABUS.

Where a corporation competitively engaged in imprinting or stamping upon pencils the name requested by the purchaser, with the effect of misleading customers and the public, advertised "High grade pencils engraved in gold"; notwithstanding the fact that the substance used for such imprinting contained no gold:
Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Union Pencil Co., Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in 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 in the city of New York, in said State.

PAR. 2. That respondent is engaged in the business of selling pencils upon which are imprinted, by the respondent, the name of the purchaser or the name of some other person designated by the purchaser, and respondent causes pencils 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 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, causes to be inserted in newspapers of general circulation, advertisements which contain false and misleading statements of and concerning the pencils sold by it; that among such false and misleading statements is a statement to the effect that pencils sold by respondent are "engraved in gold," whereas, in the process of imprinting the name of the purchaser or other

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person on such pencils, gold leaf is not used, or gold in any other form, but a substance known as "autofoil," which contains no gold, is used; that such advertisements are calculated to and do mislead and deceive the purchasing public, and customers are induced to buy pencils from respondent upon the mistaken belief that the printed matter thereon is in genuine gold and not an imitation of gold.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the meaning and intent 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, Union Pencil Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance in its own proper person and its answer herein, thereafter, and on June 27, 1921, it entered and filed its amended answer, whereby it withdrew its said answer originally filed, and admitted each and all of the allegations and charges of said complaint, and waived any and all right and privilege of introducing testimony and evidence in its own behalf, and of offering oral argument before the Commission, and of filing written briefs in this said cause, and agreed and consented that the Commission should proceed forthwith, upon the said complaint, to conclude and dispose of this said cause by entering its findings as to the facts, its conclusion, and its final order herein, notice thereof being waived by the respondent, all as will more fully appear from the files and records of this cause.

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

FINDINGS AS TO THE FACTS.

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

PAR. 2. That respondent is in the business of selling pencils upon which, at the request of its customers, it imprints or stamps the name of the purchaser or the name of some other person designated by the purchaser.

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PAR. 3. That these pencils so stamped or imprinted are sold by the respondent to be transported and are transported in interstate commerce to the purchasers thereof from the State of New York through and into other States of the United States, and that respondent carries on such business in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 4. That respondent, in the course of its business as described herein, causes to be inserted in newspapers of general circulation advertisements of its pencils which advertisements so inserted contain the words "High grade pencils engraved in gold."

PAR. 5. That said pencils are not engraved in gold, but, on the contrary, in the process of imprinting the name of the purchaser or other person on such pencils gold leaf is not used or gold in any other form but a substance known as "autofoil," which contains no gold, and that, accordingly, this statement that the "pencils are engraved in gold" is false and misleading.

PAR. 6. That the statements in the said advertisements were known by the respondent at the time that they were made to be false and calculated to mislead and deceive the public who purchased said pencils.

PAR. 7. That relying on said false statements in said advertisements customers were induced to buy said pencils from the respondent upon the mistaken belief that the printed matter thereon is imprinted in genuine gold and not in an imitation of gold, and this to their damage.

PAR. 8. That certain of the competitors in interstate commerce of the respondent engaged in the same business also advertised pencils "engraved in gold" and these said competitors do in truth imprint the name of the purchaser or other person upon the said pencils so sold, using genuine gold leaf in said process of imprinting.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of the respondent, and the Commission having made its findings as

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

It is now ordered, That respondent, Union Pencil Co., Inc., and its officers, directors, representatives, agents, and servants, do cease and desist from selling, offering for sale, or holding out, in any advertisement or otherwise, any pencil or pencils as "engraved in gold," unless the same be in truth and in fact engraved in gold.

And it is further ordered, That respondent, Union Pencil Co., Inc., within 60 days after service upon it of this order, enter and file its report in writing, setting forth in detail the manner and form in which this order has been complied with.

Complaint.

FEDERAL TRADE COMMISSION

v.

SUNLIGHT CREAMERIES.

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

Docket 623—July 26, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of butter, using the so-called station plan, under which the cream is assembled at various stations in charge of agents, whose duty it is to purchase from farmers and to foster and protect their patronage, and to ship the cream to the plant when assembled in sufficient quantities, by false and by derogatory statements concerning its competitors and their contracts, and by threats, indemnification and increased compensation, and offers thereof, attempted to and did induce competitors' agents to break their contracts and abandon their stations for its own, with resulting loss to competitors and gain to it of patronage built up by them in the course of many years at heavy expense; in so doing also taking advantage of its competitors' observance and its breach of an agreement to discontinue such practices:

Held, That such inducement of breach of contract and appropriation of values, 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 Sunlight Creameries, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent is a corporation, organized and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business in the city of Washington Court House, in the State of Ohio.

PAR. 2. That respondent for more than a year last past has been, and now is, engaged in the business of selling and distributing butter, and that such sales are made throughout the States and Territories of the United States in competition with others so engaged in selling butter.

PAR. 3. That the respondent and its said competitors, in the conduct of their business, severally purchase in competition with each

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other, in the States of Ohio, Indiana, and Kentucky, and in other States of the United States, the principal component material, cream or butter fat, necessary for the manufacture of said butter so shipped and sold, and cause the cream or butter fat so purchased to be shipped to their respective plants where it is converted into butter and thence sold and shipped to the purchasers thereof as aforesaid; that such cream or butter fat and butter is continuously moved to, from, and among the aforesaid and other States of the United States, and there now is, and at all times herein mentioned has been, a continuous current of trade and commerce in such butter fat and between and among the various States of the United States.

PAR. 4. That in the course of its said business respondent, through its officers, employees, and agents, for more than six months last past has conducted, and now is conducting, a campaign of defamation against a competitor, by circulating and causing to be circulated, among said competitor's employees, patrons, and others, newspapers, reprints from newspapers, and other printed matter containing false and unfair statements with reference to said competitor's business, which statements have a tendency and capacity to cause, and do cause, employees to sever their connection with, and patrons to withdraw their patronage from such competitor, thereby causing it the loss of great values created by, and belonging to, such competitor, which values respondent has appropriated, and now is appropriating, to its own use and benefit.

PAR. 5. That in pursuance of its said campaign, and as a part thereof, respondent, through its officers, employees, and agents, has, and now is, attempting to weaken said competitor's business organization, depreciate it as a competitor, and appropriate values created by it, by approaching said competitor's employees, and others, and by making to them false and unfair statements having a tendency and capacity to destroy the confidence of such employees, patrons, and others in said competitor's financial stability, and in said competitor's ability to continue to remain in business; and having a tendency and capacity to create among other false impressions in the minds of such employees that their reputation and future business usefulness in the creamery industry would be ruined by longer remaining in the employ of said competitor.

PAR. 6. That in furtherance of said campaign, by the use of methods as above described, and by means of threats, intimidation, and persuasion, respondent attempted to induce, and did induce, employees to violate and terminate their contracts with said competitor,

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by leaving its employ to take employment with respondent and to carry with them the business and patronage belonging to and enjoyed by said competitor, such employees being stationed at cities and places located at distances from said competitor's main place of business and intrusted and charged with the duties of procuring, serving, dealing with, and holding for the benefit of said competitor large groups of its patrons.

PAR. 7. That investigation by the Commission, based on numerous complaints, revealed the almost universal practice in the creamery industry of methods of competition of the nature herein charged, and others; that to eliminate such methods more speedily than could be accomplished by formal proceedings instituted against individual concerns, a large number of creamery owners from various States, at the invitation of the Commission, assembled at the city of Omaha, in the State of Nebraska, on November 3, 1919, and then and there in open meeting, presided over by a Commissioner of the Federal Trade Commission, did, by means of resolutions individually discussed and separately voted on, define and denounce those methods of competition which in the experience of the industry had proven to be unfair; that later the State associations of creamery men in the States of Ohio, Indiana, Illinois, Iowa, Kansas, Michigan, Minnesota, Wisconsin, Nebraska, and Colorado, at their respective official meetings, ratified and adopted the resolutions so passed at said city; that practically the entire industry in so far as represented by such associations in the States named have officially acted on and approved said resolutions; that at the time of their original adoption by the industry and in the announcement thereof by the Commission, such resolutions were designated as, and are known as, "Trade Practice Submittal—Creamery Industry"; that December 1, 1919, was adopted, by resolutions of the said Nebraska and Michigan associations and generally understood by all others in the industry, as the day upon which the practice of methods so denounced was to entirely cease, and which on said day did cease; that among other purposes intended and accomplished by the institution and adoption of such "Trade Practice Submittal" was the obviation of a multiplicity of formal proceedings due to the voluntary and simultaneous action of the industry in eliminating practically all of the methods and practices so defined and denounced.

PAR. 8. That respondent was, and is, well acquainted with the purpose, intent, and spirit of the action taken by the industry for the enlightenment of the Commission in the form of such "Trade Practice Submittal," respondent having expressed its approval

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thereof, among other ways, by participation in the unanimous ratification of said "Trade Practice Submittal" given at a meeting, held on November 20, 1919, called for such purpose by the Ohio Association of Creamery Owners and Butter Manufacturers, the same being one of the State associations referred to in paragraph 7 hereof.

PAR. 9. That resolutions I and V of said "Trade Practice Submittal" read respectively as follows:

I. *Resolved*, That the willful interference by any person, association, or corporation, by any means or devices whatever, with any existing contract between an employer and employee or agent of such employer in or about the production, manufacture, transportation, purchase, or sale of any dairy product or the performance of any contractual duty or service connected therewith, such interference being for the purpose or with the effect of dissipating, destroying, or appropriating, in whole or in part, the patronage, property, or business of another engaged in such industry, is hereby declared unfair.

* * * * *

V. *Resolved*, That the making, causing, or permitting to be made or published any false or untrue statement of or concerning the business policies or methods of a competitor is hereby declared unfair.

PAR. 10. That by reason of the foregoing facts 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 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, Sunlight Creameries, 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 having filed its answer admitting certain of the allegations of said complaint, and denying certain others thereof; and the Commission, having introduced testimony and evidence in support of the charges of said complaint, and the respondent having rested its case without the introduction of evidence and having waived the filing of briefs and the hearing of argument herein, and

Thereupon this proceeding having come on for final hearing without oral argument, and the Commission having duly considered the record, and it being fully advised in the premises, makes this its findings as to the facts, and conclusion:

Findings.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent is a corporation, organized and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business in the city of Washington Court House, in the State of Ohio.

PAR. 2. That respondent for more than a year last past has been, and now is, engaged in the business of selling and distributing butter, and that such sales are made throughout the States and Territories of the United States in competition with others so engaged in selling butter.

PAR. 3. That the respondent and its said competitors, in the conduct of their business, severally purchase in competition with each other, in the States of Ohio, Indiana, and Kentucky, and in other States of the United States, the principal component material, cream or butter fat, necessary for the manufacture of said butter so shipped and sold, and cause the cream or butter fat so purchased to be shipped to their respective plants where it is converted into butter and thence sold and shipped to the purchasers thereof as aforesaid; and that such cream or butter fat and butter is continuously moved to, from and among the aforesaid and other States of the United States, and there now is, and at all times herein mentioned has been, a continuous current of trade and commerce in such butter fat and butter between and among the various States of the United States.

PAR. 4. That respondent and its said competitors secure their raw material, cream or butter fat, by a method known to the creamery trade as the "station plan"; and that by such plan a flow of small quantities of cream from numerous farms in the immediate vicinity is directed to the station, from whence it passes in larger volume to the churning plant.

PAR. 5. That respondent in competition with its said competitors and numerous other creameries similarly engaged, operates such station plan and causes cream gathered at its stations in the States of Ohio, Indiana, and Kentucky to be shipped to its creamery plant in Ohio.

PAR. 6. That one such competing creamery company operates such station plan and ships the cream gathered at its stations in the State of Kentucky, the southern parts of the States of Indiana, and Illinois, and the northern part of the State of Tennessee, to its creamery plant in Kentucky.

PAR. 7. That another such competing creamery company operates such station plan and ships the cream gathered at its stations in the States of Indiana and Ohio to its creamery plant in Indiana.

PAR. 8. That cream so gathered at the stations of said competing creamery companies is shipped to their respective creamery plants as soon as a sufficient quantity of cream is secured to constitute a shipment; that immediately upon its arrival at the churning plants such cream is poured into vats and churned into butter, and after being so churned is shipped to other States for sale in competition with respondent and others; that frequently such cream is purchased at stations for the purpose of filling contracts for the future delivery of butter, which contracts are made prior to and in anticipation of such purchases of cream at said stations; and that said butter remains at said respective churning plants no longer than from one day to one week before being shipped, as above described, to other States.

PAR. 9. That said stations of respondent and said stations of its competitors are in competition, each with the other at certain points and in competition with other methods of purchasing cream at all points; that one such competing method is known to the creamery trade as the "direct shipping plan" which consists in the soliciting and purchasing of cream to be shipped by rail directly from the farm to the creamery; and another such method so known is the "route plan," namely, the purchasing of cream at the producer's farm and the transporting of it therefrom by means of trucks or wagon teams.

PAR. 10. That the method used in establishing such stations has been and is to select a suitable location, equip a building or rooms with necessary paraphernalia, advertise, and through representatives personally solicit the patronage of purchasers of cream, situated at such selected location and in the immediate vicinity thereof; that a capable person, known to the creamery trade as a "station agent" or "operator," is there employed to test and care for the cream received and to issue to patrons the creamery company's check, drawn on the creamery company's bank account, in payment for cream purchased, and to ship such cream to the churning plant immediately upon its assemblage in sufficiently large quantities to justify a rail shipment, usually 10 gallons; that said competing creamery companies exercise full dominion over their said stations and over their said agents or operators by requiring such agents, operators, or employees to perform all the duties ordinarily performed in a cream station; by deciding and dictating the price such agents shall pay for cream purchased; by requiring detailed reports of all purchases and of other matters; by accepting and acquiring title to the cream directly from the purchaser; and by paying the agent, operator, or employee for his services either on a commission or salary basis.

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PAR. 11. That the cost of establishing such stations and thereby creating values consisting of good will in the form of groups of customers, providing a somewhat constant supply of cream, is from \$200 to \$1,000 per station; that one of said competing companies created approximately 250 such stations in 18 years; that respondent announced by advertisement that it would have 1,000 stations in one year; that approximately 99 per cent of existing cream stations have been established by the creameries operating them; and that such stations are usually located at distances from the main place of business or the churning plant which they are established to supply.

PAR. 12. That for the purpose of preventing an unfair appropriation of such values so created, leaving at the same time perfect freedom of access by competitors to such customers or producers of cream, and also leaving such agents or operators absolute freedom in the matter of voluntarily terminating any contract of agency or employment according to the terms thereof and voluntarily seeking employment of such competitors or others, members of the creamery industry adopted in open meeting resolutions I and V of a set of resolutions known as the "Trade Practice Submittal—Creamery Industry," which resolutions I and V condemn the use of such methods as are charged in this complaint; that such methods, although generally practiced by those engaged in the industry prior to December 1, 1919, were thereafter almost entirely abandoned by them, except that respondent continued until April 15, 1920, to entice and to attempt to entice the agents and operators in the employ of its competitors to violate the contractual relations with their respective employers as herein specifically set forth.

PAR. 13. That respondent after September 1, 1919, and prior to April 15, 1920, through F. W. Abke and M. P. Knudsen, managers, respectively, during such period, and a force of field men working under their direction, made frequent and systematic visits to station agents or operators employed by its said competitors at stations established by such competitors in the States of Ohio, Indiana, and Kentucky, and attempted to entice and did entice such agents or operators to violate their contractual relations with their employers.

PAR. 14. That during this period respondent, through its representatives, participated in the adoption of and ratification of said "Trade Practice Submittal—Creamery Industry" and thereby encouraged its said competitors to abandon said certain practices, which it agreed also to abandon on December 1, 1919, but which in fact respondent did not abandon, but took advantage of its said competitors by continuing and renewing the practices set forth in said resolutions I and V which had been abandoned by its said competitors.

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PAR. 15. That more than 20 such agents or operators employed by one said competing creamery were thus visited and some such agents or operators were visited as many as four times by as many different employees of respondent; that on the occasions of such visits said representatives and employees of respondent told some of such agents or operators that their contracts with said competing creamery company were not binding, and in some instances offered to make good any loss occasioned by a breach thereof; that one such station agent or operator under contract for two years was likewise told that his contract was not binding and said agent or operator was advanced more than \$700 by respondent for the purpose of placing said agent or operator in a position to violate his contract and accept employment with respondent; that said agent did violate said contract by leaving the employ of said competing creamery company and accepted employment with respondent; that all such agents or operators were offered more remuneration than they were then receiving, if they would leave their then employment and accept employment with respondent; that among other statements made by such employees and representatives of respondent to the agents or operators or employees of said competitor were statements to the effect that said competitor was insolvent and the appointment of a receiver had been asked for, that a receiver would be appointed for such competitor within three months or sooner, that the farmers were afraid to accept said competitor's check in payment for cream, that the reputation of such agents or operators would be injured by being connected with an insolvent concern at the time it went to the wall, and that it would be difficult for such agents or operators to redeem the confidence of the public if they longer remained with said competitor, that if such agent or operator did not accept employment with respondent within a given time, respondent would open a competing station in the same town, or that respondent had opened a station in such town but would hold the agency open for a time to give such agent or operator an opportunity to accept a position with respondent.

PAR. 16. That newspapers and reprints from newspapers containing accounts of said application for appointment of a receiver for said competitor were shown to said competitor's agent or operators by respondent's representatives and employees and such agents or operators and others received through the mail, inclosed at times in envelopes bearing the business card of respondent and at other times inclosed in plain wrappers, newspapers, and reprints from newspapers containing similar articles with reference to the said application for receivership; and that such receiver has never been appointed.

PAR. 17. That as a result of this campaign, at least five of the twenty and odd agents or operators so approached left the said com-

Conclusion.

peting creamery company and accepted employment with respondent and took with them portions of the patronage and business established and built up by said competing creamery company after years of labor and the expenditure of a great deal of money; that one such agent took to respondent approximately 90 per cent of said competing creamery company's business at the particular station which such agent or operator was employed to foster and protect; that one such agent, after being visited several times by the representatives and employees of respondent, left the employ of said competing creamery, accepted employment with respondent, and made two spurious contracts, signed by the said F. W. Abke for respondent, neither of which was intended to bind said agent or operator, but both of which were made in an effort to show that said Abke did not entice said agent by offers of higher remuneration; and that other agents when so approached were cautioned not to speak to their employers of the visit of respondent's representatives or employees.

PAR. 18. That the agents or operators of other such competing creamery companies were approached by employees of respondent, who in some instances succeeded in appropriating values of like character created by and belonging to such competitors.

PAR. 19. That each of the agents or operators so approached by representatives of respondent was at the time employed at stations established by such competitors and such agents were paid for and charged with the duty of serving and dealing with large groups of patrons of such competitors.

PAR. 20. That respondent's representatives and employees did succeed in some cases in inducing said employees to violate their contracts with their said employers; that such employees did take with them to respondent and for its benefit large groups of its said competitor's patrons and business; and that respondent still enjoys the patronage and business of such competitors so received by it by reason of such inducements and breaches of contracts.

PAR. 21. That one such competing creamery company complained to the accredited representative of the major stockholder of respondent corporation concerning the conduct of said manager Knudson in permitting employees of respondent to approach and disturb the agents or operators of said competitors.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 13 to 21, inclusive, and each and all of them are, under the circumstances set forth in said findings, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26,

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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 thereto of the respondent and the testimony and evidence introduced thereunder, and the Commission having considered the record and made its findings as to the facts with its conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, the Sunlight Creameries, its officers, agents, employees, and servants, forever cease and desist from practicing, renewing, or reviving the following methods of competition used by it prior to April 15, 1920, to wit:

(1) From appropriating, or attempting to appropriate, values created by competitors by approaching and enticing, or attempting to entice, station agents or operators or other employees of competitors to violate their contractual relations and take with them the business and patronage of said competitors;

(2) From making or circulating, or causing to be made or circulated, to or among station agents or operators or other employees of competitors, or the public generally, either oral, written, or printed statements containing false and unfair matter concerning the business or standing of competitors.

Complaint.

FEDERAL TRADE COMMISSION

v.

SEALWOOD COMPANY.

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

Docket 601—August 9, 1921.

SYLLABUS.

Where a corporation dealing in a substitute for shellac, and in a reducer used in connection therewith, gave and offered to give to employees of its customers and prospective customers, without the knowledge and consent of their employers, gratuities such as money, liquor, cigars, meals and other personal property as inducements to them to influence their employers to purchase its products to the exclusion of its competitors', with the effect of compelling its competitors to do likewise or lose business, and of increasing the cost of its products to the public: *Held*, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sealwood 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 respondent is a corporation, organized and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the City of St. Louis, in said State.

PAR. 2. That respondent for more than a year last past has been, and now is, engaged in the business of selling and distributing a commodity used as a substitute for shellac, known as "Sealwood," and in selling and distributing a reducer used in connection therewith; and that such sales are made throughout the States and Territories of the United States in competition with others engaged in selling shellac and reducers therefor.

PAR. 3. That for more than a year last past, respondent, in the course of its said business, has been and now is giving and offering to give to employees, who in the regular course of their employment use

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shellac, or who direct its use by others, or who are required to purchase shellac for, or recommend the purchase of shellac to, their respective employers, gratuities, such as money, liquor, cigars, meals and other personal property, as inducements to said employees to influence their respective employers to purchase from respondent its said substitute for shellac and the reducer used in connection therewith to the exclusion of the products of its competitors.

PAR. 4. That by reason of the foregoing facts, 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 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 Sealwood 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 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, the Sealwood Company, before Examiners of the Federal Trade Commission, theretofore duly appointed.

After considerable testimony and evidence had been offered and received in this proceeding, the respondent through its Attorney formally admitted for the purpose of this proceeding that the facts recited below are true and correct, and requested that the Commission dispose of this matter without the introduction of further testimony, and make its findings as to the facts and issue its order against the respondent, directing it and its officers, agents, salesmen and other representatives to cease and desist from directly or indirectly continuing to use the methods and practices alleged and charged in the complaint.

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 respondent is a corporation organized and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the city of St. Louis, in said State.

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PAR. 2. That respondent for more than a year last past has been, and now is, engaged in the business of selling and distributing a commodity used as a substitute for shellac, known as "Sealwood," and in selling and distributing a reducer used in connection therewith; and that such sales are made throughout the States and Territories of the United States in competition with others engaged in selling shellac and reducers therefor.

PAR. 3. That for more than a year last past, respondent, in the course of its said business, has been and now is giving and offering to give to employees, who in the regular course of their employment use shellac, or who direct its use by others, or who are required to purchase shellac for, or recommend the purchase of shellac to, their respective employers, gratuities, such as money, liquor, cigars, meals and other personal property, as inducements to said employees to influence their respective employers to purchase from respondent its said substitute for shellac and the reducer used in connection therewith to the exclusion of the products of its competitors; that respondent in so giving and offering to give gratuities to employees, acted secretly and without the knowledge or consent of the employers of such employees; that the giving of such gratuities by respondent tends to and does compel its competitors to adopt the same or similar methods of competition, or suffer the loss of business; and that the cost of making such expenditures become a part of the expense incurred by respondent in distributing its products and is added to the price charged the purchasing public for such products.

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, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

Order.

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It is now ordered, That the respondent, Sealwood Company, and its officers, agents, servants, representatives and employees cease and desist from giving or offering to give, directly or indirectly, to employees of customers or prospective customers, who in the course of their employment, use, purchase, or recommend for purchase, or who direct or control the use or purchase by others of shellac, or other commodities manufactured or sold by respondent, for their respective employers, gratuities of money, liquor, cigars, meals or other personal property, without the knowledge or consent of their employers, for the purpose of inducing said employees to influence, or as a reward for influencing their respective employers to purchase from the respondent any commodity manufactured for sold by it, or to refuse to purchase products of its competitors.

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

Complaint.

FEDERAL TRADE COMMISSION

v.

SEYMOUR CHEMICAL CO. AND ALEXANDER S. MANN.

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

Docket 625—August 9, 1921.

SYLLABUS.

Where a corporation and an individual, its predecessor, engaged in the manufacture and sale of soaps and degreasing materials, gave and offered to give to employees of their customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement for them to influence their employers to purchase from them, the donors, and to refrain from dealing with competitors:

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

AMENDED COMPLAINT.

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

PARAGRAPH 1. That the respondent, Seymour Chemical Company, is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with principal place of business at Providence, in said State.

PAR. 2. That the respondent, Alexander S. Mann, is the president and treasurer of the respondent Seymour Chemical Company, and owns more than a majority of its stock, and prior to the organization of the respondent, Seymour Chemical Company, in August, 1919, operated under the trade name of Seymour Chemical Company; that the respondent, Seymour Chemical Company, upon its organization succeeded to the business theretofore carried on by the respondent Alexander S. Mann, under the trade name as aforesaid, which business is now under the supervision and management of the respondent, Alexander S. Mann, in his capacity as stockholder,

Findings.

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director, officer and manager of the respondent, Seymour Chemical Company.

PAR. 3. That the respondents are and have been engaged in the business of manufacturing and selling textile finishing materials, including soaps and degreasing materials, causing same to be transported to the purchasers thereof, from the State of Rhode Island through and into other States of the United States, in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 4. That the respondents in the course of the business as described in Paragraph Three hereof, have been giving to boss finishers in textile mills, without the knowledge and consent of their employers and without other consideration therefor, gratuities or cash commissions to influence such finishers to induce their employers to purchase the product of respondent and to refuse to purchase the products of competitors of respondent; that such gratuities or cash commissions so paid out by the respondents were at the rate of approximately \$10 to \$12 per barrel of material sold.

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, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondents, the Seymour Chemical Company, and Alexander S. Mann, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

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

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Seymour Chemical Company is now and has been at all times since August, 1919, a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, having its main office and principal place of business in the City of Providence, in said State; that the respondent, Alexander S. Mann, is an individual occupying the position of president and treasurer of the respondent, Seymour Chemical Company, and holding and controlling a majority of the stock of such corporation; that prior to the organization of the respondent Seymour Chemical Company, to wit, from May, 1918 to August, 1919, respondent, Alexander S. Mann, did business in Providence, R. I., under the name and style of Seymour Chemical Company, and that the respondent Seymour Chemical Company upon its organization succeeded to the business theretofore carried on by the respondent, Alexander S. Mann under such trade name.

PAR. 2. That the respondents are and have been engaged in the business of manufacturing and selling finishing materials, including soaps and degreasing materials, and shipping such products in commerce from the State of Rhode Island through and into other States of the United States; that other persons, firms, partnerships and corporations sell and ship like products in commerce in competition with respondents.

PAR. 3. That the respondents in the course of their business of selling soaps and degreasing materials, as above set forth, during the years 1918, 1919, and 1920, have given and offered to give to employees of their customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase respondent's products, and to refrain from dealing or contracting to deal with competitors of respondents.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents, the testimony and evidence, and the Commission having

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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, Seymour Chemical Company and Alexander S. Mann, and each of them, and their agents, representatives, servants and employees do cease and desist from directly or indirectly giving or offering to give to employees of customers or prospective customers, or employees of any competitor's customers or prospective customers, without the knowledge and consent of their respective employers, money, cash bonuses, commissions, or loans of money or other things of value, without an expectation of repayment, as an inducement to influence their employers to purchase or contract to purchase the products of respondents, or cause any customer of a competitor to refrain from dealing or contracting to deal with any competitor of said respondents.

And it is further ordered, That said respondents shall within sixty 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 hereinbefore set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

THE L. B. SILVER COMPANY.

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

Docket 581—September 12, 1921.

SYLLABUS.

Where a corporation engaged in the purchase, breeding and sale of thoroughbred hogs,

- (a) Falsely advertised and otherwise stated to the public that the pigs bred for, named, and sold by it as Ohio Improved Chester or O. I. C. pigs are a separate and distinct breed from that known as Chester Whites;
- (b) For the purpose of securing trade made such statements in its advertisements, circulars, and otherwise, as O. I. C. hogs are "not liable to cholera"; "Are not liable to cholera and other diseases as are the black or dark hogs"; "This has been demonstrated many times, especially throughout the western states," the facts being that no one breed is less susceptible to such scourge than any other, white hogs being if anything a little more susceptible than the black, and that the O. I. C. hogs have not become popular on account of any alleged hog cholera or disease-resisting qualities;
- (c) For the purpose of securing trade falsely advertised and otherwise publicly stated that owing to its extensive shipments of live stock it enjoyed special express rates;
- (d) Advertised and otherwise publicly stated that two of its O. I. C. hogs weighed 2,800 pounds, and that it would ship to any purchaser a sample pair of such famous hogs on time and give the agency to the first applicant, the facts being that the largest hogs used by it for breeding purposes do not weigh more than 500 or 600 pounds, though there was some evidence that over 50 years ago two sold by the founder of the so-called O. I. C. breed reached such weight;
- (e) Advertised and otherwise generally offered what it called Chester Whites at 50 per cent less than the price at which it contemporaneously offered O. I. C. pigs, declining on one pretext or another to fill orders secured for the former, but endeavoring, sometimes successfully, to persuade those so ordering to accept O. I. C. pigs in lieu thereof; and
- (f) Falsely advertised continuously, and otherwise publicly stated that there had been "no cholera, foot and mouth, or any other contagious disease in our locality for over 50 years":

Held, That such false and misleading advertising and such misrepresentations and 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 L. B. Silver Co., hereinafter referred to as the respondent, has been and is using un-

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fair 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 L. B. Silver Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, and having its principal office and place of business in the City of Cleveland in the State of Ohio.

PAR. 2. That the respondent is, and for more than six years last past has been engaged in the business of buying hogs of various ages and of both sexes, and selling and shipping them to purchasers located in the various states of the United States, and in so doing has been and is competing with others engaged in breeding, dealing in, and selling thoroughbred hogs in interstate commerce.

PAR. 3. That in the course of conducting its business, as mentioned in Paragraph 2 hereof, respondent has represented and asserted from time to time during the period aforesaid and still does represent and assert by means of various advertisements, articles and printed communications published in newspapers, journals, and periodicals circulated in and among the various states, and by means of circulars, letters and other means of communication sent through the United States mails or otherwise distributed or published to, in and among the several states of the United States, that it is a breeder and shipper of thoroughbred hogs, and sometimes that it is the most extensive breeder and shipper of thoroughbred hogs in the world, when, as a matter of fact the respondent is not a breeder but buys its pigs and hogs from farmers with whom it claims to have contracts for the raising and breeding of pigs, particularly of the Chester White breed which the respondent characterizes as Ohio Improved Chesters or O. I. C., or Famous O. I. C., which pigs and hogs when so purchased respondent sells and ships to various purchasers located in the several states of the United States.

PAR. 4. That by means of [the methods] and during the times alleged in Paragraph 3 hereof, respondent has represented, asserted, and published, and still does so represent, assert and publish that said alleged breed known as Ohio Improved Chesters or O. I. C.'s, or Famous O. I. C.'s is a breed of hogs separate and distinct from Chester White Hogs, and that said alleged breed is superior to the Chester White breed; that to lend color to said representation respondent has from time to time during the times aforesaid, among other things, advertised by the means aforesaid that it would sell Chester White

Pigs at a price substantially less, to wit: about 25 per cent less per pair than that for which it advertises to sell O. I. C.'s, that respondent usually endeavored to induce those ordering Chester White pigs at such less price to reconsider and accept O. I. C.'s at the increased price, that when such prospective customer insisted on receiving Chester White pigs as advertised, respondent would either refuse to deliver, usually assigning some pretext such as that it had discontinued breeding Chester White pigs, or would sell and ship pigs of inferior type but of the same breed and many times from the same litter from which respondent was selling alleged O. I. C.'s.

PAR. 5. That by means of [the methods] and during the times alleged in Paragraph 3 hereof, respondent has represented, asserted and published that said alleged breed of O. I. C.'s is not susceptible to cholera and other diseases; that there has been no cholera, foot and mouth, or any other contagious disease in respondent's locality for over 50 years; that the O. I. C. hog escapes cholera, pneumonia and other diseases where others are swept away; that the genuine O. I. C. possesses a power to repel disease in a degree unknown to other breeds; that the respondent has bred O. I. C. hogs for 53 years and has never lost a pig with cholera or any other contagious disease, and many other statements of like or similar character and import, while as a matter of fact the said Ohio Improved Chester hogs or O. I. C.'s are no other than, or different from Chester White pigs, and are not peculiarly immune to or exempt from disease.

PAR. 6. That during the times aforesaid, respondent has by means of printed circulars, letters, and other communications falsely represented that it had secured greatly reduced express rates on its live stock; that the express companies had agreed to give stock shipped by respondent special rates.

PAR. 7. That respondent, by the means and during the times alleged in Paragraph 3 hereof, represented and asserted that two of respondent's alleged breed of O. I. C. hogs weighed 2,806 pounds, such representations being so made and asserted as to mislead a prospective purchaser to believe that two O. I. C. hogs were then in existence or recently had been in existence weighing 2,806 pounds, whereas said representations referred to hogs which are alleged to have existed in the year 1868.

PAR. 8. That the representations, assertions and advertising matter referred to in Paragraphs 3, 4, 5 and 6 hereof were and are false, and made by respondent knowing them to be false, and with the intent that prospective purchasers of thoroughbred hogs should be misled and thereby induced to purchase stock from respondent instead of from its competitors.

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, The L. B. Silver Co., charging it with the use of unfair methods of competition in commerce in violation of the provision of the said Act.

The respondent, The L. B. Silver Co., having entered its appearance by its attorneys, Messrs. White, Johnson, Cannon and Speith, and having filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint, and on behalf of the respondent in support of its answer before George McCorkle, 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 conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The L. B. Silver Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio. For some years previous to and at the time of the issuance of the complaint in this action it had its office and principal place of business in the City of Cleveland, State of Ohio. That since the said issuance of said complaint it removed its office and principal place of business and it is now located in the city of Salem, in the State of Ohio.

PAR. 2. That the respondent advertises itself as a breeder of hogs. In a strict sense, this is not true. A breeder of hogs is a person who owns the sow at the time of conception regardless of the ownership of the sire. A broker of hogs is one who buys and sells hogs which are bred by others. The respondent buys sows and boars at large prices. The sows, and sometimes the boars, are sold at pork prices to farmers for the purposes of raising the young for the respondent. The respondent directs the mating of the sows and boars. When the young are six weeks old, the respondent buys such of the young it selects at Pittsburgh pork prices, plus an additional amount per pound up to a certain weight. These young the respondent uses to fill its customers' orders. As the respondent controls the mating and the sows and boars are sold to the farmers for breeding purposes

only, and not to convey all title, right and interest in them, the respondent may properly be called a breeder.

PAR. 3. That the respondent advertises and otherwise states to the public that the pigs bred for it and named and sold by it as O. I. C. pigs are a breed separate and distinct from the breed of pigs known as Chester Whites. The fact is that the O. I. C. pigs and the Chester White pigs are one and the same breed. The word breed refers to a class of animals derived from a proved foundation stock that reproduces from generation to generation its special characteristics whereby it may be distinguished from other breeds of live stock. This definition of breed in its essential elements is thought to be correct by all hog breeders, including the respondent itself. If two so-called different breeds of hogs are so near alike that a person could not tell the difference between the animals of one breed and the animals of the other breed, alleged to be different, the two breeds must be regarded as the same breed. If two so-called breeds of hogs were so near alike that if any one animal of one breed was compared with any one of the other so-called breed and no difference could be seen between the two animals, it would not be possible to maintain that the two so-called breeds were different breeds. It is the general consensus of opinion by disinterested persons, including experts, eminent raisers of pure-bred hogs, veterinarians, stock buyers, men long engaged in the practice of hog raising, and Carl Silver himself, the respondent's president, that hogs which fairly represent true types of O. I. C. and Chester White have such sameness of characteristics that they can not be distinguished.

PAR. 4. That the Chester White pigs and the so-called Ohio Improved Chester pigs, or O. I. C. pigs, are one and the same breed, and are not, as claimed by the respondent, separate and distinct breeds of hogs, is also shown by the following facts found: The foundation stock and the breed history of the Chester White and the so-called O. I. C. pigs are the same. The Chester White breed originated about 1820 by crossing native white pigs of Chester County, Pa., with an imported boar of a breed known as Bedfordshire and some white Chinese pigs obtained from England about that time. L. B. Silver, the founder of the so-called O. I. C. pigs, obtained about 1863, in New York, a herd of these Chester Whites which had been taken from Pennsylvania. These pigs Silver took to Ohio and, as he says, by careful selection and breeding within the breed and without the introduction of any animals of any other breed, he improved the type of these Chester Whites and called them the Ohio Improved Chesters, or O. I. C.'s. Other breeders of Chester Whites,

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for instance, Mr. Todd, also improved the breed by careful selection and breeding within the breed and without the introduction of any animals of any other breed. These breeders did not claim they originated any new breed, but considered their types as Chester Whites.

PAR. 5. That all authors of any national reputation of books on breeds of farm animals and on breeds of swine, who have themselves made any personal investigations into the origin and history of the Chester White breed and the so-called O. I. C. swine, and who have not relied wholly upon the literature and advertising matter of the respondent, are convinced, and so state in their publications, that the O. I. C. is only a strain or type of Chester Whites and belongs wholly and entirely to the Chester White breed. That authors who once stated that the O. I. C.'s are a different and distinct breed from the Chester White relied upon and were misled by the literature of the L. B. Silver Co., the respondent. That further investigation and research have convinced these authors that such literature of the respondent was not correct and that the O. I. C. and Chester White are one and the same breed. That the works of these authors were not written with a view to any litigation nor to any litigable affair; that they were published primarily for their profession and in the interests of swine industry; that it was their understanding that every conclusion made in their writings would be subject to careful professional criticism, and that the statements made therein would be ultimately open to certain refutation and denial, if not well founded; that this thought was always in their mind in everything they have written; that they understood that their reputation depended upon the correctness of their data and the validity of their conclusions drawn therefrom; that they might better not have written their articles and books than put forth statements in which might be detected a lack of sincerity of method and accuracy of results; that no criticism or comment or further investigation or data gathered by any of them save witness Ewing, and he corrected his erroneous statements, have been made since the publication of their articles that lead them to believe the statements made therein as inaccurate.

PAR. 6. That at all the important state, national and international fairs, expositions and live-stock shows, the O. I. C. pigs are classified as Chester White pigs, or as belonging to the Chester White breed. At some of the fairs, induced to do so for financial considerations, fair directors have given to O. I. C. show animals a *special*, but not a *separate*, classification. This special classification is not given because the O. I. C. is thought by these directors to be a breed separate and distinct from the Chester Whites. All this is true in Ohio, the home state of the O. I. C. pigs. Carl Silver, the president of the respondent,

stated that the fairs and expositions throughout the United States are not recognizing the O. I. C. pigs as anything else than Chester Whites.

PAR. 7. That each individual thoroughbred animal of a particular breed has a pedigree. This pedigree gives the ancestral history of the individual animal back to the foundation stock of its breed. These pedigrees are all kept in a record. Each separate breed of swine has an association whose principal function is to keep an accurate record of the pedigrees of the individual animals belonging to the breed. The pedigree of an animal belonging to another breed is not permitted to be recorded in the record of any other breed, nor are crossbred or mongrel bred animals. These different record associations have an association known as The National Association of Swine Records. The O. I. C. Swine Breeders' Association applied for membership in The National Association of Swine Records upon the ground that it was an association recording a breed separate and distinct from the Chester White pigs. The National Association of Swine Records, after a careful investigation into the facts, and after due deliberation, refused to admit the O. I. C. Association as an association recording a breed separate and distinct from the Chester White. This National Association of Swine Records regarded the O. I. C. Association as one recording only Chester White Records and as such offered it membership.

PAR. 8. That each association recording pedigrees of thoroughbred animals has rules and regulations for recording these pedigrees. They serve to preserve the purity of the breed by preventing registration of crossbred and mongrel bred animals. The rules and regulations for recording the pedigrees of the O. I. C. pigs are found in volume 10 of the O. I. C. Swine Breeders' Association Record. The rules for recording in the O. I. C. Swine Breeders' Association state that a pedigree to be eligible to record in this Association shall be:

First. The direct offspring of O. I. C. sire and dam recorded in the Record of the O. I. C. Swine Breeders' Association, or some existing reputable record of Chester White Swine. The International O. I. C. Record Association, since date receiver was appointed (January, 1899), is not recognized as a reputable record.

Second. The Secretary may, at his discretion, record animals the sire or dam of which is an O. I. C., recorded as above, the other direct ancestor of which is recorded in some reputable C. W. Record or in the International Record previous to the appointment of the receiver.

Third. All applications for record not in first or second clause of these rules shall be referred to the Board of Trustees, and, if approved by a majority of said Board, shall be admitted to record.

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PAR. 9. Eminent professors of swine breeding teach their classes that these rules prove that the O. I. C. pigs and Chester White pigs belong to the same breed. Practical prominent hog growers of National reputation state that under these rules both the O. I. C. pigs and the Chester White pigs and crosses of O. I. C. pigs with Chester White pigs may be and are recorded in the O. I. C. Swine Breeders' Association Record, and that this proves that the O. I. C. pigs and the Chester White pigs are one and the same breed. Frost, a witness for the respondent, official in the O. I. C. Swine Breeders' Association, and a winner of many prizes at the St. Louis Exposition, showed his pigs as Chester Whites at that show and advertises as Chester Whites the O. I. C. pigs he showed there and which won the prizes. The Canadian Government, the head of the Swine Department, Bureau of Animal Industry, Department of Agriculture for the United States Government, the Ohio State authorities on swine, buyers of stock and swine in and around Salem, Ohio, the local veterinarians and the general public in and around Salem, Ohio, all consider the O. I. C. pigs and the Chester Whites as one and the same breed, and that the two names mean and refer to them as animals of the same breed.

PAR. 10. That, as stated above, each different breed of pigs has its own records of the pedigrees of the animals belonging to the breed. The pedigree of an animal of one breed can not be registered in the record of pedigree of another breed. In 1884 the first record of pedigree of the Chester White breed was established. Previous to this only private records of Chester Whites were kept. The Association keeping these records was then and is now called The National Chester White Swine Record Association. For seven years the pedigrees of all the so-called O. I. C. pigs were registered as Chester Whites in the records of this Chester White Association. From 1891 to 1895 an attempt was made by L. B. Silver and H. A. Jones to create a record for Silver's O. I. C. pigs as a new breed. These men established in those years The International O. I. C. Record Association. This was unsuccessful because Silver could not show he had a new breed in the O. I. C. pigs. In 1897 L. B. Silver started a new record association for his pigs. This is now in existence and is known as the O. I. C. Swine Breeders' Association. All the pedigrees of all the hogs recorded in the International O. I. C. and in the O. I. C. Swine Breeders' Association trace back into The National Chester White Swine Record, or some other record of Chester White Swine records. In Volume 10 of the O. I. C. Swine Breeders' Association Record their record is called a "Chester White Record."

PAR. 11. That from the very beginning of L. B. Silver's business and down to the present time the respondent and its predecessor in business, L. B. Silver, have purchased and used pure-bred Chester White boars for mating to their own animals to produce pigs they sold to their customers as pure-bred O. I. C. pigs. Neither the respondent nor its predecessor have ever used boars of any other breed. From time to time the respondent has bought numbers of famous pure-bred Chester White boars, reregistered them in the O. I. C. Swine Breeders Association Record, mated them to O. I. C. sows used for its breeding purposes and sold the progeny as pure-bred O. I. C. pigs, and gave to the purchasers pedigrees of the progeny sold, and registered these pedigrees in the O. I. C. Swine Breeders Association Record as pedigrees of pure-bred O. I. C. pigs,

PAR. 12. That for the purpose of judging the merits of the characteristics of the individual hogs belonging to it, each breed of hogs has its own score card or standard of excellence. The official score card for any particular breed describes the outstanding characteristics of that breed as a whole. When two breeds of hogs, alleged to be different, have the same score card the two are not different breeds, but are one and the same breed. No two different breeds use the same score card. The score card for the O. I. C.s has been, since their earliest days, identical with that of the Chester Whites. Previous to the formation of The International O. I. C. Record Association in 1895, the score card for the O. I. C. was identical with that of the Chester White. When that association was formed it continued to use the Chester White score card. The O. I. C. Swine Breeders Association organized in 1897, adopted and used until 1905 the Chester White score card. From that year until 1913, the O. I. C.s used a very slightly different score card. In 1913 the O. I. C. Swine Breeders Association adopted the Chester White score card and has used it ever since. The fact that the score card for the O. I. C. and the Chester Whites are the same is indisputable evidence offered by each association they are handling the same breed.

PAR. 13. That for the purpose of securing trade, the respondent, in its advertisements, circulars, booklets, pamphlets, letters and other matter sent through the mail, stated that the O. I. C. hogs are "not liable to cholera"; that "they are not liable to cholera and other diseases as are the black or dark hogs"; that "this has been demonstrated many times especially throughout the western states"; that "while we do not guarantee that the O. I. C. hog might not contract cholera under unfavorable conditions, yet we do claim that the genuine O. I. C.s do possess a power to repel disease in a degree

unknown to other breeds"; that "in sections where the black hogs are swept off by thousands these were unaffected"; and, finally, that "since it is becoming extensively known that the O. I. C.s are not prone to contract cholera and other diseases as are other breeds, the demand is wonderfully on the increase, and their popularity is no longer confined to the United States, but is becoming almost world-wide."

These statements mean and are meant to convey to the purchasing public that the O. I. C. pigs are immune from and resistant to such devastating diseases as hog cholera, foot-and-mouth disease, tuberculosis and other contagious diseases. Hog cholera is the worst scourge in the hog-raising world. It causes more damage and kills more hogs than all other hog diseases put together. No one breed of hogs is less susceptible and more disease resistant than any other breed. White hogs are just as susceptible and perhaps a little more so to hog cholera than black hogs. The United States Government has continuously for the past 26 years been trying to produce a type of hogs immune to hog cholera. It has had no success. Individual pigs sometimes show immunity, but the progeny of immune pigs will not produce cholera-immune pigs. In carrying out experiments to produce a cholera-immune type of pig the United States Government "used hogs of all colors, kinds and descriptions." No matter how healthy an animal may be, no matter how healthy the stock may be from which he is descended, the animal, if put where there is a contagious disease, especially after it is weaned, is just as apt to be affected by contagious disease, such as hog cholera, tuberculosis, foot-and-mouth disease, such as hogs may have, as any animal that has not had careful bringing up, and has not had the ancestral history of the others. During the year 1920, the chief of the division of hog-cholera control, Bureau of Animal Industry, Department of Agriculture, and director of field work, has had 143 men engaged in 43 States on hog-cholera control. It was not found that the O. I. C. pigs were less liable to contract hog cholera than any other breed. The O. I. C. hogs have not become popular on account of any alleged hog cholera or disease-resisting qualities. A breeder for many years in the Middle West of O. I. C. pigs for L. B. Silver lost 2,000 O. I. C. pigs from hog cholera.

PAR. 14. That the respondent for the purpose of securing trade, advertised and otherwise made public the following statement: "Owing to our extensive shipping of live stock the express companies have agreed to give stock shipped by us special rates." See Commission's Exhibit No. 504.¹ The facts are:

¹ Not printed.

That at the time such statement was so published by the respondent, and at the present time, all shipments of pigs by express companies, were and now are by express companies charged under Official Express Classification first-class rates when crated and no exceptions were made from Cleveland or any other point. That all shippers of live stock on all the Express Companies' lines have the same relative rates and that there was then and now is no discrimination whatever against any particular point, and in favor of any other point. That all shippers at that time and ever since have, paid the regular first-class rate prescribed by the Interstate Commerce Act. That the respondent admits in its answer the truth of the charge of the complaint in this particular; and, by paragraph 7 on page 45 of its brief, that it had not and does not now have any right to make the said statement.

PAR. 15. That the respondent for the purpose of securing trade, advertised and otherwise made public the following statement: "Two of our O. I. C. Hogs weigh 2,806 pounds," and that it would ship to any purchaser a sample pair of these famous hogs on time and give the agency to the first applicant. That there is no proof in this case that any O. I. C. hog ever weighed at any time one-fourth of that weight. The largest hogs used by the L. B. Silver Co. for breeding purposes are not more than 500 or 600 pounds in weight. There was hearsay evidence only to the effect that, in 1867, 54 years ago, L. B. Silver sold two very small pigs, that these were afterwards castrated, and that they grew to weigh 2,806 pounds. The pedigrees of these pigs were never recorded.

PAR. 16. That the respondent has from time to time by advertising and other means offered to sell to the public throughout the United States, what it called Chester White pigs, at a price about 50 per cent less than the price at which, at the same time, it offered to the same public to sell O. I. C. pigs. When acceptances of these offers to sell what it called Chester White pigs came to the respondent it endeavored and sometimes successfully to persuade those ordering Chester White pigs at said less price to reconsider and to accept in lieu thereof O. I. C. pigs at the greater price. When such prospective purchasers insisted upon receiving Chester White pigs upon the terms offered, and refused to purchase O. I. C. pigs, the respondent would refuse to deliver at all its so-called Chester White pigs upon the ground either that it had no Chester White pigs or that it had discontinued breeding them. The respondent admits in its answer, paragraph 4 thereof and in its brief, paragraph 4 on page 35 thereof, that it has done all these things and that its action in doing so is indefensible, and that since one of the United States Post Office Department in-

vestigations into this same subject matter it no longer does do these things. There is nothing in the evidence in this case contrary to this claim of discontinuance.

PAR. 17. That the respondent has continuously advertised and made public and transmitted through the mails the statement that there has been "No cholera, foot-and-mouth or any other contagious disease in our locality for over 50 years." See Commission's Exhibit Nos. 30 and 8, postmarked May 23, 1920, and June 1, 1920.¹ This statement is not true. The locality referred to by said statement, and the one within which persons breed the so-called O. I. C. hogs for the respondent, is a stretch of territory 30 miles long and 20 miles wide, situated partly in Columbiana County and partly in Mahoning County, Ohio. Salem, where the office and principal place of business of the respondent is, and Leetonia, the respondent's shipping point, are both in Columbiana County and within the said territory. The official duties of the State Veterinarian of Ohio require him to keep a record of all cases of hog cholera, tuberculosis and foot-and-mouth diseases. The State of Ohio, by regulations, requires its field veterinarians to report to the State Veterinarian all outbreaks of such diseases. The State's field veterinarians in obedience to those regulations have sent to the State Veterinarian official reports of hog cholera and tuberculosis occurring in and around Columbiana County. Tuberculosis is a contagious disease. It is transmissible from cattle to hogs. From November 21, 1919, to May 1, 1920, one field veterinarian alone sent in to the State Veterinarian reports of 142 cases of tuberculosis of cattle in Salem, Columbiana County, Ohio. Salem is in the "locality" mentioned in the said statement and within the territory above described. The present State Veterinarian for Ohio is Dr. Burnett. He has had this office since 1916. During his term of office he has had cases of hog cholera in and around Columbiana County. Dr. D. J. Frame, deputy state veterinarian for Ohio, in active practice in Ohio since 1909, has treated hogs in Columbiana County for hog cholera. He cited several cases among which were cases of O. I. C. hogs. On January 22, 1920, there was an outbreak of hog cholera on the farm of the C. E. Trotter Estate, Salem, Columbiana County, Ohio, which caused the death of 35 hogs. Post-mortem examination by two veterinarians showed the death of these 35 hogs was due to hog cholera. As field veterinarian for the State of Ohio, Dr. Maxwell reported this case to his chief, Dr. Burnett. In 1916, Dr. Shipman, local veterinarian in Salem, Columbiana County, Ohio, reported to Dr. H. H. George, United States Veterinarian at Cleveland, Ohio, the deaths of swine from hog

¹ Not printed.

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cholera in and around Salem, Ohio. Dr. McCandless, a graduate in 1915 of Chicago Veterinary College, has practiced since 1915 in and around Salem, Ohio. From 1915 to the middle of 1920 he has had from 12 to 15 cases of hog cholera every year around Salem, Ohio. He sends to the State Veterinarian of Ohio for antihog cholera serum. Between 40 and 60 hogs died of hog cholera in 1920 at one time in Leetonia, Ohio, a place within the territory in which respondent has its breeders and which is the shipping point of the respondent.

CONCLUSIONS.

That the methods of competition set forth in all but the first and second paragraphs of the foregoing findings of fact, under the circumstances therein set forth, are unfair methods of competition in interstate commerce, and in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein wherein it alleged that it had reason to believe that the respondent, The L. B. Silver Co., had been, and was at the time of the issuance of the said complaint, using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by White, Johnson, Cannon and Speith, its attorneys, and having filed its answer to said complaint, and the issues so raised having, pursuant to due notice given respondent, come on for hearing before a duly authorized Examiner of the Commission, and testimony having been introduced in support of the charges alleged in the complaint, and the respondent having appeared in person and by attorney and introduced its evidence in denial thereof, and the attorney for the Commission, and the attorneys for the respondent having submitted briefs and oral arguments herein, and the Commission being duly advised in the premises, and upon its consideration thereof having made its report in writing wherein it stated its findings as to the facts and its conclusion that the 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 Com-

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mission, etc.," which said report is hereby referred to and made a part hereof:

Now, therefore, it is ordered, That the respondent, the L. B. Silver Co., its officers, directors, agents and employees cease and desist from representing, in interstate commerce, to the public, by circulars, pamphlets, catalogues, trade journals, periodicals, newspapers or otherwise;

1. That the so-called Ohio Improved Chesters, or O. I. C.'s, or Famous O. I. C.'s are a breed of hogs separate and distinct from the Chester White breed of hogs;

2. That it has no Chester White pigs when, in fact, it has Chester White pigs, though called by it O. I. C. pigs; or that it has Chester White pigs and O. I. C. pigs, as if the latter were a different and more valuable breed, when, in fact, they are one and the same breed; or that it has no Chester White pigs with which to fill orders for Chester White pigs at its quoted prices or otherwise, when, in fact, it has Chester White pigs, though called by it O. I. C. pigs; or that it has discontinued to breed Chester White pigs, when, in fact, it is continuing to breed them, though designated by it O. I. C. pigs;¹

3. That the so-called O. I. C. pigs, as a breed, or otherwise, are not liable to cholera, foot and mouth disease, tuberculosis, and other contagious diseases; that there has been no cholera, foot and mouth disease, tuberculosis nor other contagious diseases in respondent's locality; that the O. I. C. pigs possess a power to resist disease in a degree unknown to other breeds; that in localities where contagious diseases have swept off the dark and black hogs the O. I. C.'s were unaffected; from in any way representing to the public that the O. I. C. pigs are more resistant to disease than are other breeds of hogs;

4. That in the shipment of live stock the respondent enjoys or has enjoyed, either or both, from express companies rates of transportation lower than the rates granted to other shippers of live stock by the said express companies;

5. That two of its hogs weigh 2,806 pounds, that such hogs are in existence, that their progeny is for sale by the respondent.

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

¹ The paragraph is printed as modified by the Commission, December 5, 1921.

Complaint.

FEDERAL TRADE COMMISSION

v.

THE CHECK WRITER MANUFACTURERS, INC., AND
WILLIAM HUTTER.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 602—September 12, 1921.

SYLLABUS.

Where a corporation and an individual, engaged in the business of buying, rebuilding, repairing and selling used check writers in competition with manufacturers of new machines sold by them to the ultimate users only,

- (a) Advertised and sold used machines as new;
- (b) Widely advertised, offered and sold used machines of a certain make to the trade as new machines, at lower prices than the manufacturer's;
- (c) Falsely advertised and otherwise represented that they were authorized to deal in and sell said manufacturer's new machines;
- (d) In order to mislead buyers into believing they were purchasing new machines manufactured by the corporation, substituted plates bearing its name and serial numbers to correspond with those on machines being currently marketed, for the original name plate and serial number of the manufacturer; and
- (e) Used the word "manufacturers" in its corporate name, notwithstanding the fact that it did no manufacturing;

With the effect of discrediting the manufacturer and its prices, and of embarrassing it in its relations with its salesmen, who considered said corporation a bogus independent operated in direct competition with them:

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 by it that Check Writer Manufacturers, Inc., and William Hutter, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges, in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Check Writer Manufacturers, Inc., is a corporation organized under the laws of the State of New York, and maintains its principal place of business at No. 200 Broadway, New York City. Respondent, William Hutter, is an individual, a stockholder in respondent just above named, and its secretary and

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manager, and also maintains his office and principal place of business at No. 200 Broadway, New York City.

PAR. 2. That said respondents now and for more than two years last past were engaged in the business of rebuilding check protecting machines of various makes, and selling the same, and in buying and selling new check protecting machines in interstate commerce among the several States of the United States, territories thereof, and the District of Columbia, in direct competition with other persons, firms copartnerships and corporations similarly engaged.

PAR. 3. That for more than one year last past the respondent in the distribution and sale of check protecting machines as aforesaid (1) falsely and fraudulently represented themselves to be distributors and sales agents for the Todd Protectograph Co. of Rochester, N. Y., which corporation was and is engaged in the business of manufacturing and selling in interstate commerce various types of check protecting machines; (2) sold second hand and re-built check protecting machines representing them to be new machines; (3) mutilated trade marks and patent notices on check protecting machines and substituted therefor fictitious numbers; (4) falsely and fraudulently advertised in newspapers, circulars, letters and other forms of advertising, that they carried in stock new machines manufactured by the said Todd Protectograph Co.; (5) advertised and offered to sell new machines manufactured by the said Todd Protectograph Co., and when they have received orders for such machines have filled them in many instances with second hand machines.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, 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, The Check Writer Manufacturers, Inc., and William Hutter, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents, The Check Writer Manufacturers, Inc., and William Hutter, having entered their appearance by their attorneys, Messrs. Kornbleuh and Hutter, and having filed their answer herein,

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hearings were had and evidence was thereupon introduced in support of their answer before George McCorkle, 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 conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the applicant, The Todd Protectograph Co., is a New York Corporation with its office, principal place of business and factory in Rochester, N. Y. It has been engaged for twenty years, next preceding the issuance of this complaint on May 4, 1920, in manufacturing various kinds of patented check protecting machines and selling them in interstate and foreign commerce.

PAR. 2. That the respondent, The Check Writer Manufacturers, Inc., is a corporation organized in New York State in June, 1919, and has its office and principal place of business at 200 Broadway, New York City. It does business in other States and sells and ships check writers and check protecting machines from New York State into other States. It has a capital stock of \$10,000, consisting of 100 shares at a par value of \$100 each. William Hutter, the other respondent, owns one share, his sister-in-law owns another share, and his wife owns the remaining 98 shares. Hutter is the Secretary and General Manager of the corporation.

PAR. 3. The respondents, since the incorporation of The Check Writer Manufacturers, Inc., have been and now are competitors in interstate commerce of the said The Todd Protectograph Co. and for more than two years next preceding said date were and now are engaged almost wholly—90 per cent—in the business of rebuilding second-hand and used check writing and check protecting machines of various makes and selling the same, and in buying and selling to a limited extent—10 per cent—new check protecting machines, in interstate commerce among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 4. That The Todd Protectograph Co. sell their machines direct to the ultimate user. They distribute them through their own salesmen to whom only they give rights to sell their machines. No machines are sold by the Company or its salesmen to dealers. To insure the carrying out of this policy the Company uses the following system of distribution:

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Each general agent or branch manager has a defined territory, and has guaranteed to him by The Todd Co. an exclusive sales right within that territory. No machines are sold in any other manner. This practice is followed by manufacturers of other check writing machines. The Todd Protectograph Co. keep a very careful record in Rochester, N. Y., of the disposition of each machine from the day it is manufactured until delivered to a customer. Each branch office of The Todd Protectograph Co. receiving the machines from the factory, receives from the company a green slip. This slip is made out in Rochester, N. Y., with the following information: The date on which machines were filed by the company and the branch office, the name of the model, and the particular number of the machines in that series which the slip represents. That is all the information the green slip contains at the time it is sent from Rochester to the branch office. Subsequently, the branch office puts on this green slip the name and address of the purchaser, the salesman's order number, the date the machine was paid for by the customer, and the notation as to the allowance which may have been made for a machine taken in trade or part payment. Every salesman who takes out a machine from a branch office gives a receipt to the company for that machine. Before a salesman may get another machine he must account to the company for the one taken out. When the machine is sold the salesman must bring to the company an order for it signed by the purchaser, together with the customer's check payable to The Todd Protectograph Co. He is not allowed to accept cash or to make collections. By this method the company is able to trace to the ultimate customer every machine sold. The method of distribution thus adopted prevents The Check Writer Manufacturers, Inc., William Hutter and others from dealing in new machines.

PAR. 5. That the business of the respondents consists in buying, rebuilding, and repairing second-hand and used check writers. They manufacture no machines. They do business all through the United States and export to Canada and to South America. They have no salesmen. All local and out-of-town business is solicited by advertisements, circular letters, price lists, and catalogues sent to stationers and office-fixture dealers throughout the country. Through these advertising agencies they represent to the public that they sell new and rebuilt machines.

PAR. 6. That manufacturers have upon their machines plates designating the name of the manufacturer and the name and serial number of the machine. The respondents take off these name plates from the machines which come into their possession and substitute in place thereof new name plates of The Check Writer Manu-

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facturers, Inc., bearing new serial numbers. These new name plates respondents use as an advertisement to get further orders and to make buyers believe the machines are new machines made by Check Writer Manufacturers, Inc. When respondents first started to make the present name plates, they began with an arbitrary serial number of 750,000 which agreed with the serial numbers of The Todd machines then manufactured.

PAR. 7. Since respondents do not sell as many machines as the Todd Co., the respondents' serial numbers fell behind the serial numbers [of] Todd machines. Respondents' practice then was arbitrarily to advance respondents' serial numbers to keep them a little above the serial numbers on the Todd Co. machines. They also follow this practice with reference to machines of other manufacturers.

PAR. 8. That sometimes a manufacturer's salesman will sell to respondents a new machine. The salesman then detaches and takes with him the name and number plate thereon. After respondents sell the machine the manufacturer's salesman goes to the buyer, restores the manufacturer's name and number plate and reports the sale to the company. This is the way respondents get new machines to sell.

PAR. 9. That The Todd Protectograph Co. and other manufacturers of check writers and check protecting machines maintain, for the benefit of their purchasers and no others, service or repair departments in different cities to give for one year free repair and upkeep service. If during that time the machines do not operate satisfactorily, or if they need repairs, the manufacturers, upon proper notice, make the necessary adjustments and repairs. Purchasers of used, second-hand, or rebuilt machines are not entitled to this service. The customer who calls on the telephone or writes a letter and asks for service on his machine is required to give the number to enable the manufacturer to identify the particular model or kind of machine in question, and therefore the manufacturer is in a position to supply the proper parts and proper color of ink, and so on. This information required of the person requesting service, together with the company's record, enables the company to determine whether the machine is in the hands of the person authorized to possess it.

PAR. 10. That purchasers of second-hand or used machines from The Check Writer Manufacturers, Inc., and from William Hutter believe their machines are new, that they are entitled to this free service from the Todd Protectograph Co. or other manufacturers, and they demand it. The manufacturers then are either obliged to repair the machine at their own expense or to allow the purchaser to continue

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to use a machine that is not giving good service. These purchasers then become dissatisfied, and disparage the machines.

PAR. 11. That there is another way in which the methods and practices of the two respondents injuriously affect the business of manufacturers. The practice of the Check Writer Manufacturers, Inc., in selling second-hand and rebuilt machines as new machines destroys the public's confidence in the salesmen of the Todd Protectograph Co. and discredits that company. Salesmen throughout the country find advertisements, circulars and advertising matter sent to dealers by the Check Writer Manufacturers, Inc., offering Todd machines at lower prices than the manufacturer sells them.

PAR. 12. That magazine advertisements of the Check Writer Manufacturers, Inc., are published with great regularity in the principal magazines that go to the stationery trade, and hundreds of thousands of copies of them distributed in the last year or two (i. e., 1919, 1920), were coming to the attention of all dealers in the country, and to Todd salesmen and all others interested in the specialty business. Where people are led to believe, as they are, that they can get new Todd machines for less than the regular Todd catalogue prices they will not buy from the Todd Co. Some of the salesmen have openly told the Todd Co. they believe the company is conducting the Check Writer Manufacturers, Inc., in direct competition with the salesmen. The practice supplants the sales of new machines by manufacturers.

PAR. 13. That on January 13, 1919, the Check Writer Manufacturers, Inc., sold Protectograph Check Writer No. 624,146, a second-hand machine, as a new Todd machine to Durel & Dodge, New York City, for \$50, whereas the market price for new Todd machines of that make was only \$45. In January or February, 1920, a Todd agent called to give service to this machine. It had a Todd label on it. The serial number on this label showed the machine was two years old. It was sold originally to R. Krause, New York City, January 4, 1917; it had on its original number 624,146.

PAR. 14. That the Check Writer Manufacturers, Inc., sold to Norwich Indemnity Co. a second-hand machine, at least a year and a half old as and for a new Todd Protectograph Check Writer and charged the company \$45 for it, which was the price of a new machine. On this machine the original Todd Protectograph Co.'s label was removed and the Check Writer Manufacturers, Inc., had substituted therefor their own label No. 750,205 in its place.

PAR. 15. That H. B. Ferguson Co., New York City, in 1920, sent in a call for service by a letter to the Todd Protectograph Co., addressed No. 200 Broadway, instead of to the correct street address, No. 15

Park Row. The Check Writer Manufacturers, Inc., are at 200 Broadway. However, the letter came to the Todd Protectograph Co., and their agent Fitzgerald called. He found that the machine, which was a Todd machine bearing a label No. 500,552, was a second-hand one. A new Todd machine of that type at that time should have a label numbered about 850,000. The Ferguson Co. was under the belief when it bought the machine from the Check Writer Manufacturers, Inc., that it was buying a new machine. The machine was from three to four years old.

PAR. 16. That Garrett Miller & Co., of Wilmington, Del., on September 23, 1919, sent to R. K. Carter, of New York City, purchasing agent for jobbing houses throughout the country, an order to buy for them one Todd Protectograph machine at \$45 less 10 per cent discount. R. K. Carter, on September 25, 1919, sent to Louis Landsberg, New York City, to have this order filled and asked that the machine be sent by Louis Landsberg direct to Garrett Miller & Co., Wilmington, Del. Louis Landsberg by telephone called up the Check Writer Manufacturers, Inc., that is, William Hutter, 200 Broadway, New York City, and asked for a new Todd Protectograph machine. The Check Writer Manufacturers, Inc., offered such a new machine to Louis Landsberg at \$45 less 30 per cent discount for cash. The machine delivered was received by Landsberg from the Check Writer Manufacturers, Inc., and sent down by Landsberg direct to Garrett Miller & Co. Soon thereafter R. K. Carter, by letter, notified Landsberg that the machine sold and shipped to Garrett Miller & Co. was not a new machine. Mr. Hutter himself assured Landsberg the machine sold him was a new machine, that it was the latest model. Landsberg asked William Hutter to write a letter confirming Hutter's statement that the machine was a new one. That he did. This letter Louis Landsberg sent to R. K. Carter. That company then sent the letter, together with one of their own, assuring Garrett Miller & Co. they were imposed upon. The machine, however, was an old one. William Hutter admitted this sale of their machine to Landsberg for Carter and that it was the one shipped to Delaware.

PAR. 17. That about October 1, 1919, William Hutter himself offered to sell to Macy & Co. absolutely new and perfect Standard \$40 Model Todd Protectograph Co.'s check writing machines. In order to make absolutely sure that Macy & Co. would get from William Hutter new machines, Macy & Co. required Hutter to write Macy & Co. a letter stating that they were new machines. This Hutter did. After the machines were delivered, advertised and placed on sale at Macy's, the New York City agent, Raymond Fink,

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of the Todd Protectograph Co., came to Macy & Co.'s, bought one of the machines, and insisted upon having it noted on the sales slip that the machine was new. The matter was then taken up with the President of R. H. Macy & Co., Jesse Isidor Strauss, who interviewed William Hutter in reference to the case and received assurances from Hutter that the machines were new. The Todd Protectograph Co. by letter again asserted that the machines were not new. After an outside and disinterested expert, consulted by Macy & Co. assured Macy & Co. that the machines were not new, Macy & Co. wrote a letter to Todd Protectograph Co. admitting the correctness of that company's contention that the machines were not new. Macy & Co. then required William Hutter to take back the machines he sold it. The fact that Macy & Co. were advertising Standard \$40 new machines for \$32.24 caused a great deal of trouble for the Todd Protectograph Co. because people would not believe the Todd Co. when told by it that the machines were not new. They thought that the mere fact that Macy & Co. were advertising them as new machines proved that they were new machines. The serial numbers appearing on the machines sold to R. H. Macy & Co. were fictitious serial numbers. Todd machines bearing rightfully those serial numbers were sold long before by the Todd Co. to western buyers.

PAR. 18. That the New York City agency of the Todd Protectograph Co. on March 1, 1918, sold to Arnstaedt & Co. a Todd check writer. On April 8, 1919, Oscar Birnbaum, a New York City salesman for the Weig Sales Corporation, sold an F & E check writer and accepted a pink top Todd check writer as a \$14 part payment. This machine Birnbaum sold for \$20. It was about a year old. The Emerson engineers, New York City, during the last of April, 1919, bought through their manager Charles R. Jenks, a Todd check writer from William Hutter, who called personally at the office and represented it to be a new machine. The price paid was \$30 cash, and a Todd Peerless Junior machine, No. 40,331, valued in the exchange at \$15. Then Mr. Mentzel, salesman for the Todd Protectograph Co., called and proved to the Emerson engineers that the machine bought by them from William Hutter was a second-hand machine. The Emerson engineers then caused William Hutter to call at their office, charged him there with untruthfully stating the Todd machine was a new one, and required him to take back the machine and return what they had paid him. This was done. William Hutter admitted he sold a Todd machine to Emerson engineers and had to take it back because they insisted it was not new.

PAR. 19. That on January 7, 1920, the Todd Protectograph Co. received at Rochester, N. Y., a letter dated January 3, 1920, from The Elizabeth Novelty Co., Elizabeth, N. J., stating they wanted the Todd Protectograph Co. to repair a machine recently bought from the Check Writer Manufacturers, Inc., of New York City, as a new machine. At the time the letter was received the Todd Protectograph Co. received the machine referred to in the letter. Witness Given, attorney for the Todd Protectograph Co., saw the machine himself and it bore the Check Writer Manufacturers' name plate similar to those introduced in evidence. The machine's serial number was 750,185. A machine bearing this number was shipped to J. Rittman, February 2, 1917, and returned afterwards to the factory by Mr. Rittman.

PAR. 20. That the Check Writer Manufacturers, Inc., has sent out check writing machines from its offices in New York into various States of the Union. For example, Page & Brown, dealers in office supplies, Charlotte, N. C., bought from the Check Writer Manufacturers, Inc., a Todd Protectograph machine, under the impression it was a new machine. Correspondence signed by William Hutter and the corporation's literature represented to Brown & Page that they were dealing with some one authorized to deal in and sell new Todd Protectograph machines. The machine, however, was a second-hand machine. This machine bore on its name plate "PEERLESS Junior Sold and Guaranteed by Check Writer Manufacturers, 200 Broadway, New York City," and bore serial number 66090. The machine was manufactured by the Peerless Check Protecting Co., which is a part of the Todd Protectograph Co. In the office of Pound & Moore, the largest stationery dealers in Charlotte, N. C., there were letters and circulars sent to Pound & Moore by the Check Writer Manufacturers, Inc. These letters and circulars represented to Pound & Moore that the respondents were authorized to deal in and sell new Todd Protectograph machines. Basing their action upon these letters and circulars, Pound & Moore sent orders to the Check Writer Manufacturers, Inc., for new Todd Protectograph machines. These orders from Pound & Moore distinctly specified that these machines were to be new. Pound & Moore made it a point never to handle anything but new machines.

PAR. 21. That the charge that the respondents mutilated trademarks and patent notices on machines manufactured by the Todd Protectograph Co. is not sustained by the evidence.

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CONCLUSIONS.

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

ORDER TO CEASE AND DESIST.

The issues in this action having been regularly brought on for trial before the Federal Trade Commission and the Commission and the respondents appearing by Kornbleuh and Hutter, their duly authorized attorneys, and the Commission having heard the allegations and proofs of the parties, and, after due deliberation, having duly made and filed its decision containing a statement of the facts found and the conclusions of law thereon,

It is hereby adjudged and hereby ordered, That The Check Writer Manufacturers, Inc., its officers, directors, agents, employees and servants, and William Hutter, an individual, cease and desist from:

1. Representing themselves individually or together to be the distributors and sales agents, either or both, for The Todd Protectograph Co.

2. Selling used, second-hand and rebuilt check-protecting machines representing them to be new machines.

3. Advertising or stating, by newspapers, circulars, letters, magazines, periodicals or otherwise, that they or either of them carry in stock new machines manufactured by the said The Todd Protectograph Co.

4. Representing, or advertising, or holding out themselves, either individually or together as manufacturers of check writers or check-protecting machines.

5. Using the word "manufacturers" in the corporate name of The Check Writer Manufacturers, Inc., or any other word, term, or phrase signifying to the trade or public that the said corporation is a manufacturer of check writers or check-protecting machines until such be the fact.

6. That each of you within 60 days from the date of the service of this order upon you report to the Commission how and in what manner you have complied with this order.

Complaint.

FEDERAL TRADE COMMISSION

v.

WILLIAM ROBINSON, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF SOUTHERN MACHINE
WORKS.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 744—October 26, 1921.

SYLLABUS.

Where an individual engaged in the business of repairing and furnishing repair parts to ships, paid and offered to pay to a ship company's port engineer and to a scaler who brought said individual work, without the knowledge or consent of the boat owners or employers of said engineer, a cash gratuity of 10 per cent of the total amount of all repair work they were instrumental in securing for him, tending thereby to induce employees of boat owners to prefer him unduly over his competitors, to induce his competitors to maintain similar practices, to increase the cost of repairs unduly and unfairly, and to increase unduly the cost of transportation to the general public:

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

AMENDED COMPLAINT.

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

PARAGRAPH 1. That the respondent, Wm. Robinson, carries on a business at New Orleans, in the State of Louisiana, under the trade name and style of Southern Machine Works.

PAR. 2. That respondent is engaged in the business, among other things, of repairing and furnishing repair parts to ships which reach the port of New Orleans, State of Louisiana, while engaged in the transportation of passengers and cargoes between ports in the various

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States of the United States, and the transportation of passengers and cargoes between ports of the United States and foreign nations, in direct, active competition with other persons, partnerships and corporations similarly engaged. That the respondent carries or causes to be carried aboard such vessels so engaged, materials and repair parts, and sends his employees aboard such vessels to install such parts and make such repairs thereon as may be required by such vessel owner.

PAR. 3. That the respondent in the course of his business as described in Paragraph 2 hereof, since January 1, 1920, has given and offered to give to port engineers, or purchasing agents, or other representatives or employees of the owners of vessels reaching the port of New Orleans, without the knowledge and consent of their employers, and without other consideration therefor, valuable gifts and gratuities in the form of money amounting to approximately 10 per cent of their bills for repair work, to induce such engineers, employees, or representatives to have such vessels, for the owners thereof, repaired, and repair parts for same furnished by the respondent. That as a result of the giving of such valuable gifts and gratuities in the form of money, the respondent adds to his annual cost of doing business and is compelled to and does add to his charge for the repair work done and for the repair parts furnished an amount approximating 10 per cent of a fair charge for such services, which is in addition to a fair charge for such services, and which additional amount the customers of the respondent, and eventually the public, must pay. That as a further result of the respondent's said practices, all of his competitors are affected, and the giving of valuable gifts and gratuities in the form of money, as aforesaid, has tended to cause competitors of the respondent, who in many instances have not engaged in such practices, to give engineers, officers, employees and other representatives of the owners of ships, valuable gifts and gratuities in the form of money, of substantially equal value and like amounts to those paid by respondent as aforesaid, for the same purposes and with the same effect, as a means of protecting their trade and preventing respondent from obtaining the business enjoyed by them.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondent, William Robinson, doing business under the trade name and style of Southern Machine Works, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said Act.

The respondent having entered his appearance and filed his answers herein, admitting all of the allegations of said amended complaint and each count and paragraph thereof, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed to make and enter its report, findings as to the facts and order, without the introduction of testimony in support thereof, and that said answers shall be taken and considered as and in lieu of testimony, and whereupon 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. That the respondent, William Robinson, is an individual trader doing business in the City of New Orleans, State of Louisiana, under the trade name and style of Southern Machine Works, conducting a general machine repairing plant, repairing and furnishing repair parts to vessels which reach the port of New Orleans, State of Louisiana, while engaged in the transportation of passengers and cargoes between ports in the various states of the United States and the transportation of passengers and cargoes between ports of the United States and foreign nations, in direct and active competition with other persons, partnerships and corporations similarly engaged; that the respondent carries or causes to be carried aboard such vessels so engaged materials and repair parts and sends his employees aboard such vessels to install such parts and make such repairs thereon as may be required by representatives and employees of the owners of such vessels.

PAR. 2. That the respondent in the course of his business, as described in Paragraph 1 herein, during the year 1920, in order to secure business of making repairs on the vessels of a certain steamship company, entered into an agreement and understanding with the port engineer of said line of ships, to pay him a gratuity of ten per cent in cash of the total amount of all the repair jobs the said engi-

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neer turned his way for the company he represented; that from June 22nd to October 13th, 1920, the total repairs done by the respondent under this arrangement amounted to \$8,174; that the respondent gave said port engineer \$400 under the arrangement between them to secure said repair business, and that he expected to give said port engineer an additional amount of \$417 on the payment of the balance due him for the repair work done on the vessels of said steamship company; that he also gave a scaler who brought him a repair job on a vessel \$15 in the manner and for the purpose aforesaid; that said gratuities were added into the bill for the work and do not appear on the respondent's books as such and were given without the knowledge and consent of the owners of said steamship line or employers of said port engineer.

PAR. 3. That this method of competition set out in the preceding paragraph tends to induce the employees of the owners of vessels touching at the port of New Orleans in the course of foreign and domestic commerce unduly to prefer the respondent to its competitors in the business of furnishing repair parts and repair work upon such vessels, to induce its competitors to maintain similar practices, to increase the cost of repair parts and repair work unduly and unfairly and to increase unduly the cost of transportation to the general public.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint and an amended complaint of the Commission and the answers of the respondent admitting all of the allegations of the amended complaint and each count and paragraph thereof, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, findings as to the facts and order without the introduction of testimony in support thereof, and that his answers shall be taken and considered as and in lieu of testimony, 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 ordered, That the respondent, William Robinson, doing business under the trade name and style of Southern Machine Works, his agents, servants and employees cease and desist from directly or indirectly giving to port engineers or other employees or representatives of steamship companies, sums of money or gratuities of any kind whatsoever as an inducement to have vessels repaired and repair parts for same furnished by the respondent, or as a reward for having such vessels repaired by the respondent.

It is further ordered, That the respondent within sixty 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.

Complaint.

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FEDERAL TRADE COMMISSION

v.

CARBO OIL COMPANY.

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

Docket 693—October 29, 1921.

SYLLABUS.

Where a corporation manufactured and sold a high grade automobile lubricant, under its well and favorably known trade name of Gargoyle oil and designated the various grades of its oil by the names Mobiloil "A", Mobiloil "B", etc. and thereafter a concern engaged in the manufacture and sale of a low grade oil, which was not distinguishable by appearance from Mobiloil "A", and which sold for about half its price,

- (a) Called its product Mobile "A" oil, and represented to the public and to purchasers of oil that its product was the Mobiloil "A" of said corporation;
- (b) Represented to customers and prospective customers that such oil was the property of the United States Government, bought by the Government from said corporation and now sold as surplus;
- (c) Sold its product in containers upon which was printed in large type the letters "U. S. A. Mobile 'A' Motor oil"; and
- (d) Had printed on its invoices and other stationery, "Distributor of U. S. A. Oils"; and

Where the general sales agent of said concern falsely represented to the trade that—

- (a) He was in the employ of the Government and more particularly that he represented the Quartermaster Corps Department of one of the camps;
- (b) The oil made, designated and offered as aforesaid was genuine Gargoyle Oil;
- (c) The oil so offered was being sold by the Government as surplus at a greatly reduced price from the camp, the Quartermaster Corps of which he purported to represent; and
- (d) His concern was the Government's sales agent for the sale of such oil;

With the result that many purchased such supposed Gargoyle oil and that purchasers sustained financial loss through their inability to resell the same, through restitution to their vendees, and through loss in reputation as dealers in automobile lubricants:

Held, That such false and misleading representations and such 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 Carbo Oil 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 Ohio, with its principal place of business in the City of Cleveland, in said State.

PAR. 2. That respondent is engaged in the business of compounding and selling motor lubricating oils and other chemical and mineral products, and causes such products to be transported to the purchasers 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 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 Mobiloils" of various grades, or "Mobiloil A," "Mobiloil B," etc.; that respondent in the course of its business as described in Paragraph 2 hereof, has compounded a product and attempted to imitate the product of said Vacuum Oil Co., and designated such product as "Mobile A Oil," and has represented and sold to the purchasing public its said product as and for the product of said Vacuum Oil Co.

PAR. 4. That respondent, as a means of furthering the sale of its own product as and for the product of the Vacuum Oil Co., as described in Paragraph 3 hereof, falsely represented to certain customers and prospective customers that the "Mobile A Oil" sold by it was the property of the United States Government, and had been purchased by the Government from the Vacuum Oil Co., and that respondent's facilities were being utilized by the Federal Government as a refilling station in the sale of its surplus stock which had been accumulated during the war emergency, and that Edward W. Meister, a salesman in the employ of respondent, was employed by the Federal Government to sell the oil; to other customers and prospective customers respondent falsely represented that the oil sold by it had been purchased outright from the Federal Government and was the genuine product of the Vacuum Oil Co.; that such representations were calculated to and did mislead and deceive the purchasing public.

PAR. 5. That respondent, as an additional means of furthering the sale of its own product as and for that of the Vacuum Oil Co., as aforesaid, and to create the false impression that its product had been

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purchased from the surplus stock of the Federal Government, had printed on its invoices and other stationery, the false and misleading statement: "Distributor of U. S. A. Oils," and had stenciled on the containers in which it marketed its product, the letters "U. S. A.", whereas the product sold by it had never been the property of the Federal Government.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, the Carbo Oil 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 by its attorney and having filed its answer herein, hearings were had, and evidence was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission theretofore duly appointed, and the respondent having failed to introduce any testimony in its defense, the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Carbo Oil Company, is a corporation organized and existing under the laws of the State of Ohio and has its principal place of business in the City of Cleveland, State of Ohio.

PAR. 2. That respondent is engaged in the business of compounding and selling motor lubricating oils and other chemical and mineral products, and causes said products to be transported to purchasers 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 for a number of years prior to the institution of this proceeding, the Vacuum Oil Corporation of Rochester, N. Y., a business concern widely known throughout the United States, has

been and is now engaged in refining at its plant in said City of Rochester, N. Y., an automobile lubricant, well and favorably known to the trade as "Gargoyle Mobiloil", of various grades, which grades are designated as Mobiloil "A", Mobiloil "B", etc., and likewise the said oils are sold and shipped by the said Vacuum Company throughout the various States of the United States and the District of Columbia.

PAR. 4. That respondent, in the course of its business as above described, has compounded an oil product designated by it as Mobile "A" Oil, an oil indistinguishable in appearance and almost identical in name to that grade of oil manufactured by the said Vacuum Oil Corporation and designated by it as Mobiloil "A", and has represented to the public and especially to purchasers of oil residing and doing business in the States of Ohio, Indiana, Virginia, and in other States as far South as the State of Georgia, that its said product was the Mobiloil "A" of the Vacuum Oil Corporation.

PAR. 5. That respondent, on or about the 15th day of February, 1920, and subsequent thereto, both verbally and in writing represented to its customers and prospective customers throughout the United States; that the Mobile "A" Oil sold by it was the property of the United States Government; that the same was from Camp Holabird, State of Maryland, but was being shipped to purchasers from Cleveland, Ohio, and that the said oil had been purchased from the Vacuum Oil Corporation by the United States Government and represented the surplus stock of said Vacuum Oil not needed by the United States Government since the Armistice was signed.

PAR. 6. That respondent's general sales agent, Edward W. Meister, brother of Eugene B. Meister, president of respondent company, represented himself to the trade as being in the employ of the United States Government, particularly as "representing the Quartermasters Corps Department, Camp Holabird, Maryland." That the said oil of respondent represented a surplus of said oil which the Government was selling at a greatly reduced price since the close of the war and "that positively it was genuine Gargoyle Oil" made by the said Vacuum Oil Corporation; that his said company, the respondent, was being used by the Government as a selling agent for this particular oil and that the same was being taken from tank cars on railroad siding at a camp in Cleveland, Ohio, at which place it had been shipped from the said Camp Holabird in the State of Maryland; whereas, in truth and in fact, the said Edward W. Meister, sales agent of respondent, was not in the employ of the United States Government and had never been connected with the Government in either a civil or military capacity and was not representing the Gov-

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ernment when offering said oil for sale; that said oil was not the "genuine Gargoyle Oil of the Vacuum Oil Corporation" or any other kind of oil of said corporation nor was it any part of any surplus stock of the Vacuum Oil Corporation's manufactured product owned then or at any time by the United States Government; that said respondent had never at any time represented the United States Government in the sale of surplus oils or for any other purpose. That said representations of respondent's sales agent were made in various cities and states of the United States, particularly to purchasers at Staunton, Va.; Hartford, Ind.; and Barnesville, Ohio.

PAR. 7. That the Gargoyle Oil manufactured and compounded by the Vacuum Oil Corporation is a high-grade oil and popular with the oil trade; that it usually sells for about 75 cents per gallon; that respondent was selling its product which it represented to be Vacuum Oil Corporation's product at about 40 or 45 cents per gallon; that said reduced price of respondent's oil and by it represented as genuine Gargoyle or Mobiloil "A" of the Vacuum Oil Corporation, induced many purchasers to buy respondent's oil; that one purchaser bought over \$2,000 worth of same, and later on it was discovered by use and by tests that respondent's oil was not the product of the Vacuum Oil Corporation; that its said product was but little better than common dish water; that purchasers of respondent's product sustained considerable financial loss through their inability to sell said oil and through restitution made to those to whom the oil had been sold, and in addition thereto suffered in reputation as dealers in automobile lubricants.

PAR. 8. That respondent sold its said oil product in containers called "steel drums" and had printed in large type thereon the letters "U. S. A. Mobile 'A' Motor Oil" and around the outer edge of the said drum in very small stencilling the words "Carbo Oil Company, Cleveland," and had printed on its invoices and other stationery the following: "Distributor of U. S. A. Oils."

PAR. 9. That to the public and to the trade especially Gargoyle Oil is known as the product of the Vacuum Oil Corporation and that company only, and likewise the said company's Mobiloils "A," "B," etc., and wherever motor lubricants are spoken of as Mobile Oils the public understands same as referring to the oils of the Vacuum Oil Corporation.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances set forth, unfair methods of competition in violation of the provisions of Section 5 of the Act

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the 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 an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondent, the Carbo Oil Company, its officers, agents, directors, servants and employees, do cease and desist:

1. From representing to purchasers and would-be purchasers that its compound oil product designated as Mobile "A" Oil is that of the Mobiloil "A" of the Vacuum Oil Corporation or any other grade of oil of the Vacuum Oil Corporation;

2. From using the term Mobile "A" Oil in designation of any product of its refining, and selling same with said designation;

3. From representing that its said Mobile "A" Oil or any other grade or kind of oil compounded and sold by it was a part of a surplus stock of Mobile Oils purchased by the United States Government from the Vacuum Oil Corporation;

4. From representing that it or its general sales agent was or had been in the employ of the United States Government or acting as agent of said Government in selling said Mobile Oil of the Vacuum Oil Corporation for the United States Government or for the said Vacuum Oil Corporation.

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.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

BECKWITH-CHANDLER COMPANY ET AL.

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

Docket 769—November 3, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of varnish, acting through its sales manager and traveling salesmen, gave and offered to give to foremen finishers and to other employes of automobile painting establishments and of other large purchasers of varnish, without the knowledge or consent of their employers, cash gratuities as an inducement for them to influence their employers to purchase from it in preference to, or to the exclusion of, its competitors, or as a reward for having done so, with the effect of increasing the cost of its product to the public, over and above its fair market value, by the amount of said cash gratuities, and with the tendency to cause competitors to do likewise in order to prevent it from obtaining their business:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Beckwith-Chandler Company, C. W. Slocum, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey, and Halsey Tolman, 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, Beckwith-Chandler Company, is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Newark, in said State.

PAR. 2. That the respondent, Beckwith-Chandler Company is engaged in the business of manufacturing and selling varnish, and causes varnish sold by it to be transported to the purchasers thereof from the State of New Jersey through and into other States of the United States, and carries on such business in direct, active competi-

tion with other persons, partnerships and corporations similarly engaged. That respondent C. W. Slocum, is the vice president and general manager of sales of the respondent, Beckwith-Chandler Company. That the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, are traveling salesmen employed by said respondent, Beckwith-Chandler Company to sell its products throughout the several States of the United States.

PAR. 3. That respondent, Beckwith-Chandler Company, in the course of its business as described in paragraph 2 hereof, acting through its traveling salesmen, the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, which traveling salesmen are directed by the respondent, C. W. Slocum, gives and has given cash commissions and gratuities to foremen finishers and other employees of manufacturers of automobiles, carriages and other purchasers of varnish in large quantities, without the knowledge or consent of the employers or principals of such employees, to induce such employees to recommend to their respective employers or principals, the varnish manufactured and sold by the respondent, Beckwith-Chandler Company, and to induce their said employers to purchase such varnish in preference to or to the exclusion of varnish manufactured and sold by competitors of said respondent, or such cash commissions and gratuities are given to said employees as rewards for having induced their respective employers to purchase varnish manufactured and sold by said respondent, Beckwith-Chandler Company. And as a means of carrying out its general plan of giving cash commissions and gratuities, as aforesaid, said respondent, Beckwith-Chandler Company, has from time to time appropriated funds which were apportioned and disbursed by the respondent, C. W. Slocum, between and to the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, and to Roy Hunt, a former employee of respondent, Beckwith-Chandler Company, traveling salesmen as aforesaid, for the purpose of having such traveling salesmen deliver such funds to employees of customers for the purpose aforesaid.

PAR. 4. That the amounts of the cash commissions and gratuities given by said respondent, Beckwith-Chandler Company, as set out in paragraph three hereof, are added to its annual cost of doing business, and as a result thereof said respondent adds to the selling price of varnish sold by it, an amount sufficient to compensate it for the cash commissions and gratuities paid out by it as aforesaid, which

Findings.

4 F. T. C.

amount is in addition to the fair market value of such varnish, and which additional amount customers of the said respondent, and eventually the public, must pay. That as a further result of the giving of such cash commissions and gratuities by the respondent, Beckwith-Chandler Company, as aforesaid, all its competitors are affected, and such competitors are thereby induced to also pay out such commissions and gratuities, in order to enable them to compete successfully with such respondent and protect their trade or suffer the loss of business with the purchasers of varnish whose employees have received such commissions and gratuities.

PAR. 5. That the use by each and all of said respondents, severally and in their common action, of the practices set out in the foregoing paragraph hereof, is an unfair method of competition in commerce, within the meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Beckwith-Chandler Company, C. W. Slocum, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents having entered their appearance and filed their answers herein, and having stipulated and agreed that a statement of facts signed and executed by the respondents and Adrien F. Busick, Acting Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, are the facts in this proceeding and shall be taken by Federal Trade Commission as such and in lieu of testimony, and that the said Federal Trade Commission shall forthwith proceed upon said agreed statement of facts and the answers herein to make and enter its findings as to the facts, its conclusion and order disposing of this proceeding, without the introduction of testimony, the respondents waiving any and all rights they may have to the introduction of same.

And thereupon this proceeding came on for final hearing, and the respondents and counsel for the Commission not wishing to file briefs or present oral argument, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Beckwith-Chandler Company, is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Newark, in said State, and is engaged in the business of manufacturing and selling varnish, and causes varnish sold by it to be transported to the purchasers thereof from the State of New Jersey 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. The respondent, C. W. Slocum, is the vice president and general manager of sales of the respondent, Beckwith-Chandler Company. The respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, are traveling salesmen employed by said respondent, Beckwith-Chandler Company, to sell its products throughout the United States.

PAR. 2. The respondent, Beckwith-Chandler Company, in the course of its business as described in Paragraph One hereof, acting by its traveling salesmen, the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, which traveling salesmen were directed by the respondent, C. W. Slocum, for several years prior to 1921, gave and offered to give gratuities in the form of money to foremen finishers, painters and other persons employed by automobile and carriage painting establishments, automobile manufacturers, and other purchasers of varnish in large quantities, without the knowledge or consent of the employers or principals of such employees, to induce such employees to recommend to their respective employers or principals, the varnish manufactured and sold by the respondent, the Beckwith-Chandler Company, and to induce their said employers to purchase such varnish in preference to or to the exclusion of varnish manufactured and sold by competitors of said respondent, or as rewards to said employees for having induced their respective employers to purchase varnish manufactured and sold by said respondent, Beckwith-Chandler Company. The Beckwith-Chandler Company has from time to time, appropriated funds which were apportioned and disbursed by the respondent, C. W. Slocum, between and to the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, and to Roy Hunt, a former employee of respondent, Beckwith-Chandler Company, traveling salesmen as aforesaid, for the purpose of having such traveling salesmen deliver such funds to employees of customers for the purpose aforesaid.

Conclusion.

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PAR. 3. During the period September, 1919, to January 1, 1920, the following amounts were given as gratuities to such employees by the respondent, Beckwith-Chandler Company, through the salesmen named, in the manner and for the purposes set forth in Paragraph 2 hereof:

J. F. Young.....	\$475
A. F. Adams.....	680
Halsey Tolman	90
R. Hunt.....	564
C. H. Bull.....	350
W. D. Ramsey.....	1,960
M. D. Campbell.....	160

Prior and up to September 15, 1919, this same plan had been in effect and was used in the same manner and for the same purposes.

In addition to the above amounts, the following sums of money were furnished by the respondent, Beckwith-Chandler Company, to its salesmen, to be given by them as gratuities to employees of customers in the manner and for the purposes aforesaid:

Halsey Tolman	\$204
A. F. Adams.....	404
M. D. Campbell.....	325
J. F. Young.....	520
W. D. Ramsey.....	1,112
A. N. Merrill (approximately).....	500

PAR. 4. The amounts of money given by said respondent, Beckwith-Chandler Company, as set out in Paragraph 3 hereof, were added to its annual cost of doing business and as a result thereof, said respondent added to the selling price of varnish sold by it, an amount sufficient to compensate it for the sums of money paid out by it as aforesaid, which amount was in addition to the fair market value of such varnish and which additional amount was paid by customers of the said respondent and eventually the general public purchasing the commodities upon which such varnish was used.

5. The methods of competition set out in the preceding paragraphs tend to induce competitors of the respondent, Beckwith-Chandler Company, to maintain similar practices, in order to enable them to compete successfully with such respondent and protect their trade or suffer the loss of business with the purchasers or prospective purchasers of varnish whose employees have received such gratuities.

CONCLUSION.

The practices of each and all of said respondents, severally and in their common action, under the conditions and circumstances de-

scribed in the foregoing findings, are unfair methods of competition in commerce among the States of the United States, 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 power 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 an agreed statement of facts, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Beckwith-Chandler Company, and its officers, agents, servants, representatives and employees, and C. W. Slocum, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, cease and desist from giving or offering to give, directly or indirectly, to foreman finishers, painters and other persons employed by automobile and carriage making establishments, automobile manufacturers and other purchasers of varnish, without the knowledge and consent of such employers, sums of money or gratuities of any kind whatsoever to induce such employees to recommend to their respective employers or principals, the varnish manufactured and sold by the respondent, Beckwith-Chandler Company, or to induce their said employers to purchase such varnish in preference to or to the exclusion of varnish manufactured and sold by competitors of said respondent, Beckwith-Chandler Company, or as rewards to said employees for having induced their respective employers to purchase varnish manufactured and sold by said respondent, Beckwith-Chandler Company.

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

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

SAMUEL E. BERNSTEIN.

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

Docket 701—November 9, 1921.

SYLLABUS.

Where certain foreign manufacturers, long famous for the high quality of their cutlery and cutlery steel, sold the same under the mark and brand "Sheffield," so that such brand had come to mean to dealers and to a substantial part of the consuming public, cutlery or steel made at Sheffield, England; and thereafter a domestic dealer sold, under the trade name "Royal Brand," a low-grade line of domestic cutlery, prominently branded with the word "Sheffield"; with a tendency thereby to mislead retailers into believing that the same was made in Sheffield and to encourage misrepresentations to that effect, and with the effect of similarly misleading a substantial part of the purchasing public, and of competing unfairly both with makers of, or dealers in, genuine Sheffield cutlery, and with makers of, or dealers in, domestic cutlery not so branded; to the injury of both, and to the injury of free competition in the sale of cutlery:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Samuel E. Bernstein, 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 respondent is engaged at New York, N. Y., in the business of selling cutlery and silverware at wholesale, and causes the commodities sold by him to be transported to the purchasers thereof from the State of New York through and into various other States of the United States, 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 One hereof, sells an inferior grade of cutlery made in the United States upon which he places labels which contain the

word "Sheffield," without other marks to show the true place of origin of said cutlery. That cutlery of a high quality has 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 purchasing public, as indicating that such cutlery was made in Sheffield, England, and is of good quality; that the use by respondent of labels containing the word "Sheffield" on an inferior grade of cutlery made in the United States and sold by him, was calculated to and did deceive the purchasing public, and was so used by respondent as to enable him to pass off an inferior grade of cutlery as and for cutlery made in Sheffield, England.

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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Samuel E. Bernstein, charging him with the use of unfair methods of competition in violation of the provisions of said act.

The respondent, Samuel E. Bernstein, having entered his appearance by his attorney, Abraham Beck, and having filed his answer herein, hearings were had and evidence was thereupon introduced in support of his answer before Byron L. Shinn, an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel for the respondent not appearing and waiving oral argument and having filed a brief in behalf of the respondent, 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.

PARAGRAPHS 1. That respondent, Samuel E. Bernstein, is an individual, and is now, and for the last twenty-five years, has been engaged in business, as a wholesaler and jobber in cutlery, having his

Findings.

4 F. T. C.

principal office and place of business located at New York City, in the State of New York.

PAR. 2. That respondent, in the conduct of his business, has, for more than seven years prior to January 5, 1921, the date of the issuance of the complaint herein, bought and sold cutlery, including butcher knives, carving knives, cleavers, razors, pocket knives, shears, etc., and shipped such articles to purchasers thereof located in different States of the United States, and that during such period there has been a constant trade and commerce in such articles between and among the various States of the United States. That for the five years prior to January, 1921, the respondent's sales of cutlery approximated annually Two Hundred Thousand (\$200,000) Dollars. That respondent has conducted his said business and has sold cutlery, as above described, in active competition with numerous other persons, firms and corporations similarly engaged.

PAR. 3. That during the period of more than seven years prior to January 5, 1921, respondent has, in the course of his business (as set forth in Paragraph Two above) sold, in commerce, a certain line of cutlery labeled, "Royal Brand Cutlery." This label or brand is directly impressed, etched, stamped, or otherwise inscribed on the articles themselves, and is composed of two pictorial elements—an open razor, to the left of which is a crown—and the words "Razor Edge," "Sheffield," and "Royal Brand Cutlery Co.,"—the words "Razor Edge" appearing on the blade of the razor, the word "Sheffield" between the open blade and the handle, and "Royal Brand Cutlery Co." upon the handle.

PAR. 4. That the cutlery so sold by respondent under the label "Royal Brand Cutlery" as above described, was procured by him from the Cuba Knife Company of Cuba, N. Y., and other American manufacturers, who, at respondent's direction, placed the "Royal Brand" design on the goods prior to their delivery to respondent; that the cutlery purchased by respondent from such manufacturers and bearing said label, was of an inferior grade and comparatively low priced, and was made in the United States of domestic steel.

PAR. 5. That respondent sells his cutlery to retailers, who in turn resell to consumers, and, as the label "Royal Brand Cutlery" is indelibly affixed to respondent's cutlery and is observable upon the most casual inspection, the label or design is thus brought directly to the attention of the buying public.

PAR. 6. Sheffield, England, has been identified with the successful manufacture of cutlery, steel for cutlery purposes having been made there for several centuries, and it has continued to be one of its chief industries, including many important cutlery manufacturers;

the industry is presided over by the ancient "Cutlers Company" of England, whose function is to take care of the trademarks and protect the name of "Sheffield" in the cutlery industry and trade. The reputation of cutlery made at Sheffield, England, has long been high for quality and the standard for manufacturers in this country. Its prestige, based on its history, continues.

PAR. 7. That substantial amounts of cutlery are imported from Sheffield, England, to the United States annually (barring a temporary situation brought about by the war during the years 1914 to 1918, inclusive, when importations were curtailed) and are sold here in competition with cutlery of domestic manufacture; that such imported cutlery is uniformly of a high quality of steel and sells here for a comparatively high price; that generally cutlery imported from Sheffield, England, is indelibly stamped "Sheffield, England"; cutlery manufactured in this country, in which the blade is of steel manufactured in England, very largely has stamped on the blade "Forged from Sheffield Steel" and is so advertised.

PAR. 8. That very little cutlery manufactured in the United States of domestic steel is marked or branded "Sheffield."

PAR. 9. That retailers, buyers and sellers of cutlery understand the word "Sheffield" as applied to cutlery, to mean made in Sheffield, England.

PAR. 10. That a substantial part of the consuming public understands the word "Sheffield," as applied to cutlery, to indicate that the cutlery bearing such inscription was made in Sheffield, England.

PAR. 11. That the method employed by respondent in branding cutlery of domestic manufacture with the word "Sheffield," is effective to carry to both the retailer and ultimate consumer, the representation that such articles were manufactured in Sheffield, England, and in the absence of technical knowledge in either the retailer or consumer, tends to create the belief that such cutlery was in fact manufactured in Sheffield, England.

PAR. 12. That some retailers and their salesmen rely on the brands appearing on goods, and use same in describing articles to customers; that the use of the label "Sheffield" on cutlery of domestic manufacture, tends to encourage and aid misrepresentations by uninformed or unscrupulous retailers, or their salesmen, that the cutlery so branded was imported from Sheffield, England.

PAR. 13. That the label "Sheffield" as used by respondent on its cutlery, which is manufactured in the United States of domestic steel, is calculated to and does mislead a substantial part of the purchasing public to believe that cutlery bearing such label was imported from Sheffield, England.

Order.

4 F. T. C.

PAR. 14. That several domestic manufacturers, including the largest in the United States, have refused to mark cutlery, made of domestic steel, with the word "Sheffield" at the instance of customers, for the reason that they consider it improper to use the word "Sheffield" as a brand or name for cutlery made in the United States.

PAR. 15. That sales of cutlery manufactured in this country under the brand or stamp of "Sheffield" including those by respondent, tend to and do compete unfairly with cutlery made in Sheffield, England, and with cutlery made in this country not so branded or stamped, because of the high reputation of Sheffield, England, cutlery; and damage to such competitors results by the displacing of sales of American cutlery not so stamped and of genuine imported Sheffield cutlery; such competition is prejudicial to the interest of jobbers of both American and imported cutlery and is a hindrance to free and open competition in the sale of cutlery in the United States.

PAR. 16. That under date of June 20, 1919, respondent applied to the United States Patent Office, Washington, D. C., for the registration, as a trademark, of the brand and design described above under Paragraph Three; that opposition to the registration of such trademark was filed, July 31, 1919, by the Cutler's Company of Sheffield, England; and that, under date of November 8, 1920, such opposition was sustained by the Examiner of Interference, and respondent adjudged not entitled to the registration of the trademark for which he had made application.

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, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

Order.

Now, therefore, it is ordered, That the respondent, Samuel E. Bernstein, his agents, representatives, servants, and employees forthwith, cease and desist from directly or indirectly:

Applying or using the word "Sheffield" in any manner whatsoever as a brand, label, trademark or trade name, or as a part thereof, for or on any cutlery except and unless the blade or cutting part thereof be made of steel manufactured in Sheffield, England;

And it is further ordered, That said respondent shall within sixty 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 he has complied with the order of the Commission hereinbefore set forth.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION
v.
UNITED ALLEGRETTI COMPANY.

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

Docket 715—November 17, 1921.

SYLLABUS.

Where a corporation, engaged in the manufacture and sale of chocolate creams as the Allegretti Chocolate Cream Company and as successor to a business founded by one Ignatio Allegretti, advertised and sold its product under its trade names "Allegretti's," "Allegretti," and "Original Allegretti," so that said product became widely and favorably known as such, and it acquired a valuable good will in said trade names as applied to candies and had successfully restrained others from using the name Allegretti; and thereafter a competing business, stockholders of which included (1) one Francis B. Allegretti, the moving spirit in its organization, not related to the original Allegretti, nor ever theretofore connected with the manufacture of candy, (2) his three brothers to whom he gave one share of stock each and who likewise had never theretofore had experience in candy making, (3) a man who claimed to have learned the business of making chocolate creams from a nephew and former employee of the original Allegretti, and (4)—but not until more than three years after its organization—a nephew of said original Allegretti,

- (a) Adopted the name United Allegretti Company;
- (b) Characterized and advertised its product as "United Allegretti Delicious Chocolates," "Our justly famous chocolate creams," and "United Allegretti's famous cream chocolates"; and
- (c) Labeled its boxes "United Allegretti's Delicious Chocolates," the word "United" being minimized and the word "Allegretti" made extremely prominent, the boxes also containing on the inside a notice warning the public against similarity of name of other products;

With intent thereby to mislead and confuse the trade and the public, and with a tendency and effect so to do;

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the United Allegretti 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 26th, 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, United Allegretti Company, is now and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Dakota, having its principal factory, office, and place of business located in Chicago, Ill.

PAR. 2. That respondent now [is] and for more than two years last past [has been] engaged in the business of manufacturing and selling to the trade its brands of chocolate candy among the several States of the United States, the Territories thereof, and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That in the year 1863, one Ignatio Allegretti established in Washington, D. C., the business of manufacturing and selling chocolate candies and other confections for which goods he established a wide reputation. He extended the business during the succeeding years to San Francisco, Chicago, New York, and other sections of the country. In 1893 he transferred the business to his sons, or associated them with him in the business and a corporation was organized under the laws of the State of Illinois, under the name of the "Allegretti Chocolate Cream Company" with its headquarters in the city of Chicago. This corporation succeeded to the business of the said Ignatio Allegretti. Its trade names for its products were also transferred to and owned by the corporation aforesaid, which trade names were as follows: "Allegretti's Cream Chocolates," "Allegretti Cream Chocolates," "Allegretti's," and "Allegretti."

PAR. 4. In 1917 the respondent was chartered in South Dakota and license was obtained in Illinois to do business in that State. Since that time it has been conducting business in the city of Chicago, manufacturing and selling in interstate commerce cream chocolates and other confections. It denominates its product as "United Allegretti Delicious Cream Chocolates." It described in its circular price lists, its only mode of advertising, this product as "Our famous cream chocolates." In one statement it professes to be represented on the Pacific coast by a jobbing concern known as Charles W. Mesick & Company, who use a letterhead on which appears the following: "United Allegretti's Famous Cream Chocolates." The box in which the respondent packs its candies is labeled on the outside "United Allegretti's Delicious Chocolates," while on the inside

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of the box cover is printed the following: "Warning. We warn the public against the similarity of names of our United Allegretti's Delicious Chocolates. We are in no way whatever connected with any other concern. The genuine United Allegretti's Delicious Chocolates always bear our name on each package. Signed, United Allegretti Company, Inc., 660-662 Grand Ave., Chicago, Ill." At the bottom of its letterheads is printed this statement, "United Allegretti Company is distinct from and has no connection whatever with any other concern of a similar name."

PAR. 5. That the name under which respondent was incorporated, the location of its business, the names, brands, and marks of its goods, as well as its advertising matter shows that its purpose was and is to deceive the public and lead the public to believe that its candies were the same as those manufactured and sold by the Allegretti Chocolate Cream Company, its competitor; that the tendency of such actions is to deceive and mislead the purchasing public, and that by reason of these facts and the facts set out in the foregoing paragraphs of this complaint, the respondent has been guilty of unfair methods of competition in commerce as defined and prohibited by Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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, United Allegretti Company, charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent, United Allegretti Company, having entered its appearance by its attorney, Francis B. Allegretti, and having filed its answer herein, hearings were had and evidence was thereupon introduced in support of its answer before John W. Bennett, an examiner of the Federal Trade Commission theretofore duly appointed.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is now, and at all times since on or about the 25th day of April, 1917, has been, a corporation organized under and existing by virtue of the laws of the State of South Dakota, and said respondent now is and at all times since on or about August 2, 1917, has been licensed to do business in the State of Illinois, having its principal place of business in the city of Chicago, in said State.

PAR. 2. That the respondent is now, and for more than two years last past has been, manufacturing candies, including chocolate creams, in the city of Chicago, State of Illinois, and selling and shipping them under its own brand to the trade among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged, and especially with the Allegretti Chocolate Cream Company of Chicago, Ill., the said Allegretti Chocolate Cream Company being also engaged in the manufacture of chocolate creams, and their sale and shipment in interstate commerce.

PAR. 3. That at the time of the late Civil War in the United States, about the year 1863, one Ignatio Allegretti began in Washington, D. C., the manufacture and sale of chocolate creams, and later extended such business to Baltimore, Md., and New York, N. Y. (but the evidence submitted in this proceeding does not establish with definiteness the extent, volume, and other details of such business); that prior to 1892 said Ignatio Allegretti had established in San Francisco, Calif., a business of manufacturing chocolate creams, and in shipping them and selling them in other States, including New York, Maryland, and Illinois, among others; that said Ignatio Allegretti specialized in the manufacture of chocolate creams, and had three or four stores in San Francisco, Calif., where such creams were sold; that upon the signs displayed by these stores, and upon the cartons or packages in which said chocolate creams were packed, shipped, and distributed, the word "Allegretti" was prominently displayed, and was used in connection with the words "Cream Chocolates" or "Chocolate Creams"; that such candies manufactured by said Ignatio Allegretti had a high reputation in the trade; that in 1893 said Ignatio Allegretti, having met with business reverses in San Francisco, went to Chicago, Ill., and established a similar business in said city, and after coming to Chicago said Ignatio Allegretti associated with him in business his two sons Nicholas Allegretti and Joseph Allegretti and did business under the name of Allegretti

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Brothers, producing chocolate creams similar to, or identical with, those previously produced in San Francisco, Calif., and displaying prominently upon signs and upon cartons or containers for said goods the word "Allegretti" in connection with chocolate creams; that in 1896 said Ignatio Allegretti and the said sons formed a corporation under the name, "Allegretti Chocolate Cream Company," which corporation was organized under and is existing by virtue of the laws of the State of Illinois; that said corporation succeeded to the business of said Ignatio Allegretti and his said sons which have been conducted under the name of "Allegretti Brothers"; that the trade names for their products were also transferred by said Allegretti Brothers to, and were and are owned by the said corporation, which trade names are: "Allegretti's" and "Allegretti"; that the goods made under these trade names were and are considered by the trade of high quality and are sought after by the trade in candies; that said Ignatio Allegretti had at various times employed his nephews, Benedetto Allegretti, Giacomo Allegretti, and Frank Allegretti, in his business, and that they secured or asserted that they had secured in the course of their employment, the formulas of said Ignatio Allegretti for making the said chocolate creams, and they had followed him to Chicago and about 1896, and subsequent thereto, had also engaged in the making of chocolate creams on their own accounts, and had sold such candies under the name of "Allegretti," but without the consent of said Ignatio Allegretti, nor of the Allegretti Chocolate Cream Company; that subsequent to the engaging of Ignatio Allegretti's nephews, or some of them, in the manufacture and sale of chocolate creams, and in the use by them of the name "Allegretti" in that connection, said Allegretti Chocolate Cream Company has used the words "Original Allegretti" on its packages and in its advertising; that it protested against the use of the word "Allegretti" by said competitors, and sought injunctive relief in the Illinois or Federal courts against a number of said competitors, and secured such relief against Allegretti Company, Giacomo Allegretti and others, Frank Allegretti, Inc., and others, and Benedetto Allegretti Chocolate Cream Company and others, on the ground of unfair competition through their use of the name "Allegretti" in connection with the manufacture and sale by them of chocolate creams; that since its organization in 1896 said Allegretti Chocolate Cream Company has been continuously and is now engaged in the business of manufacturing chocolate creams, in the city of Chicago, State of Illinois, and in shipping and selling the same in interstate commerce; that at or about the time that the nephews of Ignatio Allegretti engaged in competition with said Allegretti Chocolate Cream Com-

pany and [began] using the "Allegretti" name, the device of doves holding in their beaks the letters of the word "Allegretti" was adopted by the Allegretti Chocolate Cream Company, but the lettering remained practically the same as before.

PAR. 4. That in 1917, the respondent was chartered in South Dakota and license was obtained from the State of Illinois to do business in that State; that since that time it has been conducting business in the city of Chicago, manufacturing and selling in interstate commerce chocolate creams; that it denominates its product as "United Allegretti Delicious Chocolates," and "Distinctively Delicious Chocolate Creams"; that it has described in its price list circular, its principal mode of advertising, this product as "Our Justly Famous Chocolate Creams"; that respondent has been represented on the Pacific coast by a jobber known as Charles W. Mesick & Company, who has used a letterhead upon which appears the following words: "United Allegretti's Famous Cream Chocolates"; that the boxes in which respondent packs, ships, and distributes its candies are labeled on the outside "United Allegretti's Delicious Chocolates," while on the inside of the box cover is printed the following: "Warning. We warn the public against similarities of name of our United Allegretti's Delicious Chocolates. We are in no way connected with any other concern. The genuine United Allegretti's Delicious Chocolates always bear our name on each package. Signed, United Allegretti Company Inc., 660-662 Grand Avenue, Chicago, Illinois"; that at the bottom of respondent's letter is printed this statement: "United Allegretti Company is distinct from and has no connection with any other concern of a similar name"; that in the labels upon the cartons in which respondent packs, ships, and distributes its candies the word "Allegretti" is made extremely prominent, and the qualifying word, "United," minimized in size; that as part of the device upon its cartons and upon its letterheads respondent has adopted a "spread-eagle"; that while some of respondent's cartons, to wit, pound packages, resemble in color and form the packages of similar size used by the Allegretti Chocolate Cream Company, others do not; that persons in the trade consider the Chocolate Creams of respondent inferior to the chocolate creams of its competitor, the Allegretti Chocolate Cream Company.

PAR. 5. The United Allegretti Company, as originally organized, had a capitalization of \$10,000, consisting of 1,000 shares of \$10 each; \$3,000 has been paid in. The original stockholders and the amount of their holdings respectively were:

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	Shares.
John B. Agosto.....	99
Benedicti Agosto.....	50
Francis B. Allegretti.....	97
John Allegretti.....	1
James S. Sebree.....	1
Joseph E. Allegretti.....	1
Louis Allegretti.....	1

The four Allegrettis named above are brothers and a distinct family from that of Ignazio Allegretti who founded the Allegretti Chocolate Cream Business and claim no relationship to him. All are residents of Chicago. None of them has had any experience or other connection with the manufacture of candies. Francis B. Allegretti is a lawyer and conceived or adopted the plan of organizing the company and received 100 shares of stock for his services and disbursements, of which he gave one share each to his three brothers. Two of them are interested in drug stores and the third, Louis, is a pharmacist. Their only connection with respondent's business has been handling its candies with others, on commission or for the usual profit. James S. Sebree is the agent who obtained the incorporation of the company in South Dakota. John B. Agosto claims to have learned the business of making chocolate creams from Giacomo Allegretti, nephew of Ignazio Allegretti, by whom he and his father were formerly employed. Benedicti Agosto is a brother of John B. Agosto and a dentist. The Agostos are no blood relation of Ignazio Allegretti. Francis B. Allegretti seems to have conceived or adopted the plan of putting himself and his three brothers into a corporation with John B. Agosto, a practical candy maker, so as to give the company a basis for connecting the name of Allegretti with it, although they had no active interest in the business and three of them had but one share each. The Allegrettis named remained the only stockholders of that name up to September, 1920, more than three years after the organization of the company, when Frank Allegretti, nephew of Ignazio Allegretti and a stranger to the other Allegrettis except Francis B. Allegretti, was employed as a candy maker, receiving shares of stock in lieu of wages; his employment has not been continuous by the company. Prior to September, 1920, John B. Agosto had had charge of the candy making of the company.

PAR. 6. The name "United Allegretti" as used by respondent on its containers, trade-marks, labels, letterheads, circulars, and advertising matter is calculated to and reasonably tends to mislead dealers and the public into the belief that the name represents a union of other chocolate cream and candy makers named Allegretti, particu-

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larly the Allegretti Chocolate Cream Company, as composing the respondent corporation and responsible for the chocolate creams manufactured and sold by it.

PAR. 7. The dealers and public know of the existence of the original Allegretti chocolate creams, but confusion exists in their minds between the various candies sold under that name, including those of the Allegretti Chocolate Cream Company and the United Allegretti Company. Chocolate Creams made by the United Allegretti Company are sold in theaters in Chicago as "Allegrettis."

PAR. 8. That the adoption of the name "United Allegretti Company" by respondent, the trade names, brands and marks upon the packages containing its goods, and upon its letterheads and its advertising matter indicate that its purpose was and is to confuse and deceive the public and lead the public to believe that its chocolate creams were and are the same as those of the Allegretti Chocolate Cream Company, its competitor; that especially the use of the word "Allegretti" with the qualifying word "United" was intended to confuse and deceive the public; that the probable and usual tendency of such actions as those of the respondent above detailed is to confuse, deceive, and mislead the purchasing public in the buying of chocolate creams, and make it more difficult for the public to distinguish between the goods of the Allegretti Chocolate Cream Company and of the respondent herein.

CONCLUSIONS.

Under the conditions and circumstances set forth in the foregoing findings of facts, the acts and practices of respondent herein 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 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 Section 5 of an act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

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Now, therefore, it is ordered, That the respondent United Allegretti Company, its officers, directors, members, representatives, agents, and servants cease and desist:

From using as its corporate name, or displaying upon its letter-heads, stationery, circulars or advertising matter and in its trade-marks, trade names, labels or devices, in connection with the sale of its chocolate creams and candies in interstate commerce, or upon cartons, containers or packages in which its chocolate creams and candies are packed, shipped, marketed or distributed in interstate commerce, the words "United Allegretti"; also from using as its corporate name or so displaying the name "Allegretti," or other form thereof, alone or in combination with any other word or words, except and unless preceded, in type or lettering of equal size, by the name "Frank" or other first or Christian name or names in full, of one or more stockholders in good faith, of the surname "Allegretti," and except and unless accompanied by an explanation in substance as follows, so placed in relation to the trade-mark or name, device or label wherever used or displayed and in such size of lettering as to be easily and naturally read in connection therewith:

This company is not in any way connected with the
Allegretti Chocolate Cream Company.

And it is further ordered, That the respondent shall file with the Federal Trade Commission within 60 days from the date of this order its report in writing stating the manner and form in which this order has been conformed to, and shall attach to such report two copies of all circulars, catalogues, stationery, advertisements, trade-marks, trade devices, trade names, or trade labels, distributed or displayed to the public by respondent in connection with the sale of its goods in interstate commerce subsequent to the date of this order.

Complaint.

FEDERAL TRADE COMMISSION

v.

BAEDER, ADAMSON COMPANY.

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

Docket 787—November 22, 1921.

SYLLABUS.

Where a corporation, engaged in the manufacture and sale of glue, paid to the cabinet department superintendent of one of the largest glue purchasers in the United States, without the knowledge or consent of said purchaser, a secret so-called "commission" of 5 cents a pound on all glue bought of it by his employer; with the result that it secured and held said purchaser's business, not theretofore enjoyed by it, excluded therefrom, arbitrarily and without just cause, a theretofore satisfactory competitor, as well as all other competitors, established a price to said purchaser not justified by competitive conditions, and diverted to said employee many thousands of dollars paid by his employer for glue:

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 Baeder, Adamson & Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Massachusetts, with principal place of business at Philadelphia, Pa.

PAR. 2. That respondent is engaged in the business of manufacturing and selling glue, sandpapers, emery papers, etc., and causes commodities sold by it to be transported to the purchasers thereof, from the State of Pennsylvania, through and into other States of the United States, and carries on such business in direct active competition with other businesses, partnerships, and corporations similarly engaged.

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PAR. 3. That respondent in the course of its business as described in paragraph two hereof, gives and has given to superintendents, and other employees of proprietors of cabinet manufacturing establishments, and other establishments, without the knowledge and consent of the employers of such superintendents and other employees, cash commissions or gratuities, usually amounting to five cents per pound for all glue sold to said establishment by respondent, to induce such superintendents and employees to favor and recommend, and influence their employers to purchase, the products of respondent, and to refrain from purchasing the products of its competitors, and without other consideration therefor; that the total sales of glue made by respondent exceeds \$500,000 annually; that such cash commissions and gratuities so given by respondent to the superintendent of the cabinet factory and to other employees of one of its customers, to wit, the Victor Talking Machine Co., of Camden, N. J., during the two-year period ending January 1, 1921, aggregated approximately \$34,000, which resulted from the payment of a cash commission of 5 cents per pound on all glue sold by respondent, to such customer, for which glue respondent received 35 cents per pound; that respondent adds to its annual cost of doing business a sum equal to that paid out for cash commissions and gratuities as aforesaid, and is compelled to, and does add to the selling price of commodities sold by it, an amount sufficient to cover the amount so paid out for cash commissions and gratuities, which is in addition to the fair market value of such commodities, and which additional amount the customers of respondent, and eventually the purchasing public, must pay; that as a further result of respondent's said practices, all of its competitors are injuriously affected and hindered in the exercise of free and fair competition; that the methods used by the respondent tend to lessen free and fair competition by requiring competitors of respondent to give to employees of customers and prospective customers, cash commissions and gratuities of substantially like amounts to those paid by respondent as aforesaid, for the same purposes, and with the same effect, as a means of protecting their trade, and preventing respondent from obtaining the business enjoyed by them, or incurring a serious risk of loss in business without reference to the merits or prices of their several products.

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, Baeder, Adamson & Co., charging it with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, Baeder, Adamson & Co., having entered its appearance by its attorneys, Tower, Talbot & Hiler, and filed its answer herein denying certain allegations of the complainant, and admitting others, and having stipulated of record certain facts wherein it is agreed among other things, "that the complaint in this case shall stand and be regarded as having been issued against Baeder, Adamson Co., the correct name of the respondent;" that on the pleadings and this agreement and the stipulations as to records, facts, and evidence, the examiner may proceed to make his report and proposed findings as to the facts and conclusion thereon, and that the Commission may enter such order herein as may find proper support in such pleadings, agreements, and stipulation as to records, facts, and evidence, without the introduction of oral or other testimony, as to said matters so stipulated of record. And thereupon this proceeding came on for final hearing upon the argument and briefs of counsel for the Commission and respondent, respectively; and the Commission having fully considered the record and argument of counsel, 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 respondent, Baeder, Adamson Co., is a corporation organized under the laws of the State of Massachusetts, in November, 1919, with its principal place of business in the city of Boston, State of Massachusetts, with branch offices in the cities of Philadelphia, Pa., and Chicago, Ill.; that Baeder, Adamson & Co. was the name by which the respondent, Baeder, Adamson Co. was cited to appear and answer in this proceeding, which said firm was a partnership composed of William B. Adamson and William Adamson, and had its principal office and place of business at Philadelphia, Pa., with branch offices at Boston and Chicago; that the business of said partnership of Baeder, Adamson & Co. was taken over by the respondent, Baeder, Adamson Co. October 1, 1919, and carried on with only minor changes at the time of the filing of the complaint

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in this case, and in accordance with agreement herein, Baeder, Adamson Co. is substituted for Baeder, Adamson & Co., and hereinafter referred to as the respondent.

PAR. 2. That said Baeder, Adamson & Co., partnership, and its successor, Baeder, Adamson Co., corporation, for three years prior to the filing of the complaint herein, have been and are engaged in the manufacture and sale of glue and other products, and in carrying on said business, have caused its said products to be sold and transported throughout the various States of the United States, in direct competition with other persons, firms, partnerships, and corporations similarly engaged.

PAR. 3. That about February 1, 1919, the sales manager of Baeder, Adamson & Co., one W. C. Jenkins, reported to William B. Adamson and William Adamson, partners aforesaid, at their office in Philadelphia, Pa., that for the payment of a "commission" of 5 per cent, he, Jenkins, could secure for respondent, the glue business of the Victor Talking Machine Co., of Camden, N. J., one of the largest glue purchasers in the United States, using as much as 300,000 pounds of glue per annum, or more than \$100,000 worth, which said proposition of Jenkins was agreed to by the said Adamsons and arrangements were immediately made by Jenkins with one Charles W. Davis, now deceased, to pay such commissions on said sales to him as an "intermediary," and did so pay them to him.

PAR. 4. That the Victor Talking Machine Co. in January, 1919, and for a number of years prior thereto, was and had been buying its joint glue for its cabinet-manufacturing department from a glue concern by the name of Milligan & Higgins, located in New York City, N. Y., which glue was manufactured, sold, and shipped by them from time to time from New York City to the Victor Talking Machine Co. at their factory in Camden, State of New Jersey.

PAR. 5. That immediately following the report of Jenkins to the Adamsons to pay said so-called "commissions" in the manner suggested, and its approval by them, to wit, on or about February 1, 1919, the superintendent of the cabinet factory of the Victor Talking Machine Co., who in the operations of its system of factory management had the final decision as to what glue should be bought by the purchasing department of said company, reported to said department that the glue of said Milligan & Higgins, then being used by the Victor Co., had "gone bad," or failed to work satisfactorily, and suggested to the said purchasing department the necessity of forthwith procuring other glue for the work, and then suggested that they procure glue from Baeder, Adamson & Co.

PAR. 6. That immediately thereafter, and until 1920, the factory superintendent's requisition slips for glue all called for Baeder, Adamson & Co.'s glue, and in accordance with such requisition the glue of said company was purchased from time to time during the year 1919 on separate open orders to the total exclusion from said trade of Baeder, Adamson & Co.'s competitors, Milligan & Higgins, who had theretofore furnished said Victor Talking Machine Co. glue, as above stated, as well as all other competitors, of which there were many in the United States, manufacturing and selling glue of the desired kind and quality.

PAR. 7. That such sales of glue to the Victor Co. were made by Baeder, Adamson & Co. from February 1, 1919, to May, 1919, following the arrangement to pay "commissions" thereon, as aforesaid, without a call by any of the salesmen or representatives of Baeder, Adamson & Co. upon the purchasing department of the Victor Co. to solicit their trade, and had not made any such call since February, 1918; that said sales continued uninterruptedly without competitive bids or reported testing of glues by the said superintendent of the Victor Co., under whose jurisdiction tests of glue were made, although the purchasing department of the said company made earnest efforts to have tests made and reported on with a view of procuring competitive bids on the kind of glue desired.

PAR. 8. That when Jenkins, employee of Baeder, Adamson & Co., aforesaid, made the first tender of payment to "said intermediary," Davis, as "commission" on account of said sales, Davis objected to the payment of same on the basis of 5 per cent, claiming that the arrangement and agreement was to be on the basis of 5 cents per pound, that Jenkins immediately reported said claim of Davis to William B. and William Adamson, of the firm of Baeder, Adamson & Co., and procured their approval to pay 5 cents per pound on sales of glue to the Victor Co. as "commissions" to Davis, intermediary aforesaid, instead of the 5 per cent rate above mentioned; that accordingly said "commissions" were paid to Davis, based on actual invoices and amount of glue sold by Baeder, Adamson & Co. and its successor, Baeder, Adamson & Co., throughout the year and up to March, 1920, the same being made on numerous separate purchase orders received and filed from time to time, generally in 10-barrel lots, and from March, 1920, on the basis of deliveries from time to time made under a contract or purchase agreement then entered into by and between respondents and the Victor Co. for 1,000 barrels of glue.

PAR. 9. That knowledge of the arrangement to pay said so-called "commissions" was possessed by certain employees of Baeder,

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Adamson & Co., among them being George H. Sautter, assistant sales manager, and Robert Focht, bill clerk, T. Wilford Schofield, auditor, and R. C. Baldwin, a bookkeeper, knew of such payments but did not know definitely what actually became of the money.

PAR. 10. That in paying such "commissions" from February 1, 1919, to January 1, 1921, Jenkins at various times personally advanced sums of money on account of such payments due or to become due to said Davis, "intermediary," and at irregular intervals, vouchers were made up for the payments due and paid or to be paid by said Jenkins as for "commissions paid on glue sales," which vouchers were regularly approved in writing by the said auditor of the partnership and of the respondent, Baeder, Adamson & Co., and with few exceptions also approved by either William B. Adamson and William Adamson for the partnership and by William Adamson for Baeder, Adamson Co., respondents.

PAR. 11. That after said Baeder, Adamson & Co., partnership, was succeeded by Baeder, Adamson Co., corporation, William Adamson of the partnership company became president and general manager of the Baeder, Adamson Co., the corporation, and Jenkins continued to pay said "commissions" to Davis, "intermediary," the money for same being drawn on vouchers approved by the said auditor, and by William Adamson, president and general manager aforesaid, until January 1, 1921.

PAR. 12. That the following is a copy of the first voucher on which such payments of "commissions" were made, being voucher No. 41871, and calculation made on the basis of 5 cents per pound glue.

Baeder, Adamson & Co.

Philadelphia.

New York.

Boston.

Chicago.

MAR. 13, 1919.

To WM. C. JENKINS, Dr.

5% allowances to Victor Talking Machine Co. on purchases as follows:

2/19/19-----	\$4,858.00
2/24/19-----	4,353.00
2/28/19-----	5,036.00
3/ 5/19-----	5,039.00
3/10/19-----	5,090.00
3/12/19-----	4,958.00

29,384.00 \$1,469.20

Entered on V. B. folio ——. By ——. Paid by check —.

Approved for payment:

W. C. JENKINS, *Manager.*

Examined and found correct: .

T. WILFORD SCHOFIELD, *Auditor.*

Findings.

Received — —, 19—, from Bader, Adamson & Co., fourteen hundred sixty-nine & 20/100 dollars in full for above account.

\$1,469.20

W. C. JENKINS.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.

Do not detach any papers.

(Indorsed on back:)

Baeder, Adamson & Co.

Voucher No. 41871.

Date paid Mar. 13, 1919.

Wm. C. Jenkins.

PAR. 13. That the following is a sample and copy of such vouchers of the aforesaid partnership approved by William B. Adamson, being voucher No. 42247.

Baeder, Adamson & Co.

Philadelphia.

New York.

Boston.

Chicago.

APRIL 22, 1919.

To WM. C. JENKINS, DR.

Commissions paid on glue sales..... \$970.90

Entered on V. B. folio ——. By ——. Paid by check —.

Approved for payment:

W. B. ADAMSON, *Manager*.

Examined and found correct:

T. WILFORD SCHOFIELD, *Auditor*.

Received — —, 19—, from Baeder, Adamson & Co. nine hundred seventy & 90/100 dollars in full for above account.

\$970.90.

W. C. JENKINS.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.

Do not detach any papers.

(Indorsed on back:)

Baeder, Adamson & Co.

Voucher No. 42247.

Date paid Apr. 22, 1919.

\$970.90.

Wm. C. Jenkins.

Classification.

Phila.

\$970.90.

(Attached lead pencil slip reads as follows:)

3/31	4, 874
4/3	4, 861
4/9	4, 845
4/14	4, 838

19, 418

5

970.90

Findings.

4 F. T. C.

PAR. 14. That a sample of such vouchers of the partnership, approved by William Adamson, is as follows, being voucher No. 43489:

Baeder, Adamson & Co.

Philadelphia.

AUGUST 30, 1919.

New York.

Boston.

To WM. C. JENKINS, Dr.

Chicago.

For commissions paid on glue sales..... \$1,265.65

Entered on V. B. folio ——. By ——. Paid by check —.

Approved for payment:

Examined and found correct:

WM. ADAMSON, *Manager*.

T. WILFORD SCHOFIELD, *Auditor*.

Received — —, 19—, from Baeder, Adamson & Co., twelve hundred sixty-five and 65/100 dollars, in full for above account.

\$1,265.65.

W. C. JENKINS.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.

Do not detach any papers.

(Indorsed on back:)

Baeder, Adamson & Co.

Voucher No. 43489.

Date paid Sept. 2, 1919.

\$1,265.65.

Wm. C. Jenkins.

Classification. Phila. Br. \$1,265.65.

PAR. 15. That a sample of said vouchers after the taking over of the business by the respondent corporation is as follows, being voucher No. 463:

Baeder, Adamson & Co.

Philadelphia.

Nov. 21, 1919.

New York.

Boston.

To WM. C. JENKINS, Dr.

Chicago.

Commissions paid on glue sales..... \$2,319.65

Entered on V. B. folio ——. By ——. Paid by check —.

Approved for payment:

Examined and found correct:

WM. ADAMSON, *Manager*.

T. WILFORD SCHOFIELD, *Auditor*.

Received — —, 19—, from Baeder, Adamson & Co., twenty-three hundred nineteen and 65/100 dollars in full for above account.

\$2,319.65.

W. C. JENKINS.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.

Do not detach any papers.

Findings.

(Indorsed on back:)

Baeder, Adamson & Co.
 Voucher No. 463.
 Date paid Nov. 21, 1919.
 Wm. C. Jenkins.
 Classification. Phila. branch. \$2,319.65.

PAR. 16. That one of these vouchers approved by William Adamson, president of the corporation, as of July 14, 1920, is as follows, being voucher No. 3408:

Baeder, Adamson & Co.
 Philadelphia. JULY 14, 1920.
 New York.
 Boston. To WM. C. JENKINS, Dr.
 Chicago.

Commissions paid on glue sales..... \$994.35

Entered on V. B. folio——. By——. Paid by check——.

Approved for payment: Examined and found correct:
 WM. ADAMSON, *Manager.* T. WILFORD SCHOFIELD, *Auditor.*

Received ——, 19——, from Baeder, Adamson & Co., nine hundred ninety-four & 35/100 dollars in full for above account.
W. C. JENKINS.
 \$994.35.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.
 Do not detach any papers.

(Indorsed on back:)

Baeder, Adamson & Co.
 Voucher No. 3408.
 Date paid ——.
 \$994.35.
 Wm. C. Jenkins.
 Classification. Phila. a/c. \$994.35.

PAR. 17. That on the books of the respondent and its predecessor partnership, appear, among other entries and memoranda relating to these "commissions" and this account, the following:

From the ledger of the partnership—

Date.	Items.	Folio.	Amts. in dol. & cts.
Mar. 31	Glue sales, V. T. M. Co	DB147	
" "	Transfer. Sd. ppr. sales, V. T. M. C.....	"	

Findings.

4 F. T. C.

From the daybook of Baeder, Adamson & Co.—

Page 147—\$154.18, Mar 31, 1919.

Commissions a/c to sd. ppr. sales.

(Above are transfers), commission paid in re Victor Talking Machine Co., which have been previously charged to sales accounts.

Page 151—\$970.90, Apr. 30, 1919.

Commission a/c—on glue sales (Victor).

Page 154—\$745.20, May 17, 1919.

\$1,037.30.

Commissions (W. C. J. on glue sales V. T. M. Co.).

Page 183—\$1,201.30, Sept. 30, 1919.

Commission a/c (paid by W. C. Jenkins—Glue a/c).

PAR. 18. That amounts so paid out by respondent and its predecessor, Baeder, Adamson & Co., covering such sales and deliveries from February 1, 1919, to January 1, 1921, on account of such so-called "commissions" aggregated about the sum of \$34,000; that no part of amount so paid in "commissions" as aforesaid was ever received by or reached the corporate treasury of the Victor Talking Machine Co., and no part of same has or ever was authorized by said company to be received by any one for it, or by any one of its employees, nor prior to the investigation by the Federal Trade Commission into the charges alleged in the complaint in this case, had the said Victor Co. any knowledge or intimation that any of its employees were receiving any such secret "commissions" as aforesaid on its said purchases of glue.

PAR. 19. That in March, 1921, respondent Baeder, Adamson Co. tendered the supposed beneficiary of the Victor Talking Machine Co., the sum of \$750, being the balance of said "commissions" due it under the agreement heretofore referred to, which had accrued after Jenkins had been dismissed by the respondent, and at the same time made a reduction of 5 cents per pound on all deliveries of glue to the Victor Co. made subsequent to January 1, 1921, that such reduction was not made on account of the quality or market price of the glue so sold to the Victor Co.; that said \$750 "commissions" referred to were then paid to the Victor Talking Machine Co. direct, as a part of the 5 cents per pound reduction made on its sales to the Victor Co. after January 1, 1921, as above stated.

PAR. 20. That the purchases of joint glue by the Victor Talking Machine Co. made from the respondent and its predecessor, Baeder, Adamson & Co., from February 1, 1919, to March 4, 1921, at the rate or price of 35 cents per pound, on which its so-called "commissions" were paid as aforesaid, which will more particularly appear from the stipulations in this proceeding (pp. 28-30 inclusive),¹ given in pound totals were as follows:

¹ Not printed.

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Findings.

	Pounds.
In the year 1919-----	329, 799
In the year 1920-----	313, 668
In the year 1921-----	20, 392
Total-----	663, 857

PAR. 21. That on or about February 1, 1919, after the cabinet department of the Victor Co. had reported Milligan & Higgins' glue as unsatisfactory, Charles Blake, salesman for Milligan & Higgins, immediately took samples of such glue and tested same, and found the said glue equal in all respects to any glue which his said company had been supplying, and which had been for years previously accepted and used by the said cabinet department of the Victor Talking Machine Co.; that Blake reported the results of his tests of the glue furnished by his said company to the purchasing department of the Victor Co., and also to the superintendent of the cabinet department; that at this time Blake requested permission, and in which request he was joined by the purchasing department of the Victor Talking Machine Co., to go into the said cabinet department of the said Victor Co., and make tests and demonstrations with his said glue; that said requests made by Blake were peremptorily refused by the then superintendent of the said cabinet department, one Eugene T. Kieffer, and Kieffer's refusal to permit Blake to make said tests, was accompanied by "such discourteous language and insinuations" that Blake refused to have any further dealings with said superintendent looking to secure the trade of said Victor Co. though importuned to do so by the purchasing department of the Victor Talking Machine Co.

PAR. 22. That in the summer of 1920, when some trouble was reported with respondent's glue by the Victor cabinet factory superintendent, respondent's representatives were, at the suggestion of said cabinet factory superintendent, afforded every opportunity to make tests and rectify the trouble, and substitute material, such tests and experiments running over a period of weeks.

PAR. 23. That the glue sold by respondent and its predecessor to the Victor Talking Machine Co. was either glue made for it by the Tunnell Co., of Philadelphia, or glue bought from The Eastern Tanners Glue Co., of Gowanda, N. Y., with small purchases from two or three other concerns.

PAR. 24. That the costs to the Baeder, Adamson Co. of all the glue made for it by Tunnell & Co. for the year ending June 30, 1920, as billed to it by the Tunnell Co., including the 2 cents per pound for making, was \$0.2851 per pound, as to which figure as

Findings.

4 F. T. C.

final price there exists a controversy at this time, the respondent claiming said figure to be in fact too high, the billing price for the period from July 1, 1920, to February 28, 1921, being \$0.335696 per pound, about which a similar controversy and contention exists.

PAR. 25. That of the glue bought by the respondent of The Eastern Tanners Glue Co., of Gowanda, N. Y., the only invoices of purchases in 1919 of grade C, clear, ground glue (which was the glue respondent reports as having furnished the Victor Co.) are of 153 barrels, which cost respondent \$0.2588 per pound plus freight amounting approximately to one-fourth of a cent per pound. Not all of the 153 barrels were sold to the Victor Co. The other purchases by the respondent from The Eastern Tanners Glue Co. in 1919 were of lower grades of glue and amounted to about 523,000 pounds, or about 1,047 barrels, at \$0.1849 and \$0.2218 per pound for the two other grades purchased (E and D). That some of The Eastern Tanners Glue Co.'s glue furnished by respondent and its predecessor to the Victor people was glue of earlier purchase, which had cost respondent's predecessor more per pound than the above-stated price for grade C glue.

PAR. 26. That respondent and its predecessor, from July 1, 1919, to July 1, 1920, had manufactured for them by F. W. Tunnell & Co., at Philadelphia, 1,000,000 pounds of glue, of which approximately 50,000 pounds was No. 1 extra, 150,000 pounds was No. 1, 200,000 pounds Nos. 1½ and 1¾, a lower grade, and approximately 600,000 pounds was their so-called "one cross," or their standard quality.

PAR. 27. Of the glue furnished by Baeder, Adamson Co. or its predecessor, to the Victor Co., on eight lots looked up by the Baeder, Adamson auditor, the tests were:

- 4 at 186,
- 3 at 190,
- 1 at 195,

which the auditor of respondent believes is a reasonably close average as said glue was furnished and running.

PAR. 28. That sales of glue by respondent and its predecessor for each of the years 1919 and 1920 (including all grades and kinds of glue, whether hide, bone, et cetera) were as follows:

1919.....	\$688, 132. 62
1920.....	754, 206. 31

PAR. 29. That the American glue price lists, which were subject to a discount of 2 per cent for cash, for the various periods as indicated between February, 1919, and June, 1920, are as follows on the two tests stated:

	186 jelly.	196 jelly.
February, 1919.....	30	32
May, 1919.....	32	34
December, 1919.....	30	32
February, 1920.....	30	32
April, 1920.....	32	34
May, 1920.....	32	34
June, 1920.....	32	34

PAR. 30. During some of the time while the Victor Co. was paying 35 cents or about that figure per pound for its glue from respondent and its predecessor, similar glue was being offered and sold generally by one concern at about 26 cents per pound and by another concern at about 28 to 30 cents a pound, said concerns being the two which, as above stated, furnished respondents most of the glue which was sold by respondent or its predecessor to the Victor Co., to wit, F. W. Tunnell & Co., of Philadelphia, and the Eastern Tanners Glue Co., of Gowanda, N. Y.

PAR. 31. That during the late World War, the United States Government certified certain glues as suitable for airplane construction; that the glues furnished the Victor Co. by respondent and its predecessor was of a "somewhat lower quality" than the grade as certified by the Government for its airplane work, but was a high-grade glue; that the glue of Milligan & Higgins aforesaid furnished the Victor Talking Machine Co., up to February 1, 1919, was of a high test and better quality than such Government certified grade; that under the tests used by a certain glue manufacturer, Delaney & Co., of Philadelphia, of glue to be certified under United States Government tests, the viscosity and shot or jelly tests showed 19 and 190, respectively; that during the period respondent's glue was used by the Victor Co., glues of Delaney & Co. aforesaid were reported unsatisfactory by the cabinet testing department of the Victor Co., which glues tested as high as 195, 205, 215, 229, and 235, shot or jelly, with a viscosity of 25 to 30.

PAR. 32. That when the business of the partnership company was succeeded by the respondent corporation, namely, October 1, 1919, William B. Adamson became a director and William Adamson became its president and general manager, and W. C. Jenkins continued as its sales manager, and each said official continued in that capacity until January 15, 1921, when Jenkins was dismissed from the respondent's employ and William Adamson was divested of all authority, but remained as president aforesaid until July 6, 1921.

PAR. 33. That in June or July, 1920, and previous, Mr. George Upton, who represented 95 per cent of the stock of the respondent corporation, discovered from the books of the said company that a

Conclusion.

4 F. T. C.

5 cents per pound "commission" on sales of glue to the Victor Talking Machine Co. appeared thereon, and he endeavored to ascertain the facts in regard thereto from William Adamson and William B. Adamson and from T. Wilford Schofield, auditor of respondent company, but failed to "obtain from any of them any definite information as to what this account actually was or why it had been started."

PAR. 34. That in October, 1920, Upton learned from Jenkins that all the moneys showed by respondent's books and those of its predecessor partnership to have been received by him, Jenkins, as "commissions," had been paid over by him to obtain and hold the glue account of the said Victor Talking Machine Co., and in said interview Jenkins stated that "Kieffer is my man," referring to the Victor Co.'s employee in the cabinet department, and that he was a "pretty slippery sort of individual" and "that it was a question if he would be able to hold the Victor account indefinitely or not."

PAR. 35. That Jenkins, general sales manager, aforesaid, for the years 1919 and 1920, received as salary from respondent and its predecessor the sum of \$10,000 and as traveling expenses a maximum sum of \$10,000.

PAR. 36. That George Upton, under his general authority as general manager of and for the company owning ninety-five (95) per cent of the stock of respondent, had full and complete authority to deal with and act as to the matters and practices hereinbefore referred to touching the payment of secret "commissions" to employees of customers, to secure trade, but up to the closing of the formal hearings in this case, namely, August 10, 1921, no action had been taken by the directors of said company or the respondent company in regard to the practices—paying secret "commissions," etc., heretofore referred to—unless accepting the resignation of William B. Adamson as president and general manager, and the dismissal of Jenkins aforesaid, may be so considered.¹

CONCLUSION.

That the practices of the said respondents, under the conditions and circumstances set forth in the foregoing findings of fact, constitute unfair methods of competition in interstate commerce, and are 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."

¹ The paragraph is printed as amended by the Commission February 8, 1922.

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

It is ordered, That the respondent, Baeder, Adamson Co., its officers, directors, agents, representatives, servants, and employees cease and desist from directly or indirectly giving or offering to give gratuities, such as money, so-called "commissions," or other thing equivalent to money, to employees of its customers or prospective customers, without the knowledge and consent of their respective employers, as an inducement to influence their employers to purchase or to contract to purchase from respondent, joint glue, or any kind of glue or other commodity sold by respondent, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent without other consideration therefor.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION
v.
TOUSEY VARNISH COMPANY.

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

Docket 797—November 22, 1921.

SYLLABUS.

Where a corporation competitively engaged in the manufacture and sale of varnish, sold its product, not made for the Government or in accordance with Government specifications, in containers falsely and deceptively labeled and branded "Government Spar":

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

COMPLAINT.

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

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Illinois, with principal place of business at Chicago in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling varnishes and causes varnishes 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 makes use of misleading and deceptive labels which it places upon the containers of varnish sold by it, which labels contain the words "Government Spar," although the varnish so labeled had not been procured from the Government or manufactured for its use or made in accordance with any Government formula or specifications; that the labels used as aforesaid, are calculated to and

do mislead and deceive the purchasing public, and numerous persons are thereby induced to purchase such varnish upon the mistaken belief that it has been manufactured in accordance with a formula or specifications approved by the Government.

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, Tousey Varnish Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent neither filed an answer nor entered its appearance herein, but made, executed and filed an agreed statement of facts in which it is stipulated and agreed by 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 upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Tousey Varnish Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, and is engaged in the business of manufacturing varnish in the city of Chicago, in said State.

PAR. 2. That the respondent, Tousey Varnish Co., sells its products and causes same to be transported from the State of Illinois to purchasers thereof throughout the different States of the United States, and there is continually and has been at all times herein mentioned a constant current of trade in commerce in said products between and among the various States of the United States; and the respondent conducts its business in competition with other corporations, copartnerships and individuals similarly engaged.

Conclusion.

4 F. T. C.

PAR. 3. That during the years 1919 and 1920 the respondent, Tousey Varnish Co., in the sale and shipment of its products as hereinbefore described, sold and shipped varnish in containers which were labeled and branded "Government Spar." Dealers purchasing this varnish offered and sold it to the general purchasing public as thus labeled and branded. The varnish, the containers for which were so labeled and branded, was not property of the United States Government, nor procured from the United States Government, nor manufactured for its use, nor made in accordance with any United States Government formula, specification, or requirement, nor was the United States Government or any department, branch or agency thereof in any way connected with the manufacture or sale of this product.

PAR. 4. That the word "Government," when applied to varnish, is generally understood by the purchasing public to mean varnish obtained from the Government of the United States, or manufactured for its use, or made in accordance with some United States Government formula, specification or requirement, or that the United States Government or some branch or agency thereof, has in some way been connected with the manufacture or sale of said product, and the general purchasing public believes that such varnish is of an unusually high grade or character because approved by the United States Government.

PAR. 5. That the purchasing public is misled by said label and brand into the belief that such varnish is of an unusually high grade or character, and approved by the United States Government.

PAR. 6. That during the years 1919 and 1920 there were, and now are, manufacturers selling their products in commerce among the several states of the United States who make varnish similar to that made and sold by the respondent but the containers for which are not labeled or branded with any word or words indicating that the Government of the United States has had any connection with said varnish.

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, 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, Tousey Varnish Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly employing or using the label or brand "Government," or any similar descriptive label or brand on varnish, or the container therefor, except (1) when the varnish has been obtained from the United States Government; or (2) when the varnish has been manufactured for, and accepted by, the United States Government; or (3) when the varnish has been made in accordance with some United States Government formula, specification, or requirement, and the word or term indicating the United States Government is joined or used with some other words or terms indicating compliance with some United States Government formula, specification, or requirement (e. g., made in accordance with Government W. D. Specification No. 97); or (4) when the varnish has been obtained from some Government other than the United States Government, and the word or term used to indicate Government is joined or used with some other word or term indicating the Government from which the varnish was obtained (e. g., French Government Spar Varnish); or (5) when the varnish has been manufactured for, and accepted by, some Government other than the United States Government, and the word or term used to indicate Government is joined or used with some other word or term indicating the Government for which the varnish was manufactured and by which it was accepted (e. g., Canadian Government Spar Varnish); or (6) when the varnish has been manufactured in accordance with the formula, specification, or requirement of some Government other than the United States Government, and the word or term used to indicate Government is joined or used with some other words or terms indicating compliance with the formula, specification, or requirement of the Government in accordance with whose formula, specification, or requirement the varnish has been manufactured (e. g., made in accordance with specification of the Italian Government).

Order.

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

Complaint.

FEDERAL TRADE COMMISSION

v.

GUARANTEE VETERINARY CO. AND GEORGE L. OWENS.

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

Docket 343—December 13, 1921.

SYLLABUS.

Where a concern engaged in the sale of salt blocks for live stock under the brand name "Sal-Tonk," and an individual, the moving and controlling spirit in its organization and management as in that of several predecessor concerns similarly engaged,

- (a) Falsely advertised and represented the ingredients of said product; and
- (b) Advertised "U. S. GOVERNMENT ADOPTS SAL-TONIK—the Quartermaster's Department of the U. S. Army has ADOPTED SAL-TONIK and purchased our entire Southern output for use in the U. S. Cavalry. * * *," reproducing a letter, falsely alleged to have been written by the "Assistant Veterinarian of the U. S. Army at Camp Johnston," indorsing such product and the results of its use at said camp; the facts being that only one purchase thereof was made by the Government, and that in other respects the advertising was false and misleading:

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

COMPLAINT.

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

PARAGRAPH 1. That the respondent, the Guarantee Veterinary 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 a year last past have been engaged in the sale of salt in the form of blocks for the use of live stock under the brand name "Sal-Tonik" in and among the several states of the United States and the District of Columbia, in direct competition with

Findings.

4 F. T. C.

other persons, copartnerships and corporations also engaged in the sale of block salt for the use of live stock.

PAR. 2. That in connection with the sale of said "Sal-Tonik" blocks in interstate commerce as aforesaid, the respondents are now and for more than a year last past have been publishing and distributing in and among the several states of the United States and the District of Columbia, advertising matter containing false and misleading statements, among which are representations and implications to the effect that the said "Sal-Tonik" blocks contain certain medicinal ingredients, that the respondents operate a number of factories in various parts of the United States, the total product of one of which was purchased and thereby endorsed by the Quartermaster Department of the United States Army, and that the respondents own and operate certain large and expensive machinery necessary for the manufacture of said "Sal-Tonik" blocks, all of which was designed to and does mislead the purchasing public into the belief that respondents' product possesses certain unique and beneficial characteristics and tends to secure for it an undue preference over the product of competitors.

REPORT, MODIFIED AND NEW FINDINGS AS TO THE FACTS, AND MODIFIED AND NEW ORDER.

This proceeding coming on to be heard upon the exceptions of the respondent to the findings as to the facts and conclusions heretofore entered herein on June 8, 1921;¹ and the Commission having duly considered said exceptions and being now fully advised in the premises, modifies its findings as to the facts, as heretofore adopted, and makes these its modified and new findings as to the facts herein, as follows:

MODIFIED AND NEW FINDINGS AS TO THE FACTS.

PARAGRAPH 1. 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.

¹ See 3 F. T. C. 402 et seq.

PAR. 2. That during the years 1918 and 1919 the respondents printed and caused to be circulated in and throughout the various States of the United States, circulars in which it stated that its product, Sal-Tonik, contained the following ingredients: Sulphate of Iron (re-dried), carbonized Peat, Charcoal, Tobacco, Quassia, Sulphur, Gentian, Pure Salt, Chloride of Magnesia, Epsom Salts, Glauber's Salts, Bicarbonate of Soda, Oxide of Iron, Mineralized Humoides, American Worm Seed, Levant Worm Seed, Capsicum (red pepper); when in truth and in fact, respondent's product, Sal-Tonik, did not contain all of said ingredients, and did not contain carbonized Peat, Charcoal, Tobacco, Quassia, Sulphur, Gentian, Mineralized Humoides, American Worm Seed, Levant Worm Seed, or Capsicum (red pepper).

PAR. 3. That 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.

PAR. 4. 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.

PAR. 5. 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,

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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 (re-dried), carbonized Peat, Charcoal, Tobacco, Quassia, Sulphur, Gentian, Pure Salt, Chloride of Magnesia, Epsom Salts, Glauber's Salts, Bicarbonate of Soda, Oxide of Iron, Mineralized Humoides, American Worm Seed, Levant Worm Seed, Capsicum (red pepper); when in truth and in fact, respondent's product, Sal-Tonik, did not contain all of said ingredients, and did not contain carbonized Peat, Charcoal, Tobacco, Quassia, Sulphur, Gentian, Mineralized Humoides, American Worm Seed, Levant Worm Seed, or Capsicum (red pepper).

PAR. 6. That during the years 1918 and 1919, respondents advertised in the Cooperative Manager and Farmer (Commission's Ex. 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 Quartermasters 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 shown by a letter which appears below, written by the Assistant Veterinarian of the U. S. Army at Camp Johnston, * * *"

"CAMP JOSEPH E. JOHNSTON, FLA,
January 25, 1919.

"GUARANTEE VETERINARY COMPANY, CHICAGO, ILLINOIS.

"To whom it may concern:

"While acting as 2d. Lt. Vet. U. S. A. Auxiliary Remount Depot No. 333, Camp Joseph E. Johnston, Florida, I had the opportunity of recognizing the value of SAL-TONIK. Large numbers of animals were kept in corrals in this camp and naturally much sickness would be expected, however, I noticed that where 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. Auxillary Remount Depot 333, Camp Joseph E. Johnston."

Order.

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.

CONCLUSIONS.

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

MODIFIED AND NEW ORDER TO CEASE AND DESIST.

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

It is ordered, That the respondents, Guarantee Veterinary Co. and George L. Owens, 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 Humoides, American Worm Seed, Levant Worm Seed, or Capsicum (red

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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.

Complaint.

FEDERAL TRADE COMMISSION

v.

M. G. SLOCUM DOING BUSINESS UNDER THE NAME AND STYLE OF GINSO CHEMICAL CO., AND GINSO CHEMICAL CO., A MISSOURI CORPORATION.

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

Docket 583—December 27, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a germicide, advertised and sold the same under the trade name and mark, "B-K, Bacilli-Kil," and included in its labels, bulletins and other advertising matter information and instructions relative thereto based on scientific tests, so that, as a result of its efforts and large expense, its said germicide had become widely and favorably known, and it had acquired a valuable good-will in the sale thereof as aforesaid; and thereafter a competing manufacturer of a product inferior in germicidal strength to its preparation, and a corporation, successor to said manufacturer's business,

- (a) Characterized and sold their product as, "B-D, Bacilli Destroy" and "Ginso's B-D, Bacilli Destroy," in containers with labels bearing such names designed in a manner closely simulating its trade-mark;
- (b) Used the same design in bulletins and other advertising matter issued and distributed by them in connection therewith;
- (c) Appropriated and used literally in their labels, bulletins, etc., large portions of the information contained in its labels, bulletins, etc., including its directions and instructions, although the same were not applicable to their product;

With a capacity and tendency to deceive and mislead the purchasing public as to the identity of the two products and to result in the passing off of the inferior for the superior germicide; and

- (d) Falsely and misleadingly advertised and represented by labels, bulletins and other advertising matter issued and distributed by them, that their product was ten times stronger as a germicide than undiluted U. S. P. carbolic acid;

Held, That such simulation of trade-mark, wrongful appropriation of competitor's matter, mislabeling, and 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 G. Slocum, doing business under the name and style of Ginso Chemical Co., and Ginso Chemical Co., a Missouri corporation, hereinafter referred to as the respondents, have within four years last past, violated, and are vio-

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lating section 5 of an act of Congress 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, G. Slocum, an individual doing business under the name and style of Ginso Chemical Co., with his principal place of business in St. Joseph, Mo., is now and since 1917 has been continuously engaged in the business of manufacturing and selling to the public, a preparation which purports to be a disinfectant and germicide, to which was given the name "B-D, Bacilli Destroy." That said preparation was and is sold by the said respondent, G. Slocum, in various states of the United States, and said respondent, G. Slocum during the aforesaid time, caused and still causes the same to be transported from the State of Missouri through and into various other states of the United States. That within the year last past, the respondent corporation, Ginso Chemical Co., was organized under and by virtue of the laws of the State of Missouri, with its principal place of business at St. Joseph, Mo., for the purpose of taking over and continuing the business of manufacturing and selling the aforesaid product. That in the conduct of said business, as aforesaid, said respondents have been and are in direct active competition with various manufacturers of similar products, which are sold and transported among the several states of the United States.

PAR. 2. That General Laboratories, a company of manufacturing chemists in Madison, Wis., have been engaged continuously since 1913 in the manufacture and sale of a disinfectant and germicide. That to such preparation said General Laboratories has given the name of "B-K, Bacili-Kil," which name is printed in a unique and fanciful form on the labels, circulars and advertisements of such preparation of said company. That General Laboratories registered in the United States Patent Office the said name "B-K, Bacili-Kil," in its said unique and fanciful form as a trade-mark, on July 31, 1915. That General Laboratories distributed and distributes to the public a circular, containing instructions for the use of said preparation, together with other printed matter, which circular is entitled "Bulletin 269," and was copyrighted under the laws of the United States in 1918. That General Laboratories distributes its said product in cans to which are affixed printed labels which bear the trade-marks aforesaid, together with certain specifications of the contents of such

cans and directions for its use. That in the course of its business, as aforesaid, General Laboratories has built up for itself a large and profitable business throughout the various States of the United States in the sale of its said product, which has become well known to the public under the said name and trade-mark; and that General Laboratories has spent large sums of money in advertising said product under said name and trade-mark, whereby the General Laboratories has acquired a valuable good-will in the sale of such product under the said name and by virtue of its said trade-mark and copyrighted circular.

PAR. 3. That the respondents since 1917 have manufactured a product purporting to be a germicide, which respondents have sold in interstate commerce under the name of "B-D Bacilli Destroy" as aforesaid. That respondents in the marketing of said product have simulated and are simulating the name and registered trade-mark of the germicide marketed by the said General Laboratories, and have simulated and are simulating the copyrighted circular issued by said General Laboratories, and also the labels as used by said company; all of which was and is designed and calculated by respondents to mislead and deceive the purchasing public, and to cause the public to believe that respondents' product was one and the same as that of General Laboratories. That the letters "B-D" adopted by respondents are designed in the same unique and fanciful form as the letters "B-K," used by the said General Laboratories; and that the name "B-D, Bacilli Destroy," as used by respondents, is a simulation of the trade-mark of General Laboratories. That respondents issued and are issuing a circular very similar in size, shape, and make-up to the copyrighted circular of General Laboratories, which circular of respondents literally reproduces the greater part of the circular of General Laboratories, and is so much like that of General Laboratories as to readily mislead and deceive the public into believing it to be that of General Laboratories. That respondents on such circular substituted the name of the Gonso Chemical Co. for that of General Laboratories, the natural tendency of which was and is to mislead and deceive the purchasing public into believing that the product of General Laboratories was manufactured and sold by respondents. That the labels heretofore and now used by respondents on the cans containing their product, were and are a simulation of the labels of General Laboratories. That the product of respondents is inferior to the product of General Laboratories. That the natural effect of such acts on the part of respondents, in the passing off of their inferior product as the product of General Labo-

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ratories, by means of the simulation of the name of the product and the circulars and labels of General Laboratories, and by the infringement of the trade-mark and copyright of General Laboratories, as aforesaid, has been and is to mislead and deceive the purchasing public into believing that the inferior product of respondents was and is the product of General Laboratories, and to appropriate to the use and benefit of respondents, part of the good-will enjoyed by General Laboratories, and to appropriate to the use and benefit of respondents, part of the good-will enjoyed by General Laboratories by reason of the advertising, and long course of business, and valuable trade-mark and copyright of said General Laboratories.

PAR. 4. That respondents have represented and held out and are representing and holding out to the purchasing public by means of their advertisements, circulars and labels aforesaid, that their product "Bacilli-Destroy" was and is a powerful sterilizer, deodorant, disinfectant and antiseptic and that it is ten times stronger than undiluted U. S. P. carbolic acid and is of great value generally as a disinfectant and germicide. That in truth and in fact said product of respondents is not a powerful sterilizer, deodorant, disinfectant and antiseptic and is not ten times stronger than undiluted U. S. P. carbolic acid but is on the contrary an inferior product, having little or no value generally as a disinfectant and germicide. That the natural effect of such false and misleading advertisements and representations by the respondents concerning their said product has been and is to mislead and deceive the purchasing public into believing that the product of respondents is a powerful and useful disinfectant and germicide when in truth and in fact said product has little or no antiseptic or germicidal value.

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, M. G. Slocum, doing business under the name and style of Ginso Chemical Co., and Ginso Chemical Co., a Missouri corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having appeared, the defendant Slocum, in person, and the defendant Ginso Chemical Co., by its attorney, and the latter having filed its answer admitting certain of the allegations of the said complaint, and denying certain others thereof; and the Commission having introduced testimony and evidence in support

of the charges of said complaint, and the respondents having introduced testimony and evidence in support of their answer, and the Commission and the respondents having rested, and the respondents having waived the filing of briefs and the hearing of argument herein, and

Thereupon this proceeding having come on for final hearing without oral argument, and the Commission having duly considered the record, and it 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, M. G. Slocum, an individual doing business under the name and style of Ginso Chemical Co., with his principal place of business in the city of St. Joseph, State of Missouri, was from about October, 1915, to about November, 1919, continuously engaged in the manufacture and sale of various chemical products; and that the respondent, Ginso Chemical Co., a Missouri corporation; was organized under and by virtue of the laws of the said State on or about the 28th day of November, 1919, with its principal place of business in the city of St. Joseph in said State, and took over the said business in which it has since been continuously engaged.

PAR. 2. That for several years last past the said respondents in the course of their said business have manufactured at St. Joseph, Mo., a germicide which they have sold, principally in the States of Missouri and Kansas, but to some extent in other States as well, under the names "B-D, Bacilli Destroy," and "Ginso's B-D, Bacilli Destroy"; and that in the sale of their said product the said respondents have been and are engaged in competition with other manufacturers of similar products.

PAR. 3. That about the year 1913 a corporation was organized under the name General Purification Co., with its principal place of business in the city of Madison, State of Wisconsin; that on or about March 8, 1916, the name of the said corporation was changed to General Laboratories; that since its organization the said corporation has been continuously engaged in the manufacture and sale of a germicide under the name "B-K, Bacilli-Kil"; that the said name, designed in a unique and fanciful form, was registered in the United States Patent Office by the said corporation as a trade-mark for the said germicide on or about February 1, 1916; that the said name and trade-mark appears on labels affixed to the containers in which the said corporation markets its said germi-

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cide, and on all bulletins, circulars, and other advertising matter issued, distributed, and published by the said corporation in connection therewith; that the said labels, bulletins, circulars, and other advertising matter contain certain information prepared by the said corporation, including directions and instructions for the proper method of diluting and applying the said germicide in the various uses to which it may be put, such directions and instructions being based upon actual scientific tests; and that the said corporation has expended large sums of money in advertising and popularizing the said germicide under the said name and trade-mark and has thus built up for itself a large and profitable business throughout the various States of the United States in the sale of the said germicide, which has become well known to the purchasing public under the said name and trade-mark, whereby the said corporation has acquired a valuable good will in the sale of the said germicide under the said name and trade-mark.

PAR. 4. That the respondents aforesaid have marketed their aforesaid "B-D, Bacilli Destroy" and "Ginso's B-D, Bacilli Destroy" in containers to which were affixed labels bearing the said names, designed in a manner closely simulating the trade-mark of the General Laboratories aforesaid, and have used the same design on bulletins, circulars, and other advertising matter issued, distributed, and published by them in connection with their said germicide; that the respondents, in their said labels, bulletins, circulars, and other advertising matter have literally appropriated and reproduced large portions of the information contained in the labels, bulletins, circulars, and other advertising matter used, issued, distributed, and published by the said General Laboratories as aforesaid, including the directions and instructions for the proper method of diluting and applying the germicide manufactured and sold by the said General Laboratories, although the said directions and instructions were not applicable to the respondents' germicide, which was inferior in germicidal strength to the product manufactured and sold by the said General Laboratories.

PAR. 5. That the simulation by the respondents of the trade-mark of the General Laboratories and their appropriation and reproduction of the directions, instructions, and other information prepared by the General Laboratories as aforesaid was calculated to deceive and mislead the purchasing public as to the identity of the germicides in question and result in the passing off of the respondents' inferior product for the product of the General Laboratories.

PAR. 6. That the respondents, by means of their labels, bulletins, circulars, and other advertising matter used, issued, distributed, and

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published as aforesaid, have made the false and misleading representation that their said product was ten times stronger as a germicide than undiluted U. S. P. carbolic acid.

PAR. 7. That since the beginning of this proceeding the respondents have abandoned the names "B-D, Bacilli Destroy" and "Ginso's B-D, Bacilli Destroy," and have adopted for their said product the name "Electrofied Chlorine," which name now appears upon the labels affixed to the containers in which the said product is marketed and in the bulletins, circulars, and other advertising matter issued, distributed, and published in connection therewith.

CONCLUSION.

That the practices of the said respondents, under the conditions and circumstances set forth in the foregoing findings as to the facts, 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 thereto of the respondents and the testimony and evidence introduced on behalf of the respondents, and the Commission having considered the record and 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 above-entitled respondents, M. G. Slocum, whether doing business under the name and style of Ginso Chemical Co. or under any other trade name, and Ginso Chemical Co., a Missouri corporation, its officers, directors, agents, servants, and employes, cease and desist from:

I. Displaying the names "B-D, Bacilli Destroy" or "Ginso's B-D, Bacilli Destroy" designed in simulation of the trade-mark "B-K, Bacilli-Kil" as registered by the General Laboratories of Madison, Wis., on any carton, container, or package in which the respondents market any antiseptic, disinfectant, germicide, or similar product in interstate commerce, or on any label, bulletin, circular, or other advertising matter used, issued, distributed, or pub-

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lished in connection with the sale of such products in interstate commerce.

II. Appropriating and reproducing on any carton, container, or package in which the respondents market any antiseptic, disinfectant, germicide, or similar product in interstate commerce, or in any label, bulletin, circular, or other advertising matter used, issued, distributed, or published in connection with the sale of such products in interstate commerce, any instructions, directions, or other information prepared by the said General Laboratories and contained in the labels, bulletins, circulars, or other advertising matter used, issued, distributed, or published by the said General Laboratories in connection with the marketing of its product known as "B-K, Bacilli-Kil."

III. Misrepresenting the germicidal strength of any antiseptic, disinfectant, germicide, or similar product manufactured and sold in interstate commerce by the respondents, either on the cartons, containers, or packages in which such sales are made, or in the labels, bulletins, circulars, or other advertising matter used, issued, distributed, or published in connection with such sales, or in any other way.

And it is further ordered, That the respondents shall file with the Federal Trade Commission within sixty (60) days from the date of this order their report in writing, stating the manner and form in which this order has been complied with, and shall attach to such report two copies of all wrappers, labels, bulletins, circulars, and other advertising matter used, issued, distributed, or published by the respondents in connection with the sale of antiseptics, disinfectants, germicides, or similar products in interstate commerce subsequent to the date of this order.

Complaint.

FEDERAL TRADE COMMISSION

v.

MARX FINSTONE.

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

Docket 663—January 7, 1922.

SYLLABUS.

Where an individual engaged in the manufacture and sale of cheap fountain pens and of individual containers therefor, sold said pens together with containers bearing the legend "Price \$1.50" or "Price \$3.00," the prices shown being fictitious and exaggerated; with the effect of misleading purchasers and the general public into believing said prices to be the usual retail prices, and of enabling, encouraging and aiding dealers to defraud the public by obtaining excessive prices, and, by selling at less than the figure indicated, to mislead and deceive purchases into believing that a higher grade of pen was being sold at a reduced price:

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Marx Finstone 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 amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent is engaged in the business of manufacturing and selling fountain pens with principal place of business at New York, N. Y., and causes pens sold by him to be transported to the purchasers thereof, from the State of New York, through and into various other States of the United States, and into foreign countries, and carries on such 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 One hereof, sells at wholesale fountain pens manufactured by him, which pens he packs singly in containers upon which he conspicuously prints what purport to be proposed resale prices, but which prices are false, fictitious and misleading in that such prices are greatly in excess of the prices at which respondent

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and his vendees contemplate that said pens will be resold, and are greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; and such pens are sold by respondent, packed in the containers marked as aforesaid, with full knowledge that such marks are to be used for the purpose of misleading and deceiving the purchasing public and inducing the public to purchase said pens, when offered for sale at prices substantially below those printed on said containers, upon the mistaken belief that said pens are being sold at a greatly reduced price; that among pens so sold by respondent, at prices ranging from 7¢ to 25¢ each are pens placed in containers upon which the respondent prints "Price 1.50" and "Price \$3.00," and that in selling the pens in containers so marked the respondent comes in direct competition with other manufacturers of and dealers in pens who do not mark their product with such false, fictitious and misleading price marks, and the said respondent by the means aforesaid aids, abets and assists his customers to whom he sells his pens in containers so marked, in using unfair methods of competition against others similarly engaged, but who do not sell their pens in containers marked with such false, fictitious and misleading price marks.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondent, Marx Finstone, 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 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 sup-

port of same, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Marx Finstone, is engaged in the business of manufacturing and selling fountain pens and also selling or supplying individual boxes or containers stamped or marked with a resale price, with his principal place of business at 161 Grand Street, in the City of New York, State of New York, and causes pens sold by him to be transported to the purchasers thereof, from the State of New York, through and into various other States of the United States, and into foreign countries, in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That within two years last past the respondent has sold at wholesale, in commerce as aforesaid, throughout the United States, cheap grades of fountain pens at prices ranging from \$10 to \$24 per gross, and has sold or supplied purchasers of said pens with individual boxes or containers on which boxes or containers is stamped or marked "Price \$1.50" for the cheaper grade and "\$3.00" for the better grades.

PAR. 3. That respondent sells said fountain pens and sells or supplies said purchasers with boxes stamped or marked with false and fictitious proposed resale prices, that such resale prices are not bona fide but placed on such boxes for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are of high grades and reasonably worth the false and fictitious prices marked on such boxes.

PAR. 4. That the sale by respondent to dealers of cheap fountain pens and at the same time the sale or supplying of individual boxes or containers, stamped or marked with fictitious prices as aforesaid, is calculated to and does enable dealers in said pens to defraud the purchasing public by obtaining for such pens, prices greatly in excess of cost price of said pens; that said pens are sold by some dealers at prices below those indicated on the box or containers, and the prices indicated on the boxes or containers mislead and deceive the purchasing public into believing that a higher grade of pen is being sold at a reduced price; and that thus respondent encourages, aids and abets said dealers in misleading or deceiving the public as to the real value of said pens.

PAR. 5. That the effect of printing or stamping of fictitious or exaggerated prices on the boxes or containers supplied or sold by respondent, in which fountain pens are sold to the public, as aforesaid, has been and is to mislead purchasers and the general public

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into the belief that the retail price of said fountain pens is the price stamped or marked on the boxes or containers.

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 and the amended complaint of the Commission 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, Marx Finstone, his agents, representatives, servants and employees, do cease and desist from directly or indirectly:

1. Stamping, printing or otherwise marking on boxes or containers in which fountain pens are sold or intended to be sold, a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

2. Selling or supplying his customers with individual boxes or containers, made to contain fountain pens, on which said boxes or containers is stamped, printed or otherwise marked, a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

And it is further ordered, That said respondent Marx Finstone, shall within thirty (30) 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 he has complied with the order of the Commission herein set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

BENJAMIN SHATKUN AND DAVID KAHN, PARTNERS,
STYLING THEMSELVES SHATKUN & KAHN.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 664—January 7, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of cheap fountain pens packed in individual containers bearing the legend "Price \$3.00," which was a fictitious and exaggerated price, sold the same so packed to dealers who resold them to the public at prices many times in excess of their cost and often at the price so indicated; with the effect of misleading purchasers and the general public into believing said price to be the usual retail price, and of enabling, encouraging and aiding dealers to defraud the public by obtaining excessive prices, and, by selling at less than the figure indicated, to mislead and deceive purchasers into believing that a higher grade of pen was being sold at a reduced price:

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Benjamin Shatkun and David Kahn, partners styling themselves Shatkun & Kahn, herein-after referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents are partners and style themselves Shatkun & Kahn, and have their principal place of business at New York, in the State of New York.

PAR. 2. That respondents are engaged in the business of manufacturing and selling fountain pens, and cause same to be transported to the purchasers thereof, from the State of New York through and into other States of the United States, in direct, active competition with other persons, partnerships and corporations similarly engaged.

Findings.

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PAR. 3. That respondents in the course of their business, as described in Paragraph 2 hereof, sell at wholesale, fountain pens manufactured by them, which pens they pack singly in containers upon which they conspicuously print what purports to be proposed resale prices, but which prices are false, fictitious and misleading in that such prices are greatly in excess of the prices at which respondents and their vendees contemplated that said pens will be resold, and are greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; and such pens are sold by respondent, packed in the containers marked as aforesaid, with full knowledge that such marks are to be used for the purpose of misleading and deceiving the purchasing public and inducing them to purchase said pens when offered for sale at prices substantially below those printed on said containers, upon the mistaken belief that said pens are being sold at a greatly reduced price; that among pens so sold by respondents, at prices ranging from 16¢ to 25¢ each, are pens placed in containers upon which respondents print "Price \$3.00", and in selling the pens in containers so marked, respondents come in direct competition with other manufacturers of pens who do not mark their product with such false, fictitious and misleading price marks, and respondents by the means aforesaid, aid, abet and assist their customers, to whom they sell their pens in containers so marked, in using unfair methods of competition against others similarly engaged, but who do not sell their pens in containers marked with such false, fictitious and misleading price marks.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondents, Benjamin Shatkun and David Kahn, partners, styling themselves Shatkun & Kahn, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Respondents having entered their appearance and filed their answer 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 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 being now fully advised in the premises makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Benjamin Shatkun and David Kahn, partners, styling themselves Shatkun & Kahn, are now and at all times hereinafter mentioned have been engaged in the business of manufacturing and selling fountain pens throughout the various states and territories of the United States, with their principal place of business at 118 Walker Street, in the City of New York, State of New York, in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That in the conduct of their business as aforesaid, respondents have sold and transported fountain pens, packed in individual boxes or containers, stamped or marked with a fictitious or exaggerated price, to customers in different states of the United States, causing the same to pass from the state of New York through and into other states of the United States, and there is and has been at all times hereinafter mentioned a constant current of trade and commerce of such fountain pens, packed in boxes as aforesaid, between and among the different states of the United States.

PAR. 3. That within one year last past respondents have sold at wholesale, in commerce as aforesaid, throughout the United States, cheap grades of fountain pens at prices ranging from \$24 to \$36 per gross, said pens being packed in individual boxes or containers on which boxes or containers is stamped or marked "Price \$3.00." That since April, 1920, respondents have discontinued the sale of fountain pens packed as aforesaid.

PAR. 4. That such resale prices are not bona fide but placed on such boxes for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are of high grade and reasonably worth the false and fictitious price marked on such boxes.

PAR. 5. That respondents have sold said fountain pens packed in boxes or containers, stamped or marked with fictitious or exaggerated price as aforesaid, to dealers who resell them to the public at prices many times in excess of the cost price, and often at the same price stamped or marked on the boxes or containers.

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PAR. 6. That the sale by respondents to dealers of cheap fountain pens in boxes or containers, stamped with a fictitious price as aforesaid, was calculated to, and did enable dealers in said pens to defraud the purchasing public by obtaining for such pens prices greatly in excess of the cost price of said pens; that said pens are sold by some dealers at prices below those indicated on the boxes or containers, and the prices so indicated mislead and deceive the purchasing public into believing that a higher grade of pen is being sold at a reduced price; and that thus respondents encourage, aid and abet said dealers in misleading and deceiving the public as to the real value of said pens.

PAR. 7. That the effect of printing or stamping of fictitious or exaggerated prices on the boxes or containers in which fountain pens are packed and sold by respondents, to dealers, who resell them to the public as aforesaid, has been and is to mislead purchasers and the general public into the belief that the retail price of said fountain pens is the price stamped or marked on the box or container.

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 and the amended complaint of the Commission 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, Benjamin Shatkun and David Kahn, partners, styling themselves Shatkun & Kahn, their agents, representatives, servants and employees, do cease and desist from directly or indirectly:

(1) Stamping, printing or otherwise marking on boxes or containers in which fountain pens are sold or intended to be sold, a fictitious, exaggerated or misleading price, known to be in excess of

Memorandum.

the price at which such pens are intended to be and usually are sold at retail.

(2) Selling or supplying their customers with individual boxes or containers made to contain fountain pens, or selling fountain pens packed in individual boxes or containers, on which said boxes or containers is stamped, printed, or otherwise marked a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

And it is further ordered, That said respondents shall within thirty (30) 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.

The Commission also made similar findings and order in the case of Abraham Shatkun, doing business under the trade name and style of United States Novelty Company, (of New York City, Dock. 665) issued as of January 7, 1922, in which the respondent, a manufacturer of cheap fountain pens, sold the same packed in individual containers marked "Price \$1.50" "Price \$2.00" "Price \$2.50" and "Price \$3.00," under the same circumstances and with the same effect as in the preceding case.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

CHARLES J. McNALLY, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF MACFOUNTAIN PEN AND
NOVELTY COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 666—January 7, 1922.

SYLLABUS.

Where an individual engaged in the sale of jewelry, notions, etc., and of cheap fountain pens packed in individual containers bearing the legend "Price \$1.50," which was a fictitious or exaggerated price, sold the same so packed to dealers who resold them to the public at prices many times in excess of their cost and often at the price so indicated; with the effect of misleading purchasers and the general public into believing such price to be the usual retail price and of enabling, encouraging and aiding dealers to defraud the public by obtaining excessive prices, and, by selling at less than the figure indicated, to mislead and deceive purchasers into believing that a higher grade of pen was being sold at a reduced price:

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Charles J. McNally trading under the trade name and style of Macfountain Pen & Novelty 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 amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Charles J. McNally, carries on business at New York, N. Y., under the name and style of Macfountain Pen & Novelty Co.

PAR. 2. That respondent is engaged in the business of selling jewelry, notions, etc., at wholesale, and causes same to be transported to the purchasers thereof, from the State of New York through and into other states of the United States and into foreign countries, in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of his business, as described in Paragraph Two hereof, sells at wholesale fountain pens, which pens he packs singly in containers upon which he conspicuously prints what purports to be proposed resale prices, but which prices are false, fictitious and misleading in that such prices are greatly in excess of the prices at which respondent and his vendees contemplate that said pens will be resold, and are greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; and such pens are sold by respondent, packed in the containers marked as aforesaid, with full knowledge that such marks are to be used for the purpose of misleading and deceiving the purchasing public and inducing them to purchase said pens, when offered for sale at prices substantially below those printed on said containers, upon the mistaken belief that said pens are being sold at a greatly reduced price; that among pens so sold by respondent, at prices ranging from 10¢ to 17¢ each are pens placed in containers upon which the respondent prints "Price \$1.50" and that in selling the pens in containers so marked the respondent comes in direct competition with manufacturers of pens and other dealers in pens who do not mark their product with such false, fictitious and misleading price marks, and the said respondent by means aforesaid, aids, abets and assists his customers to whom he sells pens in containers so marked, in using unfair methods of competition against others similarly engaged, but who do not sell their pens in containers marked with such false, fictitious and misleading price marks.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondent, Charles J. McNally, doing business under the trade name and style of Macfountain Pen and Novelty Company, 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

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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 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, Charles J. MacNally, doing business under the trade name and style of Macfountain Pen & Novelty Company, is now and at all times hereinafter mentioned has been engaged in the business of selling fountain pens, jewelry, notions, etc., with his principal place of business at 21 Ann Street, in the City of New York, State of New York, in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That in the conduct of his business, as aforesaid, respondent sells and transports fountain pens packed in individual boxes or containers stamped or marked with fictitious or exaggerated prices to customers in different States of the United States, causing the same to pass from the State of New York through and into other States of the United States and into foreign countries, and there is and has been at all times hereinafter mentioned a constant current of trade and commerce in such fountain pens packed in boxes, as aforesaid, between and among the different States of the United States.

PAR. 3. That within one year last past, respondent has sold at wholesale, in commerce as aforesaid, throughout the United States, cheap grades of fountain pens at prices ranging from \$15.00 to \$24.00 per gross, packed in individual boxes or containers, upon which boxes or containers is stamped or marked "Price \$1.50."

PAR. 4. That such resale prices are not bona fide but placed on such boxes for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are high grade and reasonably worth the false and fictitious price marked on such boxes.

PAR. 5. That respondent sells said fountain pens packed in boxes or containers stamped or marked with fictitious or exaggerated prices, as aforesaid, to dealers who resell them to the public at prices many times in excess of the cost price, and often at the same price stamped or marked on said boxes or containers.

PAR. 6. That the sale by respondent to dealers of cheap fountain pens packed in boxes or containers stamped or marked with fictitious

prices, as aforesaid, is calculated to and does enable dealers in said pens to defraud the purchasing public by obtaining for such pens prices greatly in excess of the cost price of said pens; that said pens are sold by some dealers at prices below those indicated on the boxes or containers, and the prices so indicated mislead and deceive the purchasing public into believing that a higher grade of pen is being sold at a reduced price; and that thus respondent encourages, aids and abets said dealers in misleading and deceiving the public as to the real value of said pens.

PAR. 7. That the effect of printing or stamping of fictitious or exaggerated prices on the boxes or containers in which fountain pens are packed and sold by respondent to dealers, who resell them to the public as aforesaid, has been and is to mislead purchasers and the general public into the belief that the retail price of said fountain pens is the price stamped or marked on the box or container.

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 Sept. 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its power and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint and the amended complaint of the Commission 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, Charles J. McNally, doing business under the trade name and style of Macfountain Pen & Novelty Co., his agents, representatives, servants and employees, do cease and desist from directly or indirectly:

(1) Stamping, printing or otherwise marking on boxes or containers in which fountain pens are sold or intended to be sold, a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

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(2) Selling or supplying his customers with individual boxes or containers, made to contain fountain pens, or selling fountain pens packed in individual boxes or containers, on which said boxes or containers is stamped, printed, or otherwise marked a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

And it is further ordered, That said respondent, Charles J. McNally, doing business under the trade name and style of Mac-fountain Pen & Novelty Co., shall within thirty (30) 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 he has complied with the order of the Commission herein set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

N. SHURE COMPANY.

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

Docket 667—January 7, 1922.

SYLLABUS.

Where an individual engaged in the sale of jewelry, notions, etc., and of cheap fountain pens packed in individual containers bearing the legend "Price \$1.50," which was a fictitious and exaggerated price, sold the same so packed to dealers who resold them to the public at prices many times in excess of their cost; with the effect of misleading purchasers and the general public into believing such price to be the usual retail price and of enabling, encouraging and aiding dealers to defraud the public by obtaining excessive prices, and, by selling at less than the figure indicated, to mislead and deceive purchasers into believing that a higher grade of pen was being sold at a reduced price:

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that N. Shure Company 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 amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That 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 at wholesale, jewelry, notions, etc., and causes same 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, sells at wholesale fountain pens manufactured by it, which pens it packs singly in containers upon which it

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4 F. T. C.

conspicuously prints what purports to be proposed resale prices, but which prices are false, fictitious and misleading in that such prices are greatly in excess of the prices at which respondent and its vendees contemplate that said pens will be resold, and are greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; and such pens are sold by respondent, packed in the containers marked as aforesaid, with full knowledge that such marks are to be used for the purpose of misleading and deceiving the purchasing public and inducing them to purchase said pens, when offered for sale at prices substantially below those printed on said containers, upon the mistaken belief that said pens are being sold at a greatly reduced price; that among pens so sold by respondent, at prices ranging from 12 cents and 15 cents each are pens placed in containers upon which the respondent prints "Price \$3.00," and that in selling the pens in containers so marked the respondent comes in direct competition with other manufacturers of pens who do not mark their product with such false, fictitious and misleading price marks, and the said respondent by the means aforesaid aids, abets and assists its customers to whom it sells its pens in containers so marked, in using unfair methods of competition against others similarly engaged, but who do not sell their pens in containers marked with such false, fictitious and misleading price marks.

PAR. 4. That by reason of the facts recited, 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 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 and an amended complaint upon the respondent, N. Shure 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 all of the allegations of said complaint and each count and paragraph thereof are true in the manner and form therein set forth, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its

findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, N. Shure Company, is a corporation organized under the laws of the State of Illinois with principal office and place of business at the City of Chicago, in said State, and is now and at all times hereinafter mentioned has been engaged in the business of selling at wholesale jewelry, notions, novelties, fountain pens, etc., throughout the various States of the United States, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That in the conduct of its business as aforesaid, respondent sells and transports fountain pens, packed in individual boxes or containers, to customers in different States of the United States, causing the same to pass from the State of Illinois through and into other States of the United States, and there is and has been at all times hereinafter mentioned, a constant current of trade and commerce of such fountain pens, packed in boxes as aforesaid, between and among the different States of the United States.

PAR. 3. That within one year last past, respondent has sold at wholesale, in commerce as aforesaid, throughout the United States, low-priced fountain pens at prices ranging from \$17.50 to \$21.50 per gross, said pens being packed in individual boxes or containers, on which boxes or containers is stamped or marked "Price \$3.00."

PAR. 4. That such resale prices are not bona fide but placed on such boxes for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are of high grade and reasonably worth the false and fictitious price marked on such boxes.

PAR. 5. That respondent sells said fountain pens, packed in individual boxes or containers, stamped or marked with a fictitious or exaggerated price as aforesaid, to dealers who resell them to the public at prices many times in excess of the cost price of said pens.

PAR. 6. That the sale by respondent to dealers of cheap fountain pens, packed in individual boxes or containers, stamped or marked with a fictitious or exaggerated price as aforesaid, is calculated to, and does, enable dealers in said pens to defraud the purchasing public by obtaining for such pens prices greatly in excess of the

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cost price of said pens; that said pens are sold by some dealers at prices below those indicated on the boxes or containers, and the prices so indicated mislead and deceive the purchasing public into believing that a higher grade of pen is being sold at a reduced price; and that thus respondent encourages, aids and abets said dealers in misleading and deceiving the public as to the real value of said pens.

PAR. 7. That the effect of printing or stamping of fictitious or exaggerated prices on the boxes or containers in which fountain pens are packed and sold by respondent to dealers, who resell them to the public as aforesaid, has been and is to mislead purchasers and the general public into the belief that the retail price of said fountain pens is the price stamped or marked on the box or container.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint and the amended complaint of the Commission, the answer of the respondent and a stipulation of facts entered into on behalf of the commission and the respondent, in which stipulation of facts respondent waived its right to presentation of oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, N. Shure Company, its agents, representatives, servants and employees, do cease and desist from directly or indirectly:

(1) Stamping, printing, or otherwise marking on boxes or containers in which fountain pens are sold or intended to be sold, a fictitious, exaggerated, or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

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(2) Selling or supplying its customers with individual boxes or containers, made to contain fountain pens, or selling fountain pens packed in individual boxes or containers, on which said boxes or containers is stamped, printed or otherwise marked a fictitious, exaggerated, or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

And it is further ordered, That said respondent, N. Shure Company, shall within thirty (30) 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.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

MYER LEVIN, MORRIS L. LEVIN, ISAAC P. LEVIN AND
MAX LEVIN, PARTNERS, STYLING THEMSELVES
LEVIN BROTHERS.

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

Docket 668—January 7, 1922.

SYLLABUS.

Where a firm engaged in the sale of jewelry, notions, etc., and of cheap fountain pens, sometimes packed in, and sometimes sold with, individual containers therefor bearing the legend "Price \$3.00," which was a fictitious and exaggerated price,

- (a) Sold said pens, as above set forth, to dealers who packed them in said containers, when not already so packed, and resold them to the public at prices many times in excess of their cost; with the effect of misleading purchasers and the general public into believing the price so indicated to be the usual retail price, and of enabling, encouraging and aiding dealers to defraud the public by obtaining excessive prices, and, by selling at less than the figure indicated, to mislead and deceive purchasers into believing that a higher grade of pen was being sold at reduced price;
- (b) Sold pens with the pen points marked "14 K GOLD PLATED" and so inserted that the last two words were hidden by the barrel of the pen, with the effect of misleading the purchasing public into believing said points to be made of 14-karat gold, and of enabling dealers thereby to defraud it;

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Meyer Levin, Morris L. Levin, Isaac P. Levin, and Max Levin, partners styling themselves Levin Brothers, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents are partners and style themselves Levin Brothers, and have their principal place of business at Terre Haute in the State of Indiana.

PAR. 2. That respondents are engaged in the business of selling jewelry, notions, novelties, etc., including fountain pens, and cause same to be transported to the purchasers thereof, from the State of Indiana, 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. 3. That respondents in the course of their business, as described in Paragraph 2 hereof, sell at wholesale fountain pens, which pens they pack singly in containers upon which they conspicuously print what purports to be proposed resale prices, but which prices are false, fictitious and misleading in that such prices are greatly in excess of the prices at which respondents and their vendees contemplate that said pens will be resold, and are greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; and such pens are sold by respondents, packed in the containers marked as aforesaid, with full knowledge that such marks are to be used for the purpose of misleading and deceiving the purchasing public and inducing them to purchase said pens, when offered for sale at prices substantially below those printed on said containers, upon the mistaken belief that said pens are being sold at a greatly reduced price; that among pens so sold by respondent, at prices ranging from 11 cents to 50 cents each are pens placed in containers upon which the respondent prints "Price \$3.00," and that in selling the pens in containers so marked respondents come in direct competition with manufacturers of pens and other dealers in pens who do not mark their product with such false, fictitious and misleading price marks, and respondents by the means aforesaid aid, abet and assist their customers to whom they sell pens in containers so marked, in using unfair methods of competition against others similarly engaged, but who do not sell their pens in containers marked with such false, fictitious and misleading price marks.

PAR. 4. That respondents further, in the course of their business as described in Paragraphs 2 and 3 hereof, issue annually a catalogue in which many of the articles sold by them are described at length; that in the 1919-1920 catalogue issued by respondents and distributed generally to the trade, certain of the fountain pens offered for sale by respondents were described as "Goldine" and were equipped with pen points which were stamped "14 K Gold Plated" but had the points so inserted that the words "Gold Plated" were hidden, in such manner as to be likely to create the false im-

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pression that such pen points were made of 14 K. gold; that respondents, by said means aid, abet and assist their customers, to whom they sell such fountain pens, in using unfair methods of competition against others similarly engaged, but who do not sell fountain pens fitted with similar points stamped as aforesaid.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondents, Meyer Levin, Morris L. Levin, Isaac P. Levin, and Max Levin, partners, styling themselves Levin 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 by their attorney, Harry J. Baker, Esq., and filed their answer herein, admitting that all the allegations of said complaint and amended complaint, and each count and paragraph thereof, are true in the manner and form therein set forth, and having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondents, Meyer Levin, Morris L. Levin, Isaac P. Levin, and Max Levin, partners, styling themselves Levin Brothers, with their principal place of business at the City of Terre Haute, State of Indiana, are now, and at all times hereinafter mentioned have been, engaged in the business of selling jewelry, notions, novelties, fountain pens, etc., throughout the various States of the United States in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business as aforesaid, respondents sell and transport fountain pens, and boxes made to contain fountain pens, to customers in different States of the United States causing the same to pass from the State of Indiana through and into other States of the United States, and there is and has been at all times hereinafter mentioned, a constant current of trade and commerce of such fountain pens and boxes made to contain such fountain pens, between and among the different States of the United States.

PAR. 3. That within two years last past, respondents have sold at wholesale in commerce as aforesaid, fountain pens at prices ranging from \$16.50 per gross to \$6.00 per dozen, said pens being packed in individual boxes or containers, on which boxes or containers is stamped or marked "Price \$3.00." Respondents have also within the two years last past, sold at wholesale, in commerce as aforesaid, fountain pens, and individual boxes or containers made to contain said fountain pens, said boxes or containers being stamped or marked "Price \$3.00."

PAR. 4. That such resale prices are not bona fide but placed on such boxes for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are of high grade and reasonably worth the false and fictitious price marked on such boxes.

PAR. 5. That respondents sell said fountain pens, either packed in individual boxes or containers, or in bulk, and sell or furnish at the same time said boxes or containers, in either case being stamped or marked with a fictitious or exaggerated price as aforesaid, to dealers who pack said pens in said individual boxes or containers, if necessary, and resell them to the public at prices many times in excess of the cost prices of said pens.

PAR. 6. That the sale by respondents to dealers of cheap fountain pens, packed in individual boxes or containers, stamped or marked with a fictitious or exaggerated price as aforesaid, or the sale of said fountain pens, and at the same time selling or supplying individual boxes or containers for said pens, said boxes or containers being stamped or marked with a fictitious or exaggerated price as aforesaid, is calculated to, and does, enable dealers in said pens to defraud the purchasing public by obtaining for such pens prices greatly in excess of the cost price of said pens; that said pens are sold by some dealers at prices below those indicated on the boxes or containers, and the prices so indicated mislead and deceive the purchasing public into believing that a higher grade of pen is being sold at a reduced price; and that thus respondents encourage, aid and abet said dealers in misleading or deceiving the public as to the real value of said pens.

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PAR. 7. That the effect of such printing or stamping of fictitious or exaggerated prices on individual boxes or containers in which fountain pens are packed for sale to the public, as aforesaid, has been and is to mislead purchasers and the general public into the belief that the retail price of said fountain pens is the price stamped on the box or container.

PAR. 8. That within two years last past, respondents have offered for sale and sold at wholesale, in commerce as aforesaid, certain fountain pens, in which pens are inserted pen points stamped or marked "14K Gold Plated", said pen points being inserted in the holders in such a way that the words "Gold Plated" were hidden, leaving the symbol "14K" visible; that the symbol "14K" has acquired a meaning in the public mind which indicates that pen points upon which this symbol appears are made of 14 karat gold; that the sale of fountain pens by respondents in which are inserted pen points bearing the words "14 K Gold Plated," with the words "Gold Plated" hidden by the barrel of the fountain pen, is calculated to, and does, create the false impression in the minds of the purchasing public that such points are made of 14 karat gold, and enables the dealers to whom respondents sell such fountain pens to mislead and defraud the purchasing public.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint and the amended complaint of the Commission, 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 respondents, Meyer Levin, Morris L. Levin, Isaac P. Levin and Max Levin, partners, styling themselves Levin Brothers, their agents representatives, servants and employees, do cease and desist from directly or indirectly:

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(1) Stamping, printing or otherwise marking on boxes or containers in which fountain pens are sold or intended to be sold, a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

(2) Selling or supplying their customers with individual boxes or containers made to contain fountain pens, on which said boxes or containers is stamped, printed or otherwise marked a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

(3) Selling or disposing of fountain pens in which are inserted gold-plated pen points upon which pen points are stamped or otherwise marked, the words "14K Gold Plated," the arrangement of these words being such that the words "Gold Plated" are obscured by the barrel or holder of the pen, leaving the symbol "14K" visible.

And it is further ordered, That said respondents shall within thirty (30) 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.

Complaint.

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FEDERAL TRADE COMMISSION

v.

JAMES KELLEY.

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

Docket 670—January 7, 1922.

SYLLABUS.

Where an individual engaged in the sale of cheap fountain pens and of individual containers therefor, bearing the legends, "Price \$1.00", "Price \$1.50" or "Price \$3.00", which were fictitious and exaggerated prices, sold the same to peddlers, street fakers and other dealers who packed them in said containers and resold them to the public at prices many times in excess of their cost and often at the prices so indicated, knowing that said peddlers, etc., intended so to do; with the effect of misleading purchasers and the general public into believing the prices so indicated to be the usual retail prices, and of enabling, encouraging and aiding said peddlers etc. to mislead the public as to the real value of said pens:

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that James Kelley 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 amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent is engaged in the business of selling various specialties including fountain pens at wholesale, with principal place of business at New York, N. Y., and causes pens sold by him to be transported to the purchasers thereof, from the State of New York, through and into various other States of the United States, and carries on such 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, sells at wholesale fountain pens, which pens he packs singly in containers or said pens are sold in bulk and the purchasers thereof are furnished containers which are suitable for use by such purchasers for enclosing such pens therein, when offered

for sale at retail, and such containers are furnished by respondent for that purpose, and upon such containers respondent conspicuously prints what purports to be proposed resale prices, but which prices are false, fictitious and misleading in that such prices are greatly in excess of the prices at which respondent and his vendees contemplate that said pens will be resold, and are greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; and such pens are sold by respondent, either in bulk or packed in containers marked as aforesaid, with full knowledge that such marks are to be used for the purpose of misleading and deceiving the purchasing public and inducing them to purchase said pens, when offered for sale at prices substantially below those printed on said containers, upon the mistaken belief that said pens are being sold at a greatly reduced price; that among pens so sold by respondent, at prices ranging from 8¢ to 18¢ each, are pens placed in containers upon which the respondent prints "Price \$1.00," "Price \$1.50," and "Price \$3.00," or when said pens are sold in bulk the purchasers are furnished containers for use in the sale of said pens at retail, as aforesaid, and such containers have said price marks printed thereon; that in selling the pens, as aforesaid, respondent comes in direct competition with manufacturers of pens and other dealers in pens, who do not enclose pens sold by them in containers upon which are printed false, fictitious and misleading price marks, or furnish such containers for use in the sale of said pens at retail; that respondent by the means aforesaid, aids, abets, and assists his customers to whom he sells pens, in using unfair methods of competition against others similarly engaged, but who do not sell their pens in containers upon which are printed false, fictitious and misleading price marks.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondent, James Kelley, 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

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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 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 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, James Kelley, is now and at all times hereinafter mentioned has been engaged in the business of selling fountain pens and boxes made to contain fountain pens throughout the various States of the United States, in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of his business aforesaid, respondent sells and transports fountain pens and boxes made to contain fountain pens to customers in different States of the United States, causing the same to pass through and into various States of the United States, and there is and has been at all times hereinafter mentioned a constant current of trade and commerce of such fountain pens and boxes to contain such fountain pens between and among the different States of the United States.

PAR. 3. That within two years last past, respondent has sold at wholesale, in commerce as aforesaid, low-priced fountain pens at prices ranging from \$12.50 to \$25.00 per gross, and has supplied with or sold to purchasers of said fountain pens, boxes or containers for said low-priced fountain pens, on which boxes or containers were stamped or branded "Price \$1.00" or "Price \$1.50" or "Price \$3.00."

PAR. 4. That such resale prices are not bona fide but placed on such boxes for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are of high grade and reasonably worth the false and fictitious prices marked on such boxes.

PAR. 5. That respondent sells said pens to peddlers, street fakers and other dealers, and that said purchasers pack the pens in said boxes or containers and resell them to the public at prices many times in excess of the cost price, and often at the same price stamped or branded on said boxes furnished to said peddlers, street fakers and other dealers by respondent, as aforesaid.

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PAR. 6. That the effect of such branding or stamping of fictitious or exaggerated prices on the boxes or containers supplied or sold by respondent, in which fountain pens are sold to the public as aforesaid, has been and is to mislead purchasers and the general public into the belief that the retail price of said fountain pens is the price stamped on the box or container.

PAR. 7. That respondent at the time of selling said low-priced fountain pens, and selling or furnishing the said boxes or containers, stamped or branded with fictitious prices as aforesaid, knew that said peddlers, street fakers, and other dealers intended to pack said pens in the boxes so sold or furnished by respondent at the time of sale and resell them to the public at the prices stamped or branded on the boxes, or at other prices many times in excess of the cost price of said pens, as aforesaid, and respondent thereby encourages, aids and abets such peddlers, street fakers, and other dealers in misleading the public as to the real value of said pens.

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 and the amended complaint of the Commission 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, James Kelley, his agents, representatives, servants, and employees, do cease and desist from directly or indirectly:

1. Stamping, printing, or otherwise marking on boxes or containers in which fountain pens are sold or intended to be sold, a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

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2. Selling or supplying his customers with individual boxes or containers, made to contain fountain pens, on which said boxes or containers is stamped, printed, or otherwise marked, a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

It is further ordered, That said respondent, James Kelley, shall within thirty (30) 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 he has complied with the order of the Commission herein set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

EVERETT JONES, TRADING UNDER THE NAME AND
STYLE OF STANDARD PEN CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 671—January 7, 1922.

SYLLABUS.

Where an individual engaged in the sale of cheap fountain pens, and of circulars to accompany the same, to window workers, street fakers and other dealers, whose practice it was to spend a day in a place, circularizing the same prior thereto with such matter,

- (a) Sold to said purchasers circulars containing the statement that the regular price of such pens was \$1.50 and \$2.00, but that they would be sold for one day only at prices of 49 cents, 69 cents or 79 cents, the fact being that such alleged "regular prices" were fictitious and exaggerated prices, and that the alleged reduced prices were the customary prices of said pens;

With the effect of misleading the purchasing public into believing that said pens were actually worth such "regular prices," and that it was obtaining higher grade pens at reduced prices, and of enabling, encouraging and aiding dealers thereby to defraud and mislead purchasers as to the real value of said pens;

- (b) Sold such pens accompanied by a pretended guarantee to the effect that if the same failed to give good service he would, within a year, supply a new pen upon receipt of the old, and 25 cents for "wrapping and mailing," an amount which yielded him a substantial profit on some of the pens so sold by him; and

- (c) Sold pens with the pen points marked with the words "14 K GOLD PLATED," the arrangement being such that the barrel of the pen obscured the word "plated," leaving visible the words "14 K GOLD";

With the effect of misleading the purchasing public into believing such pen points to be made of 14 karat gold, and of encouraging and aiding thereby in the misleading and deception of the public by the dealer;

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Everett Jones, trading under the name and style of Standard Pen Company, at Evansville, Indiana, hereinafter referred to as respondent, has been using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commis-

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sion, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent carries on business at Evansville, Indiana, under the name and style of Standard Pen Company and is engaged in the business of selling fountain pens and certain advertising matter in the form of circulars, which accompany said fountain pens, and causes same to be transported to the purchasers thereof from the State of Indiana, through and into various other States of the United States, and carries on such business in direct, active competition with other persons, firms and corporations similarly engaged.

PAR. 2. That respondent in the course of his business as described in Paragraph 1 hereof, sells low grade fountain pens at prices ranging from 10¢ to 27¢ each, wholesale, and also sells to the purchasers of such pens, circulars, at the rate of one dollar per thousand, which circulars contain certain printed matter which purports to describe the pens so sold; that in such printed matter are certain false and misleading statements, among which are statements to the effect that such pens will be sold for one day only at a greatly reduced price of 49¢; that the regular prices for such pens were \$1.50 and \$2.00 each; that the so-called regular prices mentioned in said circulars are greatly in excess of the prices at which respondent and his vendees contemplate that such pens will be resold and all greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; that such pens are sold by respondent accompanied by the circulars as aforesaid, with full knowledge that the prices mentioned in said circulars, as the regular prices, are to be used by his vendees for the purpose of misleading and deceiving the purchasing public by inducing them to purchase said pens, when offered for sale at prices substantially below the so-called regular prices mentioned in said circulars, upon the mistaken belief that said pens are being sold at a greatly reduced price; that in selling said pens accompanied by circulars as aforesaid, respondent comes in direct competition with manufacturers of pens and other dealers in pens who do not use in connection therewith circulars or other means of announcing false, fictitious and misleading prices for pens sold by them; that respondent by the means aforesaid aids, abets and assists his customers to whom he sells pens and circulars, as aforesaid, in using unfair methods of competition against others similarly engaged, but who do not make use of circulars or other means of announcing false and misleading prices.

PAR. 3. That the circulars sold by respondent as described in paragraph 2 hereof, contain the further false and misleading statement that the pens sold by respondent are guaranteed for five years, whereas the only guaranty given by respondent is to the effect that if pens sold by him should not give service, that respondent will within one year, give to the purchaser a new pen upon receipt of the old pen and 25¢ to pay for wrapping and mailing.

PAR. 4. That as a further means of aiding and abetting his customers to mislead and deceive the purchasing public in the resale of pens so sold by respondent, respondent caused certain of said pens to be fitted with pen points stamped "14 K. Rolled Plate," with the word "plate" so near the end of the pen point that it became invisible when the pen point was inserted in the holder, whereby the purchasing public was misled and deceived and induced thereby to buy such pens upon the mistaken belief that such pens were fitted with points made of 14 K. gold.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondent, Everett Jones, trading under the name and style of Standard Pen Co., 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 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 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, Everett Jones, trading under the name and style of the Standard Pen Company, with principal place of business at the City of Evansville, State of Indiana, is now and at all times hereinafter mentioned has been engaged in the business of selling fountain pens and advertising matter, in the form of circulars, which accompany such fountain pens, throughout the various States of the United States, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That in the conduct of his business as aforesaid, respondent sells and transports fountain pens and advertising matter in the form of circulars, which accompany such fountain pens, to customers in different States of the United States, causing the same to pass from the State of Indiana through and into various other States of the United States, and there is and has been at all times hereinafter mentioned a constant current of trade and commerce of such fountain pens and advertising circulars, which accompany said fountain pens, between and among the different States of the United States.

PAR. 3. That within one year last past, respondent, in the conduct of its business has sold, at wholesale in commerce as aforesaid, low-grade fountain pens at prices ranging from \$15. to \$38. per gross, and at the same time has sold to purchasers of said pens advertising circulars at the rate of \$1. per thousand, which circulars contain certain printed matter which purports to describe the fountain pens so sold.

PAR. 4. That said circulars sold by respondent to purchasers of fountain pens, as aforesaid, contain certain false and misleading statements, among which are statements to the effect that the regular price of said fountain pens are \$1.50 and \$2.00, but that they will be sold for one day only at the special prices of forty-nine cents, sixty-nine cents, or seventy-nine cents.

PAR. 5. That such resale prices are not bona fide but placed on such circulars for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are of high grade and reasonably worth the false and fictitious price marked or printed on such circulars.

PAR. 6. That the fountain pens sold by respondent, as aforesaid, are purported to be guaranteed by him for one year. The only guarantee given on said pens was that if said pens failed to give good service, the respondent would within one year give the purchaser a new pen upon receipt of the old pen and twenty-five cents to pay for wrapping and mailing; that said payment of twenty-five cents by the

purchaser yields respondent a substantial profit on some pens sold by him under this guarantee.

PAR. 7. That respondent sells said fountain pens at the prices aforesaid and at the same time sells said circulars to window-workers, street fakers, and other dealers, who arrange with a drug store or other store for the use of its window for one day, and who then scatter said circulars bearing descriptive matter, as above mentioned in Paragraph 4, throughout the town advising prospective purchasers that said \$1.50 and \$2.00 fountain pens will be sold for one day only at prices of forty-nine cents, sixty-nine cents, or seventy-nine cents; that said window-workers, street fakers, and other dealers never remain more than one day in a town, but if they did they would still sell said fountain pens at the same prices the next day.

PAR. 8. That the sale by respondent of low-grade fountain pens, and at the same time the supplying of advertising circulars to purchasers of said pens, which circulars falsely represent the value of said pens to be \$1.50 and \$2.00, as set forth in Paragraph 5 above, enables dealers in said pens to defraud the purchasing public by misleading or deceiving purchasers of said pens as to the value of the pens by creating the false impression in the minds of said purchasers that such pens are actually worth \$1.50 and \$2.00 and that such purchasers are obtaining higher grade fountain pens at reduced prices, and that thus respondent encourages, aids and abets said dealers in misleading and deceiving the public as to the real value of said pens.

PAR. 9. That within one year last past respondent has sold at wholesale, in commerce as aforesaid, fountain pens at prices ranging from \$15.00 to \$38.00 per gross, in which fountain pens are inserted pen points stamped or marked "14K Gold Plated," the words of this stamp being so arranged that the word "plated" occurs near the heel of the pen point and is obscured by the barrel or holder of the pen into which it is inserted, leaving the words "14K Gold" visible. That the words "14K Gold" have acquired a meaning in the public mind which indicates that pen points upon which these words appear are made of 14 karat gold; that the sale by respondent of fountain pens in which are inserted pens bearing the words "14K Gold Plated," with the word "plated" hidden by the barrel of the fountain pen, does create a false impression in the minds of the purchasing public that such pen points are made of 14 karat gold, and enables the dealer to whom respondent sells such fountain pens, equipped with pen points, stamped as aforesaid, to mislead and defraud the purchasing public; and that thus respondent encourages, aids and abets said dealers in misleading and deceiving the public as to the said pen points.

Order.

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CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint and the amended complaint of the Commission 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, Everett Jones, trading under the name and style of Standard Pen Company, his agents, representatives, servants and employees, do cease and desist from directly or indirectly:

(1) Selling or otherwise supplying circulars or other advertising matter with fountain pens sold by him, which said circulars or other advertising matter contain fictitious, exaggerated or misleading prices, descriptive of said pens and which prices are known to be in excess of the prices at which said pens are intended to be and usually are sold at retail.

(2) Selling or otherwise supplying circulars or other advertising matter with fountain pens sold by him, which said circulars or other advertising matter contain fictitious, exaggerated or misleading prices, descriptive of said pens and contain statements that said pens will be sold for one day only at a reduced price from said fictitious, exaggerated or misleading prices.

(3) Selling or disposing of fountain pens in which are inserted gold-plated pen points upon which pen-points are stamped or otherwise marked the words "14K Gold Plate", the arrangement of these words being such that the word "plate" is obscured by the barrel or holder of the pen, while the words "14K Gold" remain visible.

It is further ordered, That the said respondent, Everett Jones, trading under the name and style of Standard Pen Company, 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 he has complied with the order of the Commission herein set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

KARL GUGGENHEIM, INC.

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

Docket 672—January 7, 1922.

SYLLABUS.

Where a corporation engaged in the sale to peddlers, street fakers and other dealers of cheap fountain pens packed in individual containers bearing the legend "Price \$2.00" which was a fictitious and exaggerated price,

(a) Sold said pens so packed to said peddlers, etc., who resold them to the public at prices many times in excess of their cost, and often at the price indicated, with the representation that they were reasonably worth said price, knowing that said peddlers, etc., intended so to resell; with the effect of misleading purchasers and the general public into believing said prices to be the usual retail prices, and of aiding said peddlers, etc., to mislead the public as to the real value of said pens;

(b) Sold pens with pen points, composed of a cheap substance in imitation of gold, marked "14 K", with the effect of aiding said peddlers, etc., to deceive the public into believing they were buying a pen with pen point made of 14 karat gold:

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

AMENDED COMPLAINT.

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

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

PAR. 2. That respondent is engaged in the business of buying and selling, in wholesale quantities, fountain pens and other specialties, 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 carries on such business in direct,

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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 fountain pens which it packs singly in containers upon which it conspicuously prints what purport to be proposed resale prices, but which prices are false, fictitious and misleading in that such prices are greatly in excess of the prices at which respondent and its vendees contemplate that said pens will be resold, and are greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; that such pens are sold by respondent, packed in the containers marked as aforesaid, with full knowledge that such marks are to be used for the purpose of misleading and deceiving the purchasing public and inducing them to purchase said pens, when offered for sale at prices substantially below those printed on said containers, upon the mistaken belief that said pens are being sold at a greatly reduced price; that among pens so sold by respondent, at prices ranging from 7¢ to 25¢ each are pens placed in containers upon which the respondent prints "Price \$2."; that in selling the pens in containers so marked, the respondent comes in direct competition with manufacturers of pens and with other dealers in pens who do not mark their product with such false, fictitious and misleading price marks, and the said respondent by the means aforesaid, aids, abets and assists its customers to whom it sells pens in containers so marked, in using unfair methods of competition against others similarly engaged, but who do not sell pens in containers marked with such false, fictitious and misleading price marks.

PAR. 4. Respondent further, in the course of its said business, sells fountain pens at approximately 10¢ each, in which pens are fitted pen points which are stamped or labeled "14 Kt. Gold" but which pen points are not made of 14 Kt. gold, and contain no genuine gold, but are made of an inferior substance of small value; that by stamping or labeling such pen points "14 Kt. Gold" respondent aids, abets and assists its customers to whom it sells such pens, to mislead and deceive the public by inducing them to purchase such pens upon the mistaken belief that such pens are fitted with points made of 14 Kt. gold.

PAR. 5. That by reason of the facts set out in the foregoing paragraphs of this complaint, the respondent has been guilty of unfair methods of competition in commerce as defined and prohibited in Section 5 of an Act of 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 and an amended complaint upon the respondent, Karl Guggenheim, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

Respondent having entered its appearance and filed its answer herein, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Karl Guggenheim, Inc., is a corporation organized and existing under the laws of the State of New York, having its principal office and place of business at 17 East 17th Street, in the City of New York in said State, and is now and at all times hereinafter mentioned, has been engaged in the business of selling fountain pens, packed in boxes made to contain the same, throughout the various States of the United States in direct competition with other persons, firms and corporations similarly engaged.

PAR. 2. That in the conduct of its business aforesaid, respondent sells and causes to be transported fountain pens, packed in boxes as aforesaid, to customers in different States of the United States, causing the same to pass through and into various States of the United States, and there is and has been at all times hereinafter mentioned a constant current of trade and commerce in such fountain pens, packed as aforesaid, between and among the different States of the United States.

PAR. 3. That within two years last past, the respondent has sold at wholesale, in commerce, as aforesaid, throughout the United States, cheap grades of fountain pens, at prices ranging from \$10 to \$36 per gross, said pens being packed in individual boxes or containers on which boxes or containers is stamped or marked "Price \$2.00."

Conclusion.

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PAR. 4. That such resale prices are not bona fide but placed on such boxes for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are of high grade and reasonably worth the false and fictitious price marked on such boxes

PAR. 5. That respondent sells said fountain pens, packed in boxes or containers marked as aforesaid, to peddlers, street fakers and other dealers, who resell them to the public at prices many times in excess of the cost price, and often at the same price stamped or marked on said boxes or containers, with the representation that such pens are reasonably worth the price so marked or stamped on said boxes or containers.

PAR. 6. That the effect of such printing or stamping of fictitious or exaggerated prices on individual boxes or containers in which fountain pens are packed for sale to the public, as aforesaid, has been and is to mislead purchasers, and the general public into the belief that the retail price of said fountain pens is the price stamped on the box or container.

PAR. 7. That respondent at the time of selling said cheap grades of fountain pens, packed in boxes or containers stamped or marked with a fictitious price as aforesaid, knew that said peddlers, street fakers and other dealers, intended to resell said pens, packed as aforesaid, to the public at the price stamped or marked on the boxes, or at other prices many times in excess of the cost price of said pens, as aforesaid, and respondent thereby encourages, aids and abets such peddlers, street fakers and other dealers in misleading the public as to the real value of said pens.

PAR. 8. That within two years last past respondent has sold at wholesale, in commerce as aforesaid, to peddlers, street fakers and other dealers, a cheap fountain pen at \$1.25 per dozen, in which is inserted a pen point marked "14K"; that the symbol "14K" has acquired a meaning in the public mind which indicates that pen points upon which this symbol appears are made of 14 karat gold; that the pen points inserted in the fountain pens sold by respondent as aforesaid are not made of gold, but are in fact made in imitation of gold of some cheap substance of very small value, and that by selling fountain pens containing pen points stamped or marked as aforesaid, respondent aids and abets said peddlers, street fakers and other dealers, to deceive the public into the belief that they are buying a fountain pen containing a pen point made of 14 karat gold.

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

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Order.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint and the amended complaint of the Commission, 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, Karl Guggenheim, Inc., its agents, representatives, servants and employees, do cease and desist from directly or indirectly:

(1) Stamping, printing or otherwise marking on boxes or containers in which fountain pens are sold or intended to be sold, a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

(2) Selling or supplying its customers with individual boxes or containers made to contain fountain pens, or selling fountain pens packed in individual boxes or containers, on which said boxes or containers is stamped, printed or otherwise marked a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

(3) Selling or disposing of fountain pens in which are inserted pen points, upon which pen points are stamped or otherwise marked the symbol "14K", when said pen points are not made of 14 karat gold.

And it is further ordered, That said Karl Guggenheim, Inc., shall within thirty (30) 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.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

ED. HAHN AND E. G. HAHN, A COPARTNERSHIP, DOING
BUSINESS UNDER THE NAME OF ED. HAHN.

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

Docket 673—January 7, 1922.

SYLLABUS.

Where a firm engaged in the sale of cheap fountain pens and of individual containers therefor bearing the legend "SELF-FILLING Standard Fountain Pen \$1.50," which was a fictitious and exaggerated price, sold the same to canvassers, peddlers, fair workers, street fakers and other dealers who packed them in said containers and resold them to the public at prices many times in excess of their cost, and often at the price so indicated, knowing that said individual canvassers, etc., intended so to do; with the result of misleading purchasers and the general public into believing such price to be the usual retail price and of enabling, encouraging and aiding said individual canvassers, etc., to mislead the public as to said pens' real value, and, by selling at less than the figure indicated, to mislead and deceive purchasers into believing that a higher grade of pen was being sold at a reduced price:

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

AMENDED COMPLAINT.

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

PARAGRAPH 1. That the respondents are partners and trade under the name and style of Ed. Hahn and have their principal place of business at Chicago, in the State of Illinois.

PAR. 2. The respondents are engaged in the business of selling various specialties and novelties, including fountain pens, and cause pens sold by them to be transported to the purchasers thereof, from the State of Illinois, through and into other States of the United

States, and carry on said business in direct, active competition with other persons partnerships and corporations similarly engaged.

PAR. 3. That respondents in the course of their business as described in Paragraph Two hereof, sell, at wholesale, fountain pens, which pens they pack singly in containers or said pens are sold in bulk and the purchasers thereof are furnished containers which are suitable for use by such purchasers for inclosing such pens therein when offered for sale at retail, and such containers are furnished by respondents for that purpose, and upon such containers respondents conspicuously print what purport to be proposed resale prices, but which prices are false, fictitious and misleading in that such prices are greatly in excess of the prices at which respondents and their vendees contemplate that such pens will be resold, and are greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; and such pens are sold by respondent either in bulk or packed in the containers marked as aforesaid, with full knowledge that such marks are to be used for the purpose of misleading and deceiving the purchasing public, thereby inducing the public to purchase said pens when offered for sale at prices substantially below those printed on said containers, upon the mistaken belief that said pens are being sold at a greatly reduced price; that among pens so sold by respondents, at prices ranging from 8 to 15 cents each, are pens placed in containers upon which respondents print "Price \$1.50," or when said pens are sold in bulk the purchasers are furnished containers for use in the sale of said pens at retail, as aforesaid, and such containers have said price marks printed thereon; that in selling the pens, as aforesaid, respondents come in direct competition with other manufacturers of pens or other dealers in pens who do not inclose same in containers upon which are printed false, fictitious and misleading price marks or furnish such containers for use in the sale of said pens at retail; that respondents by the means aforesaid, aid, abet and assist their customers to whom they sell pens, in using unfair methods of competition against others similarly engaged, but who do not sell their pens in containers upon which are printed false, fictitious and misleading price marks.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondents, Ed. Hahn and E. G. Hahn, a copartnership, doing business under the name of Ed Hahn, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents neither filed an answer nor entered their appearance herein, but made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Ed. Hahn and E. G. Hahn, a copartnership doing business under the name of Ed. Hahn, with their principal place of business located in the City of Chicago, State of Illinois, are now and at all times hereinafter mentioned have been engaged in the business of selling fountain pens, and boxes made to contain fountain pens, throughout the various States of the United States, in direct competition with other persons, firms and corporations similarly engaged.

PAR. 2. That in the conduct of their business aforesaid, respondents sell and transport fountain pens, and boxes made to contain fountain pens, to customers in different States of the United States, causing the same to pass from the State of Illinois, through and into other States of the United States, and there is and has been at all times hereinafter mentioned, a constant current of trade and commerce in such fountain pens, and boxes made to contain such fountain pens, between and among the different States of the United States.

PAR. 3. That within two years last past, respondents have sold to wholesalers, in commerce as aforesaid, throughout the United States, low-priced fountain pens at prices ranging from \$12.00 to \$21.00 per gross, and at the same time have supplied or sold to purchasers of said fountain pens, individual boxes or containers made to contain said low-priced fountain pens, on which boxes or con-

tainers is stamped or branded, "SELF FILLING Standard Fountain Pen, \$1.50."

PAR. 4. That such resale prices are not bona fide but placed on such boxes for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are of high grade and reasonably worth the false and fictitious price marked on such boxes.

PAR. 5. That the respondents sell said low-priced fountain pens, and said boxes or containers made to contain said pens, to individual canvassers, peddlers, fair workers, street fakers and other dealers, and that said purchasers pack the fountain pens in said boxes or containers and resell them to the public at prices many times in excess of the cost price of said pens, and often at the same price stamped or branded on said boxes furnished to said individual canvassers, peddlers, fair workers, street fakers or other dealers by respondents, as aforesaid; that said pens are sold by some dealers at prices below those indicated on the boxes or containers, and the prices so indicated mislead and deceive the purchasing public into believing that a higher grade of pen is being sold at a reduced price.

PAR. 6. That the effect of printing or stamping of fictitious or exaggerated prices on boxes or containers supplied or sold by respondents, in which fountain pens are sold to the public as aforesaid, has been and is to mislead purchasers and the general public into the belief that the retail price of said fountain pens is the price stamped or marked on the box or container.

PAR. 7. That respondents, at the time of selling said low-priced fountain pens, and at the same time selling or furnishing said boxes or containers, stamped or branded with a fictitious price as aforesaid, knew that said individual canvassers, peddlers, fair workers, street fakers, and other dealers, intended to pack said pens in said boxes so sold or furnished by respondents at the time of sale, and resell them to the public at the prices stamped or branded on said boxes or containers, or at other prices many times in excess of the cost price of said pens, as aforesaid, and respondents thereby encourage, aid and abet such individual canvassers, peddlers, fair workers, street fakers and other dealers, in misleading the public as to the real value of said fountain pens.

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.

4 F. T. C.

ORDER TO CEASE AND DESIST.

This proceeding, having been heard by the Federal Trade Commission, upon the complaint and the amended complaint of the Commission, 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, Ed. Hahn and E. G. Hahn, a copartnership, doing business under the name of Ed. Hahn, their agents, representatives, servants and employees, do cease and desist from directly or indirectly:

(1) Stamping, printing or otherwise marking on boxes or containers in which fountain pens are sold or intended to be sold, a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

(2) Selling or supplying their customers with individual boxes or containers, made to contain fountain pens, or selling fountain pens packed in individual boxes or containers, on which said boxes or containers is stamped, printed or otherwise marked a fictitious, exaggerated or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

And it is further ordered, That said respondents, shall within thirty (30) 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.

Complaint.

FEDERAL TRADE COMMISSION

v.

RUBY K. LEVY, TRADING UNDER THE NAME AND STYLE
OF BERNICE COAL CO., AND SIMON LEVY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 854—January 31, 1922.

SYLLABUS.

Where the operators of certain southwestern coal mines, the product of which greatly resembled Pennsylvania anthracite, long marketed the same extensively as "Bernice Anthracite," under which name it had become widely and favorably known to the trade and to the consuming public; and thereafter a middle western coal dealer, and her general manager, who neither dealt in the genuine Bernice anthracite, nor owned nor operated coal mines,

- (a) Adopted and used the trade names Bernice Coal Co. and Guaranty Coal Mining Co. in their business of selling coal purchased in wholesale quantities from mine operators and other dealers; and
- (b) Published and circulated booklets and other advertising matter wherein was written and featured "Bernice Coal Company" and "Bernice Burns Best," and wherein was set forth that they sold coal direct from their "Bernice mines";

With the effect of embarrassing and injuring competitors and owners and operators of genuine Bernice anthracite mines, of confusing the trade and purchasing public, and of misleading the latter into purchasing of them as and for genuine Bernice anthracite coal, coal mined elsewhere:

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.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Ruby K. Levy, trading under the name and style of Bernice Coal Co., and Simon Levy, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows.

Complaint.

4 F. T. C.

PARAGRAPH 1. That the respondent, Ruby K. Levy, carries on business at Chicago, Illinois, under the name and style of Bernice Coal Co., and is and has been engaged in the business of dealing in coal, and employs as general manager of such business the respondent, Simon Levy, who is the husband of the respondent Ruby K. Levy. That respondents, in the course of said business, purchase coal in wholesale quantities from the owners or operators of mines and from dealers and scalpers in coal, and resell same, usually in carload lots; direct to the consumers. Respondents also sell coal in various communities in the several States, through local agents, which branch of their said business is carried on under the trade name of "Guaranty Coal Mining Company"; that respondents cause coal sold by them to be transported from the State or States in which it is mined or purchased, to the purchasers thereof through and into other States of the United States, and carry on said business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That for a number of years before the adoption by the respondent, Ruby K. Levy, of the trade name, "Bernice Coal Company," there had been produced, and still is produced in Pope County, State of Arkansas, a grade of coal which greatly resembles Pennsylvania Anthracite coal, and which has been and is designated and known to the trade and consuming public as "Bernice Anthracite" coal, and for a period of more than twenty-five years immediately prior to the issuance of this complaint said coal has been marketed by the operators of the mines from which such coal has been produced, under the said name "Bernice Anthracite," and by extensive advertising and by other means, the operators of said mines have built up and still enjoy an extensive trade in said coal, and have caused such coal to become well and favorably known to the trade and consuming public in the State of Arkansas and States adjacent and tributary thereto, and particularly in the States of Kansas, Missouri, Nebraska, and Oklahoma.

PAR. 3. That respondents, in the course of their business as described in Paragraph 1 hereof, as a means of soliciting orders for coal, make and have made use of office stationery, booklets, circulars, circular letters and other forms of advertising matter which have been given general circulation by respondents in various States of the United States, including the States of Arkansas, Kansas, Missouri, Nebraska, and Oklahoma, which advertising matter contained numerous false and deceptive statements concerning the quality of the coal sold by respondents and their methods of carrying on business; that in such advertising matter respondents also made use of the names "Bernice Coal Company," and have featured the expression "Bernice

Burns Best." That among such false and deceptive statements were statements to the effect that respondents sold coal direct from their "Bernice mines," and that purchasers of coal from respondents got the highest possible quality of coal at a saving of about \$2 per ton; that no coal mined in the United States would give better results than respondents' best Bernice sootless, hand-picked coal, which is a grade of coal universally used and praised: Whereas, respondents did not own or operate any coal mines, but the coal sold by them is purchased in the open market or from scalpers, and is obtained from various sources and is of various grades and qualities; that the prices at which respondents sell coal do not enable the purchasers of such coal to save \$2 per ton, or to save any amount of money; that the coal sold by respondents, which they describe as "Best Bernice Sootless, Hand-picked Coal," is not universally used and praised, for there has been no uniformity in the product sold by respondents under that description, and the coal sold by respondents possessed no distinctive qualities or merit.

PAR. 4. That the use by respondents of the advertising matter described in Paragraph 3 hereof, and by carrying on business under the name and style of Bernice Coal Co., have caused confusion in the trade and in the minds of the purchasing and consuming public, particularly in the States adjacent and tributary to the State of Arkansas, and respondents have been enabled thereby to pass off coal mined in States other than the State of Arkansas as and for coal mined in Pope County, Ark., at the mines described in Paragraph 2 hereof; and the public in said States has been misled by respondents' said practices, and thereby induced to purchase coal so sold by respondents, upon the mistaken belief that it was the product of said mines in Pope County, Ark., and the operators of said mines have been injured, embarrassed and hindered by respondents' said practices in the marketing of the product of said mines in States adjoining and tributary to the State of Arkansas.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Ruby K. Levy, trading under the name and style of "Bernice Coal Company," and Simon Levy, charging

Findings.

4 F. T. C.

them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearances by their respective attorneys and having filed their answers herein, and attorneys for respondents thereafter having signed and filed a statement of facts and being desirous that such statement of facts, subject to the approval of the Commission, should be taken by the Commission in lieu of testimony herein and that the Commission might therewith proceed upon such statement of facts to make and enter its report stating its findings as to the facts, and its order disposing of this proceeding without the introduction of testimony in support of the same, and attorneys for respondents having waived any and all rights they may have to require the introduction of such testimony or to file briefs or make oral argument in the above-entitled matter, and the Commission being fully advised in the premises, now makes its report and findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Ruby K. Levy, the [is a] sole trader doing business under the name and style of Bernice Coal Company, having her principal place of business located in the City of Chicago, in the State of Illinois; that respondent, Simon Levy, is the husband of respondent, Ruby K. Levy, and is the general manager of said business conducted by Ruby K. Levy, under the name and style of Bernice Coal Company; that respondents are now and for more than two years prior to the filing of the complaint herein, have been engaged in the business of purchasing coal in wholesale quantities from the operators of mines and from dealers in coal and selling said coal in carload lots direct to consumers thereof; that respondents also are now and for more than two years prior to the filing of complaint herein have been engaged in the business of selling coal in various communities in the several States through their local agents, which branch of respondents' said business is carried on under the trade name of "Guaranty Coal Mining Company"; that respondents caused all of said coal so sold by them to be transported from the State or States in which it is mined or purchased to purchasers thereof located throughout other different States of the United States in direct competition with other persons, firms and corporations similarly engaged.

PAR. 2. That for a number of years before the adoption by the respondent, Ruby K. Levy, of the trade name "Bernice Coal Company," there had been produced and still is produced in Pope County, State of Arkansas, a grade of coal which greatly resembles Pennsyl-

Conclusion.

vania anthracite coal and which has become known to and designated by the trade and consuming public as "Bernice Anthracite" coal; that for a period of more than twenty-five years, prior to the issuance of the complaint herein said coal has been marketed by the operators of mines from which such coal has been produced under the said name "Bernice Anthracite"; that the operators of said mines do now and for many years have enjoyed an extensive trade in said coal; that said "Bernice Anthracite" coal has become well and favorably known to the trade and consuming public in the State of Arkansas, and various other different States of the United States.

PAR. 3. That respondents in the conduct of their business as aforesaid, for more than two years prior to the filing of the complaint herein have caused to be published and circulated through various States of the United States, booklets, circulars, letters and other advertising matter wherein was written, printed and featured "Bernice Coal Company" and "Bernice Burns Best," and wherein was printed and set forth that respondent sold coal direct from their "Bernice Mines," whereas in truth and in fact respondents do not now and have never owned or operated coal mines, and do not now and have never sold or shipped coal direct from their own mines, but sold and shipped coal purchased by them from mine operators and in the open market.

PAR. 4. That the acts, practices, and representations of respondents in the manner and form mentioned and set forth in the foregoing paragraphs have embarrassed and injured competitors of respondents and owners and operators of coal mines in Pope County, Arkansas, in the conduct of their said businesses, and have caused confusion in the coal trade and in the minds of the consuming public throughout different States of the United States, and have resulted in said consuming public purchasing from respondents coal other than "Bernice Anthracite" Pope County, Arkansas, coal as and for "Bernice Anthracite" coal mined in Pope County, Arkansas. That respondents do not now and never have sold or shipped to the trade or consuming public coal mined or coming from the "Bernice" anthracite mines in Pope County, Arkansas.

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 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.

4 F. T. C.

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 respective respondents, together with statement of facts filed by respondents, 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, Ruby K. Levy, trading under the name and style of Bernice Coal Company, and Simon Levy, and their agents, servants and employees, cease and desist, directly or indirectly:—

1. From making use of, by advertising or otherwise, the words "Bernice Coal Company," or the words "Bernice Burns Best," or the word "Bernice" in any way whatsoever in connection with the sale, offering for sale, or advertising of coal in commerce, unless said coal sold or offered for sale by respondents comes from the Bernice mines located in Pope County in the State of Arkansas.

2. From representing, by advertising or otherwise, that the coal respondents sell comes direct from their own mines, unless at the time of such representation the respondents own or operate mines from which said coal is mined.

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

Complaint.

FEDERAL TRADE COMMISSION

v.

HENRY J. BRIEDE AND W. P. ROGOVSKY, PARTNERS,
DOING BUSINESS UNDER THE NAME AND STYLE OF
BRIEDE AND ROGOVSKY, AND THE NATIONAL TAIL-
ORING COMPANY.

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

Docket 839—February 15, 1922.

SYLLABUS.

Where a firm engaged in the manufacture and sale of clothing direct to the consumer, used the trade name "The Old Woolen Mills Company," notwithstanding the fact that they neither owned, operated nor were interested in any woolen mills; with the effect of misleading many of the purchasing public into purchasing of them in the mistaken belief that in so doing they were dealing with both cloth and clothing manufacturers and thereby saving the middle man's profits, and of thereby injuring competitors:

Held, That such misleading use of trade name, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Henry J. Briede and W. P. Rogovsky, partners, doing business under the name and style of Briede and Rogovsky, and the National Tailoring Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of Section 5 of an Act of Congress approved September 26, 1914, entitled: "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect 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, Henry J. Briede and W. P. Rogovsky, constitute a partnership and carry on business under the names of Briede and Rogovsky, Schwabe Brothers, The Old Woolen Mills Company and National Tailoring Company, with their principal place of business in the City of Chicago, State of Illinois, and for many years have been and are now engaged in manufacturing and selling, upon mail orders and through agents located in various States of the United States, clothing, and in causing the clothing

Complaint.

4 F. T. C.

so sold to be transported from the State of Illinois through and into other States of the United States and the District of Columbia to the purchasers thereof, and in the conduct of such business are in direct and active competition with other copartnerships, corporations and individuals similarly engaged.

PAR. 2. That in the year 1917 respondents, Henry J. Briede and W. P. Rogovsky, moved their business into a building fronting on Jackson Boulevard in the City of Chicago, State of Illinois and in the same block as the building occupied by the International Tailoring Company, a corporation organized under the laws of the State of Illinois in the year 1896, with a capital stock of \$100,000 and engaged in the same business as respondents. That the International Tailoring Company is one of the largest concerns engaged in said business and has become well and widely known to the trade and public, and for many years has used and still uses upon its catalogues, circulars, and advertising matter the slogan "Tailors to the Trade" and "Personal Service." That in the year 1918, respondents, Henry J. Briede and W. P. Rogovsky, caused the National Tailoring Company to be organized under the laws of the State of Illinois with a capital stock of one thousand dollars, practically all of which is owned by respondents, Henry J. Briede and W. P. Rogovsky, and since that time have conducted a large part of their business as described in Paragraph One hereof under the name of National Tailoring Company. That the advertisements, circulars, and catalogues of the respondent, National Tailoring Company, contain the slogans "Tailors to the Nation" and "National Service" and very closely resemble those of the International Tailoring Company. That the International Tailoring Company, as a part of its window dressing, painted a black stripe across its windows, and respondents, Henry J. Briede and W. P. Rogovsky, have caused to be painted across the windows of the building occupied by the National Tailoring Company a similar black stripe. That this similarity in name, address, slogans, advertisements, and circulars is calculated to, and actually does, cause much confusion in the trade and among the purchasing public and is calculated to, and actually does, mislead and deceive many in the trade and among the purchasing public and induce them to purchase the goods of the respondents in the belief that they are purchasing the goods of the International Tailoring Company.

PAR. 3. That respondents, Henry J. Briede and W. P. Rogovsky, in the course of their business, as described in Paragraph One hereof, sell clothing directly to the consumer under the trade name "The Old Woolen Mills Company." That the respondents, Henry J.

Briede and W. P. Rogovsky, neither own, operate, nor are interested in any woolen mills, but on the other hand buy from the manufacturers all cloth used by them. That the use by respondents of the name, "The Old Woolen Mills Company," is calculated to, and actually does, mislead and deceive many among the purchasing public and induce them to purchase the goods of the respondents, Henry J. Briede and W. P. Rogovsky, in the belief that said respondents own, control, or operate a woolen mill in which they manufacture the cloth used by them, and that persons buying from respondents are buying directly from the manufacturers of the cloth and the clothing and thus saving the profits of the middlemen; that the use of such name by the respondents is thus calculated to, and actually does, injure competitors of respondents.

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 respondents, Henry J. Briede and W. P. Rogovsky, partners, doing business under the name and style of Briede & Rogovsky and National Tailoring Company, charging them with violation of Section 5 of said Act.

The respondents having entered their appearance and filed their answer herein, together with a stipulation as to the facts in support of the allegations of said complaint, and this proceeding having come regularly on for hearing before the Commission and the matter having been duly considered upon the record, and the Commission being fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents, Henry J. Briede and W. P. Rogovsky, constitute a partnership and carry on business under the names of Briede and Rogovsky, Schwabe Brothers, The Old Woolen Mills Company and National Tailoring Company, with their principal place of business in the City of Chicago, State of Illinois, and for many years have been and are now engaged in manufacturing and selling, upon mail orders and through agents located in various States of the United States, clothing, and in causing the clothing so sold to be transported from the State of Illinois through and into other States of the United States and the District of Columbia to the

Order.

4 F. T. C.

purchasers thereof, and in the conduct of such business are in direct and active competition with other copartnerships, corporations and individuals similarly engaged.

PAR. 2. The respondents, Henry J. Briede and W. P. Rogovsky, in the course of their business, as described in Paragraph One hereof, sell clothing directly to the consumer under the trade name "The Old Woolen Mills Company." The respondents, Henry J. Briede and W. P. Rogovsky, neither own, operate nor are interested in any woolen mills, but on the other hand buy from the manufacturers all cloth used by them. The use by respondents of the name, "The Old Woolen Mills Company," is calculated to, and actually does, mislead and deceive many among the purchasing public and induce them to purchase the goods of the respondents, Henry J. Briede and W. P. Rogovsky, in the belief that said respondents own, control or operate a woolen mill in which they manufacture the cloth used by them, and that persons buying from respondents are buying directly from the manufacturers of the cloth and the clothing and thus saving the profits of the middlemen; the use of such name by the respondents is thus calculated to, and actually does, iniure competitors of respondents.

CONCLUSION.

The use by respondents of the name "The Old Woolen Mills Company," under the circumstances, is an unfair method of competition within the meaning of Section 5 of the 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 come regularly on to be heard by the Federal Trade Commission upon the complaint of the Commission, and the answer and stipulation as to the facts by the respondents, and the Commission having made its findings as to the facts with its conclusion that respondents 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."

It is now, therefore, ordered, That the respondents, Henry J. Briede and W. P. Rogovsky, partners, doing business under the name and style of Briede and Rogovsky, and National Tailoring Company be and they are hereby ordered to cease and desist from using the word "Mills" as part of their firm name or style of business or in any other manner indicating that they own or operate a mill

unless and until, as a matter of fact, respondents own or operate a mill.

It is further ordered, That respondents be and they are hereby allowed to use "Successors to The Old Woolen Mills Company" for a period of one year from the date hereof beneath any name they may adopt in place and instead of the name "The Old Woolen Mills Company."

It is further ordered, That respondents shall within four months after the date of the service upon them of this order file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been conformed to and complied with.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

UNITED CHEMICAL PRODUCTS CORPORATION.

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

Docket 717—February 25, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of dyestuffs and finishing materials, paid to employees in charge of the dyeing and finishing departments of customers' and prospective customers' textile mills, without the knowledge or consent of their employers, cash commissions aggregating large sums of money to influence them to induce their employers to purchase its products; with the result that its prices to the purchasing public were increased, and all competitors were affected, either by losing business through their failure to adopt the same method or by being compelled to do so in order to retain their business:

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the United Chemical Products Corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate and foreign commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended 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 Jersey, with principal office and place of business at Jersey City, in said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling dyestuffs and chemicals, causing same to be transported to the purchasers thereof, from the State of New Jersey, through and into the other States of the United States, in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in Paragraph 2 hereof, gives and has given to dyers and other em-

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Findings.

ployees of its customers and prospective customers, without the knowledge and consent of their employers, and without other consideration therefor, cash commissions, aggregating large sums of money, to influence such employees to induce their employers to purchase the commodities produced and sold by respondent. That such cash commissions so paid by respondent aggregated approximately 10 per cent of its entire volume of business, which volume of business amounts to approximately \$400,000 per year. That by the payment of such commissions and as a result thereof, respondent adds to its annual cost of doing business approximately \$40,000, and is compelled to and does add to the selling price of commodities sold by it an amount approximating 10 per cent of the fair market value of such commodities, which is in addition to the fair market value of such commodities, and which additional amount the customers of respondent, and eventually the purchasing public, must pay. That as a further result of respondent's said practice, all competitors of respondent are affected, and the payment by respondent of cash commissions, to the extent and for the purposes aforesaid, has tended to cause competitors of respondent to pay employees of customers and prospective customers, cash commissions of approximately like amounts to those paid by respondent as aforesaid, for the same purposes, and with the same effect, as means of protecting their trade and preventing respondent from obtaining the business enjoyed by them.

PAR. 4. That by reason of the facts recited, the respondent has used 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 and an amended complaint upon the respondent, the United Chemical Products Corporation, 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 answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaints before George McCorkle, 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

Findings.

4 F. T. C.

advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent is a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business at Jersey City in said State, and engaged in manufacturing and selling dyestuffs and finishing materials used for dyeing textiles and finishing fabrics of cotton, wool, and silk manufacture throughout the various eastern States of the United States in competition with other concerns manufacturing similar products and selling and distributing them in interstate commerce.

PAR. 2. That respondent in the course of its said business during the years 1917, 1918 and 1919, and prior thereto, was engaged in the practice of "giving cash commissions aggregating large sums of money to employees of customers and prospective customers without the knowledge or consent of their employers to influence such employees to induce their employers to purchase the commodities sold by respondent."

PAR. 3. That cash commissions paid by respondent between the 23d day of September, 1918, to the 23d day of September, 1919, amounted to \$30,000 to \$40,000, which was approximately 8 per cent to 10 per cent of the total sales of respondent during said period. The employees receiving said commissions are known as dyers and finishers or overseers, and have charge of the dyeing and finishing departments of and were employed in certain textile mills located in the New England States of the United States, the States of North and South Carolina and Georgia.

PAR. 4. That the said gratuities or cash commissions paid the said employees were based sometimes on the number of pounds and sometimes on the number of barrels of said materials purchased by the said textile mills. In one instance in New York City on an annual purchase of from \$8,000 to \$10,000 by a certain textile plant located in said city, the dyer or finisher employed therein received \$150 per month. Amounts ranging from \$300 to \$500 were given to employees of textile mills at different times during the years above mentioned in the States of New Jersey, New York, and the New England States. In North Carolina during the times hereinbefore mentioned seven employees in different textile mills, operating in said State, received amounts ranging from \$250 to \$600; totaling the sum of \$2,125, and cash commissions of smaller amounts were paid to employees of textile mills located in the States of

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Order.

South Carolina and Georgia. For a more detailed statement of the amounts of cash commissions paid employees, their several names, the States in which located and the names of the mills at which they were employed, reference is made to the testimony as appears in Exhibit I.¹

PAR. 5. That the money commissions paid to employees as aforesaid were charged to Overhead Expense by respondent and taken into consideration in fixing the prices to be paid for the products of respondent by its customers and caused said prices generally to be increased to the purchasing public.

PAR. 6. That engaging in said practice of giving commissions to employees of customers as aforesaid affected all competitors of respondent, causing those who did not engage in said practice to lose business and others, whether they desired to do so or not, to pay said commissions to employees of customers in similar or increased amounts for the said purpose and effect in order to protect their trade and prevent respondent from obtaining business enjoyed by them.

PAR. 7. That since September 23, 1919, respondent has ceased to engage in the said practice of paying commissions to employees as set forth in Paragraph Two above.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint and amended complaint of the Commission, the answers of the respondent, and 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 the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, the United Chemical Products Corporation, its officers, directors, agents and employees, cease and desist from directly or indirectly giving to employees of customers or prospective customers, without the knowledge or con-

¹ Not printed.

Order.

4 F. T. C.

sent of their employers and without other consideration therefor, gratuities consisting of cash commissions as an inducement to influence their employers to purchase or contract to purchase from respondent, dyestuffs, finishing material and other chemicals.

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 he has complied with the order to cease and desist hereinbefore set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

MARGARET NEWSON AND GEORGE B. KETCHUM, DOING
BUSINESS UNDER THE NAME AND STYLE OF THE
MODEL MARKET.

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

Docket 737—February 25, 1922.

SYLLABUS.

Where a firm engaged in the sale, partly pursuant to foreign contracts secured by it, of meats and other supplies to coastwise and ocean-going ships of British registry chiefly, paid to the captains of the vessels, without the knowledge or consent of their employers, secret commissions of 5 per cent of the amount of the bills for the purpose of securing and holding business and excluding competitors therefrom; with a tendency to cause competitors to adopt the same method in order to retain their business, and with the result that all competitors were affected, an unfair advantage was taken both of competitors who would not do so and of the employers who received no consideration in return for such payments, and the firm's cost of doing business was increased:

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 Margaret Newson and George B. Ketchum, doing business under the name and style of The Model Market, hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate and foreign commerce, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, Margaret Newson and George B. Ketchum, doing business under the name and style of The Model Market, have their principal place of business at Galveston, in the State of Texas.

Complaint.

4 F. T. C.

PAR. 2. That the respondents, Margaret Newson and George B. Ketchum, are engaged in the business of selling meats, poultry, fish, vegetables and other food products under the name and style of The Model Market, to ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in transporting passengers and commodities between ports in the various States of the United States bordering upon the southeastern and southern coast thereof, and in transporting passengers and commodities from American ports to foreign countries, in due course of commerce among the several States of the United States and with foreign countries; such supplies so sold by respondents being for consumption and use by the purchasers thereof, upon the high seas, in and beyond the territorial jurisdiction of the United States, said business being conducted by respondents in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That the respondents in the course of their business as described in Paragraph 2 hereof, give and have given to captains and other officers of vessels to which they furnish meats, poultry, fish, vegetables and other food products, without the knowledge or consent of their employers and without other consideration therefor, cash commissions and gratuities amounting in some instances to as much as 5 and 10 per cent of the invoices of the supplies purchased, to induce such captains and officers to purchase their requirements of meats, poultry, fish, vegetables and other food products from the respondents. That as a result of the giving of such gratuities, respondents add to their annual cost of doing business the value of the gratuities given, and are compelled to and do add to the selling price of the products sold by them an amount approximating 5 and 10 per cent of the fair market value of such commodities, and which additional amount the customers of the respondents and eventually the public must pay. That as a further result of respondents' said practices all of their competitors are affected, and the giving of cash commissions and gratuities by the respondents as aforesaid has tended to cause competitors of the respondents to give captains and other officers of ships cash commissions and gratuities of substantially like amounts to those paid by the respondents as aforesaid, for the same purposes and with the same effect, as a means of protecting their trade and preventing the respondents from obtaining the business enjoyed by them.

PAR. 4. That, by reason of the facts recited the respondents are using an unfair method of competition in commerce within the in-

tent 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, Margaret Newson and George B. Ketchum, doing business under the name and style of the Model Market, 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 answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Warren R. Choate, 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 Model Market is located at the southeast corner of Twentieth and Market Streets, in the City of Galveston, State of Texas, and supplies ships engaged in transporting cargoes in commerce from that port to ports in other States of the United States, and between ports in the United States and ports in foreign countries, with meats, produce and fish, and is in competition with other persons, firms and corporations similarly engaged.

PAR. 2. The Model Market is owned by Mrs. Margaret S. Newson and managed by George B. Ketchum, her son-in-law, and the products handled by this market are meats and produce.

PAR. 3. Fish are also dealt in by the Model Market through the establishment of G. B. Marsans & Co., in which establishment Mrs. Margaret S. Newson has an interest and when fish are among the products sold by the Model Market to ships they are charged to said market by G. B. Marsans & Co., and billed by the Model Market to the vessels on The Model Market bill heads and become sales by said market.

PAR. 4. The business conducted by the Model Market with ships in the supplies of meats, produce and fish amounted in the years 1918 and 1919 to approximately \$100,000.

Conclusion.

4 F. T. C.

PAR. 5. Portions of the business conducted by the Model Market with ships are under contracts made and executed with the owners of vessels in Great Britain through an agent of respondent, residing in that country, and other portions are secured with what is known in the shipping industry as "free ships" that is, ships not under contract with any particular dealer but "free" to deal in supplies with any one whom the captain of the vessel desires.

PAR. 6. That on all business done with ships prior to about April, 1920, there was paid to the captains a commission or gratuity of 5 per cent of the amount of the bill covering the supplies furnished to the ship.

PAR. 7. That most of the business is done with British ships, some with French ships and a lesser amount with Italian vessels and the remainder with ships of other nationalities.

PAR. 8. That these commissions or gratuities are paid to captains for the purpose of getting their trade; holding it and preventing competitors from obtaining the business.

PAR. 9. That the amount of the gratuity does not appear on any account rendered and is paid to the captain secretly and without any notice to the owners of the vessels or to their agents.

PAR. 10. That the business of the Model Market is under the sole direction and charge of George B. Ketchum, and the commissions or gratuities were paid by him or with his approval and under his authority and that Margaret S. Newson is an elderly lady, taking no active part in the business, leaving all questions and business activities to the decisions of her son-in-law, one of the respondents in the complaint.

PAR. 11. The practice of giving cash commissions and gratuities by the respondents as aforesaid affects all of their competitors and tends to cause them to give captains and other officers of vessels gratuities of substantially like amounts to those given by the respondents for the same purpose and with the same effect, as a means of protecting their trade and preventing the respondents from obtaining the business enjoyed by them.

PAR. 12. That as a result of the giving of cash commissions and gratuities to captains and other officers of vessels as aforesaid, the respondents add to their cost of doing business the value of the gratuities given, and the price of their products to their customers is their cost of doing business plus their profit.

CONCLUSION.

That in this method of selling supplies to coastwise and foreign vessels, the respondents were engaged in commerce as defined by

Section 4 of the Act of Congress, approved September 26, 1914, creating a Federal Trade Commission and defining its powers and duties.

That this method of paying gratuities to captains and other officers of vessels is in violation of the provisions of Section 5 of the above recited act; that in the payment of these gratuities, an unfair method was adopted because it created an unlawful advantage as against those engaged in similar business who would not pay such gratuities; that in the payment of gratuities in this manner to captains and other officers of vessels an unfair advantage was taken of the owners of the vessels and that there was no valuable consideration moving from the captain to the respondents that would support said payments.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the testimony and evidence submitted, 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 respondents, Margaret Newson, and George B. Ketchum, their agents and employees, cease and desist from directly or indirectly giving to captains or other officers or employees of vessels, without the knowledge and consent of their employers, sums of money or gratuities of any kind as an inducement to purchase or for purchasing from respondents for the owners of vessels, meats, produce, fish, or other supplies.

It is further ordered, That the respondents 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.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION
v.
ERNST BISCHOFF COMPANY, INC.

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

Docket 743—February 25, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of substitutes for textile soaps, paid and offered to pay to employees of customers and prospective customers charged with the duty of recommending to their employers which products to use, without the knowledge and consent of said employers, sums of money aggregating several thousand dollars annually as an inducement for them to influence their employers to purchase or contract to purchase its products, and to refrain from dealing with its competitors; with a tendency to cause competitors to adopt the same methods in order to retain their business, and with the result that all competitors were affected and the corporation's cost of doing business was increased:

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

PARAGRAPH 1. That the respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at the City of New York in said State.

PAR. 2. That the respondent is now and has been at all times hereinafter mentioned engaged in the business of manufacturing and selling dye stuffs, textile soaps, finishing materials and specialties for textile mills, causing such products 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 such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

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PAR. 3. That respondent in the course of its business as described in Paragraph 2 hereof, gives and has given to dyers, finishers and other employees of proprietors of textile mills to whom it sold or offered to sell dye stuffs, soap, oil and other materials and specialties used in such mills, without the knowledge and consent of their employers and without other considerations therefor, cash gratuities amounting in some instances to as much as \$200 and \$500 per year, to induce such employees to favor and recommend, and influence their employers to purchase, the products of the respondent, and to refrain from purchasing the products of its competitors. That such cash gratuities so given by respondent aggregate approximately \$3,000 annually, or 5 per cent of the entire volume of business of the respondent, which volume of business amounts to approximately \$60,000 per year. That as a result of the payment of such cash gratuities, respondent adds to its annual cost of-doing business \$3,000, and is compelled to and does add to the selling price of the products sold by it an amount approximating 5 per cent of the fair market value of such commodities, which is an addition to the fair market value of such commodities, and which additional amount the customers of the respondent, and eventually the purchasing public, must pay. That as a further result of respondent's said practices, all of its competitors are affected, and the giving of cash gratuities by respondent as aforesaid, has tended to cause competitors of respondent to give employees of customers and prospective customers, cash gratuities of substantially like amounts to those paid by respondent as aforesaid, for the same purposes and with the same effect, as a means of protecting their trade and preventing respondent from obtaining the business enjoyed by them.

PAR. 4. That by reason of the facts recited, the respondent 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, Ernst Bischoff Co., Inc., charging it with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon intro-

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duced in support of the allegations of the said complaint before Frank B. Lent, an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing and counsel for the Commission and the respondent having waived the filing of briefs and the hearing of oral argument herein, 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, Ernst Bischoff Co., Inc., is now and has been at all times since November, 1912, a corporation, organized and existing under and by virtue of the laws of the State of New York, having its main office and principal place of business in the City of New York, in said State.

PAR. 2. The respondent is and since its incorporation has been engaged in the business of manufacturing and selling paroxan, a chemical product which is used as a substitute for soap in washing and scouring textile goods during the process of manufacture thereof, and emarol, a chemical product which is used also as a substitute for soap in the fulling process in the manufacture of textile goods, and shipping such products in commerce from the State of New York through and into the States of Connecticut, Rhode Island, Massachusetts, and Pennsylvania; that other persons, firms, partnerships, and corporations sell and ship soap products, which are used for similar purposes in the textile mills, in commerce in competition with respondent.

PAR. 3. The respondent in the course of its business of selling chemical products used for washing, scouring, and fulling, as above set forth, during the years 1918 and 1919, has given and offered to give to employees of its customers and prospective customers, without the knowledge and consent of their employers, sums of money, amounting in some instances to as high as Two hundred (\$200) Dollars, and Five Hundred (\$500) Dollars, per year, and aggregating approximately Three Thousand (\$3,000) Dollars, annually, as an inducement to influence their said employers to purchase or contract to purchase respondent's products, and to refrain from dealing or contracting to deal with competitors of respondent.

PAR. 4. The employees to whom sums of money were offered or given by the respondent as aforesaid were dyers and finishers in textile mills whose duties required them to make tests and apply prepara-

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tions in different processes, and to recommend to their employers which products to use in their mills.

PAR. 5. The practice of giving sums of money to employees of customers by the respondent affects all of its competitors and tends to cause them to give employees of their customers and prospective customers sums of money of substantially like amounts to those paid by the respondent for the same purpose and with the same effect, as a means of protecting their trade and preventing the respondent from obtaining the business enjoyed by them.

PAR. 6. That as a result of the payment of such sums of money to employees as aforesaid, the respondent adds to its cost of doing business the amount of money given by it as shown by these findings, and the price of its products to its customers is its cost of doing business plus its profit.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, 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 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, Ernst Bischoff Co., Inc., its agents, representatives, servants and employees, cease and desist from directly or indirectly giving or offering to give to employees of customers or prospective customers or employees of any competitor's customers or prospective customers, without the knowledge or consent of their employers, money, cash bonuses, commissions, or other things of value, as an inducement to influence their employers to purchase or contract to purchase the products of respondent, or cause any customer of competitor to refrain from dealing or contracting to deal with any competitor of the said respondent.

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It is further ordered, That respondent, Ernst Bischoff Co., Inc., 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 forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

DIAMOND HOLFAST RUBBER COMPANY.

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

Docket 788—February 25, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of automobile tires, inner tubes and accessories as The Diamond Rubber Co., advertised its business at large expense and extended the same largely, so that the word "Diamond" and the name "The Diamond Rubber Co.," had become identified extensively in the public mind with goods made in its factories; and thereafter a competitor, the name of whose president purported to be "Dimond" or "Diamond,"

(a) Adopted the name "Diamond Holfast Rubber Co.;" and

(b) Intentionally and extensively imitated the Diamoud packages, brands, and labels;

Thereby causing confusion respecting the identity of the two concerns and of their respective products, and resulting in the sale of the products of the latter concern as and for those of the former:

Held, That such simulation of trade or corporate names, brands and labels, 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 Diamond Holfast Rubber Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Georgia, with principal place of business at Atlanta in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling automobile accessories and repair materials, including fan belts, friction tape, inner tubes, patches and cement, and causes commodities sold by it to be transported to the purchasers

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thereof, from the State of Georgia, 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 on June 6, 1912, the B. F. Goodrich Co., a corporation organized under the laws of the State of New York, acquired the physical assets, trade marks, trade names, and good will of the Diamond Rubber Co., a corporation organized in May, 1907, under the laws of the State of Ohio, and in order to obtain the benefits accruing from the use of said name and trade marks, which had become well known to the trade and the general public and were of great value, immediately thereafter caused to be organized under the laws of the State of New York a subsidiary corporation under the name of Diamond Rubber Co., and said B. F. Goodrich Co. has continuously, since 1912, manufactured and sold through said subsidiary, under the trade marks acquired from said Ohio corporation, various kinds of rubber goods, including inner tubes, patching material, and cement for automobile tires, and has caused commodities sold by it as aforesaid to be transported to the purchasers thereof from the State of New York through and into other States of the United States, and has carried on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 4. That the respondent was originally organized on October 27, 1916, with the corporate name of Diamond Holfast Patch Co., and on January 20, 1919, its charter was amended and its name changed to Diamond Holfast Rubber Co.; that the present corporate name of the respondent so closely resembles that of the Diamond Rubber Co., described in Paragraph 3 hereof, that confusion in the trade as to the products of the respondent and the products of said Diamond Rubber Co., has resulted; that the adoption of the corporate name, Diamond Holfast Rubber Co. by respondent, was calculated to and does mislead and deceive the public, and purchasers have been misled thereby into buying respondent's products, under the mistaken belief that they were the products of said Diamond Rubber Co.

PAR. 5. That since its organization, the Diamond Rubber Co., described in Paragraph 3 hereof, has marketed its products in containers upon which were placed labels in which the word "Diamond" was featured, and respondent, since its organization, as a means of enabling or assisting it to pass off its products as and for the products of said Diamond Rubber Co., has marketed its products in containers upon which were placed labels which also featured the word "Dia-

mond," and so closely resembling the labels of the Diamond Rubber Co. in typographical arrangement, color scheme, general appearance and design as to cause confusion in the trade; that the use by respondent of the labels as aforesaid, was calculated to and does mislead and deceive the purchasing public and purchasers are thereby deceived and induced to purchase respondent's products under the mistaken belief that they are the products of said Diamond Rubber Company.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent having entered its appearance by its attorneys and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondent before Warren R. Choate, 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, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of Georgia, with its principal place of business at 33 Auburn Avenue, Atlanta, Ga. It was originally incorporated under the name of Diamond Holfast Patch Company, October 27, 1916. On January 20, 1919, the charter was amended and the name changed to Diamond Holfast Rubber Co.

PAR. 2. Respondent is engaged in the business of manufacturing and selling automobile accessories and repair material, including fan belts, friction tape, patches, cement and inner tubes, and causes such commodities sold by it to be transported to the purchasers thereof, from the State of Georgia, through and into other states in

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the United States, and carries on such business in direct and active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. On June 6, 1912, The B. F. Goodrich Co., a corporation organized under the laws of the State of New York May 1, 1912, acquired the physical assets, patents, copyrights, trademarks, trade names and good will of The Diamond Rubber Co., a corporation organized under the laws of the State of Ohio, November 6, 1905, said physical assets including a rubber factory and equipment therefor located at Akron, Ohio, and from the time of such acquisition continued the business of said The Diamond Rubber Co., as its successor, using the same factory, equipment, names, marks and labels. To facilitate the sale of Diamond products and keep them separate and distinct from the Goodrich products The Diamond Rubber Co. was incorporated under the laws of the State of New York, April 25, 1917, as a subsidiary corporation of The B. F. Goodrich Co. Since the incorporation of said subsidiary the Diamond line of goods has been sold through it.

PAR. 4. Long prior to the organization of respondent corporation, or its predecessor, Diamond Holfast Patch Co., the general rubber business of The Diamond Rubber Co., including automobile tires, inner tubes and accessories, had been advertised at large expense and had been extended in large volume into all parts of the United States, and the word "Diamond" and the name "The Diamond Rubber Co." had become identified in the public mind with such goods made in The Diamond Rubber Company factories at Akron, Ohio, having been used as the business name and on the goods of that company and its predecessors since 1898. In the years from 1915 to 1920 inclusive, a sum exceeding \$1,714,000 was spent in advertising The Diamond Rubber Co.'s tires and automobile accessories, and the business in these goods for that period exceeded \$72,000,000.

The Diamond Rubber Co. maintains a branch at Atlanta, Ga., through which branch the Diamond products are distributed throughout a district comprising eight states, from Virginia to Texas. The business in The Diamond Rubber Co.'s tires, tubes and accessories in the Atlanta district for the period from 1917 to 1921 were approximately \$6,000,000. Respondent's sales are principally in this territory.

The word "Diamond" and also a mark which prominently includes two diamond-shaped figures inclosing letters D were registered in the United States Patent Office in 1907, by The Diamond Rubber Co., of Ohio, as trademarks for rubber vehicle tires. Respondent has no registered trademarks or labels.

PAR. 5. The use of the word "Diamond" as a part of the corporate name of respondent has caused confusion with the name of The Diamond Rubber Co., in that letters intended for Diamond Holfast Rubber Co. frequently have been sent in the mails addressed to The Diamond Rubber Co. and delivered to that company; in that goods have been shipped to The Diamond Rubber Co., and so addressed, that were intended for the respondent company; in that state officials have mailed matter to The Diamond Rubber Co. intending the mail matter to be sent to Diamond Holfast Rubber Co.; and in that a garage owner at Tuscumbia, Ala., being visited by a salesman of respondent, purchased a bill of goods from him under the impression that they were goods of The Diamond Rubber Co.

On a number of occasions and in different retail stores in Atlanta where respondent's goods are sold, requests have been made for the purchase of "Diamond" products, such as inner tubes, patching rubber and cement, and such requests have been complied with by delivering the products of the respondent company, Diamond Holfast Rubber Co.

PAR. 6. Since 1916 the respondent and its predecessor have intentionally and extensively imitated the "Diamond" packages, brands and labels. This imitation includes the use by respondent on its goods and packages of the figure of a diamond with the word "Diamond" placed therein, a device of this character having been used from an earlier time on The Diamond Rubber Co. goods; of labels having parallel stripes of contrasting colors, in combination with the word "Diamond," such a combination having been used from an earlier time on the Diamond goods; and of labels including such word and having borders consisting of chains of diamond-shaped figures with the word "Diamond" spelled out by letters placed one in each diamond, a feature of the Diamond accessory labels being a field, and in some instances a single chain, of diamond-shaped figures with the word "Diamond" so spelled out therein.

PAR. 7. The use of the word "Diamond" as a part of the corporate name of respondent and upon the goods sold by it and upon the containers thereof, and the similarity of respondent's labels to those used from an earlier time upon the "Diamond" goods has made possible and has resulted in the sale to ultimate purchasers of respondent's goods as goods of The Diamond Rubber Co.

PAR. 8. The Diamond Rubber Co. notified respondent on May 29, 1920, that "the use of the word 'Diamond' in any form or combination on rubber goods and particularly as used by you on tire accessories is a clear infringement of our trademark rights and must be

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stopped." Respondent thereafter continued to use the word "Diamond" as a part of its corporate name and upon goods sold by it and to use labels so similar to those of The Diamond Rubber Co. as to be likely to be confused therewith.

PAR. 9. Respondent's president has at various times given his name as "Dimond" and "Diamond," having in 1906 signed his application for naturalization as "Dimond," having so signed it on January 19, 1915, to a petition to be declared a bankrupt, and on February 28, 1916, to an application for registration of a motor vehicle, and having obtained life insurance policies applied for on May 23, 1917, under that name, which policies later he had changed to the name of "Diamond." It has not been proven to the satisfaction of the Commission that either the name "Dimond" or "Diamond" is the legal surname of respondent's president.

PAR. 10. In an advertising circular sponsored by respondent company promoting its sale of stock it is stated, "Mr. Diamond is a genius. He was educated in the best technical schools in Europe, specializing in the rubber industry. Later he engaged in research work with several big companies in Ohio, the center of this industry. There he absorbed all the practical methods of manufacture and marketing rubber goods." These are not facts and are false and misleading. He never "attended any technical schools in Europe, specializing in the rubber industry." He was born at sea on a vessel plying between Russian Poland and France in the year 1886. The first three years of his life he spent in France and then he went to Poland and left there at nine years of age. Then he went to England, then back to France, then to Germany, then to Austria, living in each country for periods and times indefinite and unascertainable. He ran away from home at about the age of 14 or 15 years, and came to the United States in 1903, at the age of 17 years. He never engaged in research work with any big rubber company in Ohio. He was employed as a common laborer a short and indefinite time in a factory in Akron, the name of which he could not remember.

Since coming to the United States in 1903, respondent's president was "off and on in New York City for about seven years." It is not possible to find from the record what his occupations were for these seven years. Thereafter he engaged in various lines of activity beginning in Atlanta in 1910. In 1911 he bought a soda fountain business, operated it for two or three months and sold it and entered the optical business, which lasted a few months. He then entered

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the tailoring business, which went into bankruptcy. Then he established a grocery business for a period of 18 or 19 months, when he went into bankruptcy again in 1915. Then after a short period unaccounted for, he operated a few jitney cars for five or six months. Then about the close of 1915 he went into business with his brother-in-law selling an automobile accessory called Everloc Patches. This lasted but a short while, a few months, and he sold out to his brother-in-law, and in the bill of sale agreed not to sell Everloc Patches in the States of Georgia and Tennessee or "Any other patch in these two states." The sale took place in June, 1916.

After the signing of said agreement, respondent's present president adopted the name Diamond Holfast Patch Company, secured the same location of business from which his brother-in-law had removed the former partnership business, adopted labels and circulars in which were copied illustrations and the major part of the text, as well as the general design, of labels and circulars previously used in the partnership business in which he had sold his interest under the terms of the contract above mentioned, and shortly thereafter incorporated Diamond Holfast Patch Co., respondent's predecessor, as stated in Paragraph 1 hereof.

The facts showing the steps from this point on to the time of filing the complaint in this cause appear in other paragraphs of these findings of fact heretofore set forth. A bill of equity was filed against Diamond in the Superior Court, County of Fulton, State of Georgia, by C. Chomsky, to whom the rights under previous agreements had been transferred, praying for an injunction to prevent the sale of patches in imitation of Everloc Patches. Apparently, this bill was not pushed and arbitration was entered into in lieu thereof and under it an award was made permitting Diamond to manufacture patches but not to personally travel in the two States of Georgia and Tennessee to sell them. This was the result of the difficulties existing between Chomsky and Diamond and in no way was The Diamond Rubber Company a party to this dispute.

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.

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ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, 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 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 Diamond Holfast Rubber Co., its officers and agents, cease and desist from using, as a part of the corporate name of respondent, the word D-I-A-M-O-N-D or any word or combination of words likely to be confused with the name of The Diamond Rubber Co.; from using the word D-I-A-M-O-N-D or the figure of a diamond, or any symbol or mark likely to be confused therewith, upon or in connection with the sale of rubber goods; and from directly or indirectly suggesting, by the use of a word, mark or label or otherwise, that goods of respondent are goods of The Diamond Rubber Co.

And it is further ordered, That said respondent shall file within sixty (60) days from the date of service of this order, a report with the Commission setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

J. V. FALCK SUPPLY COMPANY.

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

Docket 822—February 25, 1922.

SYLLABUS.

Where an individual engaged in the sale of ship chandlery to coastwise and ocean-going ships, including vessels under foreign registry, the business of which it solicited by correspondence and otherwise, paid to the captains of such vessels, without the knowledge and consent of their employers, commissions of five per cent of the invoices as an inducement for them to purchase of him; with the effect of increasing the price of his 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 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 J. V. Falck, trading under the name and style of J. V. Falck Supply Co., 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 respondent carries on business at Mobile, Ala., under the name and style of J. V. Falck Supply Co., and is engaged in the business of selling ship chandlery supplies for use and consumption upon vessels which reach the port of Mobile, Ala., while engaged in the transportation of passengers and cargoes between ports in various states of the United States, and between ports of the United States and foreign countries; respondent carries on said 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, gives and has given to captains and other

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officers and employees of vessels to which he furnishes chandlery supplies, cash commissions and gratuities, without the knowledge or consent of their employers or principals, to induce such officers and employees to purchase chandlery supplies from respondent for use and consumption upon the vessels operated by them for the owners thereof, or as a reward for having purchased supplies from respondent, and without other consideration therefor; that respondent expends for cash commissions and gratuities as aforesaid, large sums of money, aggregating approximately 5 per cent of the volume of sales so made, which sums are added to respondent's cost of doing business, and respondent is compelled to and does add to the selling price of the commodities so sold by him, an amount sufficient to cover the amounts so expended, which is in addition to the fair market value of such commodities, and which additional amount the customers of respondent, and eventually the public, must pay; that as a further result of respondent's said practices all of his competitors are affected, and such practices have tended to cause competitors of respondent to give employees of their customers, commissions and gratuities of substantially like amounts to those paid by respondent, as aforesaid, for the same purpose and with the same effect, as a means of protecting their trade and preventing respondent from obtaining the business enjoyed by them.

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, J. V. Falck, trading under the name and style of J. V. Falck Supply Co., charging him with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent having entered his appearance and filed his answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the said complaint before F. C. Baggarly, 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. That respondent, J. V. Falck, trading under the name and style of J. V. Falck Supply Co., is an individual having his principal office and place of business in the City of Mobile, State of Alabama.

PAR. 2. The respondent, trading as aforesaid, is now and has since July, 1920, been engaged in the selling of ship chandlery, including steward, deck and engine room supplies, consisting mostly of provisions, paints, oils, marine hardware, oakum, pitch, tar, etc., for consumption and use upon vessels which reach the port of Mobile, Ala., while engaged in the transportation of 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 his business as described in Paragraph 2 hereof, has solicited the business of and has sold and delivered to vessels of the United States Shipping Board, plying between the ports of Mobile, Ala., and ports in other States of the United States, and has also solicited by correspondence and otherwise, the business of and has sold and delivered to vessels under foreign registry, including British and Norwegian, while said vessels were engaged in commerce, steward or food supplies necessary for the use and maintenance of the officers and crew of such vessels while in port and upon the high seas, and deck and engine room supplies for the use or repair of such vessels, all of which supplies so furnished were necessary in order that said vessels could continue to operate as instrumentalities of commerce.

PAR. 4. The respondent, trading as aforesaid and in the course of his business as heretofore described, has given to captains of foreign vessels, engaged in foreign commerce, and without the knowledge or consent of their employers or principals and without other consideration therefor, cash commissions or gratuities to an amount of 5 per cent of the invoice of sales so made to induce such officers to purchase ship chandlery supplies from respondent for use and consumption upon vessels while engaged in commerce and while operated by said officers for their principals or owners thereof, and particularly gave to captains of foreign vessels for their personal use, sums of money, the same being

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5 per cent of the invoice sales covering ship supplies purchased on the following dates:

July 15, 1920, steamship <i>Sagua</i>	\$80
Oct. 22, 1920, steamship <i>Rochelle</i>	40
Nov. 12, 1920, steamship <i>Harold</i>	10
Nov. 26, 1920, steamship <i>Harold</i>	10
Dec. 15, 1920, schooner <i>Chiquimala</i>	70
Dec. 17, 1920, schooner <i>J. L. Kalston</i>	35
Dec. 31, 1920, schooner <i>Freeman</i>	45
Jan. 5, 1921, schooner <i>Carrie A. Buckman</i>	25
Mar. 28, 1921, steamship <i>Manghioneal</i>	14
Mar. 30, 1921, steamship <i>Bowdon</i>	5
Apr. 29, 1921, schooner <i>Bishop Brooks</i>	40
May 4, 1921, steamship <i>Terrfle</i>	30

Said sums of money allowed and paid to captains of vessels as commissions or gratuities, aggregating 5 per cent of the volume of sales so made is added by respondent to his cost of doing business, and respondent adds to the selling price of the supplies so sold by him, an amount sufficient to cover the amount so expended, which is in addition to the fair market value of such commodities, and which additional amount as paid becomes a charge against the owner or operator of said vessels and ultimately against the public.

PAR. 5. The giving of cash commissions or gratuities causes 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, and 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 the Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

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Order.

It is now ordered, That the respondent, J. V. Falck, trading under the name and style of J. V. Falck Supply Co., Mobile, Ala., his representatives, agents, 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 or similar 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.

Complaint.

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FEDERAL TRADE COMMISSION

v.

HAAS BROTHERS PACKING COMPANY, INC.

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

Docket 823—February 25, 1922.

SYLLABUS.

Where a corporation engaged in the sale of ship chandlery to coastwise and ocean-going ships, including vessels under foreign registry, the business of which it solicited, paid to the captains and stewards of the vessels, without the knowledge or consent of their employers or principals, commissions of 5 per cent of the invoices as an inducement for them to purchase of it; 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 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 Haas Brothers Packing Company, Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in 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 Alabama, with its principal place of business at Mobile, in said State.

PAR. 2. That the respondent is engaged in the business of selling meats and provisions to officers and employees in charge of vessels and the agents of owners of vessels which reach the port of Mobile, Ala., while engaged in the transportation of passengers and cargoes between ports of the United States and foreign countries, such meats and provisions sold by respondent being for consumption on the said vessels while so engaged in and beyond the territorial jurisdiction of the United States; respondent carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of his business, as described in paragraph 2 hereof, gives and has given to captains and other officers and employees in charge of vessels to which it furnishes meats and provisions, without the knowledge or consent of their employers or principals, cash commissions and gratuities to induce said officers and employees to purchase from respondent meats and provisions for consumption upon the vessels operated by them for the owners thereof, or as a reward for having purchased same from respondent; that respondent pays out for such commissions and gratuities, large sums of money which amount in the aggregate to 5 per cent of the gross income derived from that branch of its business; that as a result of the giving of such commissions and gratuities respondent adds to its cost of doing business approximately \$2,000 per year and is compelled to and does add to the selling price of the commodities sold by it, as aforesaid, an amount approximating 5 per cent of a fair market value of said commodities, which amount customers of respondent and eventually the public must pay; that as a further result of respondent's said practices, all of its competitors are affected; that such practices tend to cause competitors to pay like commissions and gratuities to officers and employees in charge of vessels which reach the port of Mobile, Ala., for the same purposes and with the same effect, as a means of protecting their trade and preventing the respondent from obtaining the business enjoyed by them.

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, Haas Brothers Packing Company, Incorporated, charging it with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the said complaint before F. C. Baggarly, 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

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advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent Haas Brothers Packing Company, Incorporated, is a corporation, organized under the laws of the State of Alabama about fifteen years ago, with an authorized capital stock at this time of \$12,000. Its principal place of business and executive offices are located in Mobile, Ala.

PAR. 2. The respondent, trading as aforesaid, is now and has for more than two years last past been engaged in the selling of ship chandlery or steward supplies, consisting mostly of meats for consumption upon vessels which reach the Port of Mobile, Ala., 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 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 Mobile, Ala., 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 Norwegian, Spanish, Italian, and British, while said vessels were engaged in commerce, steward or food supplies necessary for the use and maintenance of the officers and crew of such vessels while in port and upon the high seas; said supplies so furnished were necessary in order that said vessels could continue to operate as instrumentalities of commerce.

PAR. 4. The respondent, trading as aforesaid and in the course of its business as heretofore described, has given to captains and stewards of vessels, engaged in interstate and foreign commerce, and without the knowledge or consent of their employers or principals, and without other consideration therefor, cash commissions or gratuities to an amount approximating 5 per cent of the invoice of sales so made to induce such officers to purchase meats and provisions from respondent for use and consumption upon vessels while engaged in commerce and while operated by said officers for their principals or owners thereof, and particularly gave to captains and stewards of vessels for their personal use, sums of money in cash,

the same being approximately 5 per cent of the invoice sales covering ship supplies purchased on the following dates:

Jan. 9, 1919. Decatur Bridge	\$47
Jan. 25, 1919. Luf Coma	100
Feb. 19, 1919. Steamship <i>Everglade</i>	50
Feb. 23, 1919. Steamship <i>Knoxville</i>	20
Mar. 6, 1919. Lake Elmhurst	65
Mar. 25, 1919. Steamship <i>West Kyska</i>	35
Apr. 5, 1919. Steamship <i>Lake Allen</i>	50
Apr. 16, 1919. Steamship <i>Lake Gardner</i>	60
Apr. 26, 1919. Steamship <i>Lake Tesco</i>	30
May 21, 1919. Steamship <i>Laurel</i>	45
May 22, 1919. Steamship <i>Glorietta</i>	25
June 9, 1919. Steamship <i>Cave Nest</i>	85
June 16, 1919. Steamship <i>Asquain</i>	25
July 13, 1919. Steamship <i>Lake Falcraft</i>	60
Sept. 2, 1919. Steamship <i>Lake Elnebert</i>	60
Sept. 14, 1919. Steamship <i>West Kyska</i>	50
Sept. 6, 1919. Steamship <i>Lake Garza</i>	60
Sept. 10, 1919. Steamship <i>Tuecom</i>	50
Sept. 15, 1919. Steamship <i>Quattagus</i>	75
Sept. 22, 1919. Steamship <i>Ossining</i>	100
Sept. 24, 1919. Steamship <i>Lake Fon du Lac</i>	50
Oct. 2, 1919. Steamship <i>Munisca</i>	60
Oct. 5, 1919. Steamship <i>Lockhart</i>	50
Oct. 5, 1919. Steamship <i>Lake Gunce</i>	125
Oct. 5, 1919. Steamship <i>Tuecoma</i>	50
Oct. 6, 1919. Steamship <i>Lake Fernwood</i>	50
Oct. 16, 1919. Steamship <i>Lake Kytle</i>	50
Oct. 18, 1919. Steamship <i>Hutchinson</i>	90
Oct. 18, 1919. Steamship <i>Hutchinson</i>	100
Nov. 5, 1919. Steamship <i>Brabant</i>	20
Feb. 26, 1920. Steamship <i>Brabant</i>	21
Mar. 4, 1920. Tug <i>S. American</i>	10
1920. Steamship <i>Tuscan</i>	10
Mar. 18, 1920. Steamship <i>Tuscan</i>	15

Said sums of money allowed and paid to captains and stewards of vessels as commissions or gratuities, aggregating approximately 5 per cent of the volume of sales so made, is added by respondent to its cost of doing business, and respondent adds to the selling price of the supplies so sold by him an amount sufficient to cover the amount so expended, which is an addition to the fair market value of such commodities, and which additional amount as paid becomes a charge against the owner or operator of said vessels and ultimately against the public.

PAR. 5. The giving of cash commissions or gratuities causes competitors of the respondent who do not desire to engage in such practices to give commissions or gratuities of substantially like amounts

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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, and 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 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, Haas Brothers Packing Company, Incorporated, Mobile, Ala., and 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 consisting of meats and provisions or similar 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.

Complaint.

FEDERAL TRADE COMMISSION

v.

COWLEY PACKING COMPANY, INC.

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

Docket 829—February 25, 1922.

SYLLABUS.

Where a corporation engaged in the sale of ship chandlery to coastwise and ocean-going ships, including vessels under foreign registry, the business of which it solicited, paid to the captains of such vessels, without the knowledge or consent of their employers or principals, commissions approximating 5 per cent of the invoices as an inducement for them to purchase of it; 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 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 Cowley Packing Company, Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in 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 Alabama, with its principal place of business at Mobile, in said State.

PAR. 2. That respondent is engaged in the business of selling meats for consumption upon vessels which reach the port of Mobile, Ala., while engaged in the transportation of passengers and cargoes between ports in various States of the United States and between ports in the United States and foreign countries; respondent carries on 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, gives and has given to captains and other offi-

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cers and employees of vessels to which it furnishes meats, without the knowledge or consent of their employers or principals, cash commissions and gratuities and lavish entertainment, including dinner and theater parties, lodging accommodations and other forms of amusement and entertainment, to induce such officers and employees to purchase from respondent, meats for consumption upon the vessels operated by them for the owners thereof, or as a reward for having purchased such meats from respondent, and without other consideration therefor, that respondent pays out for such cash commissions and gratuities and for entertainment so furnished by it, large sums of money, such cash commissions and gratuities amounting in the aggregate to 5 per cent of the volume of sales so made by it, and in addition thereto \$50 to \$75 per month for entertainment, as aforesaid, which sums are added to respondent's cost of doing business, and respondent is compelled to, and does, add to the selling price of the meats so sold by it, an amount sufficient to cover the amount expended, which is in addition to the fair market value of such meats and which additional amounts the customers of respondent, and eventually the public, must pay; that as a further result of respondent's said practices all of its competitors are affected and such practices have tended to cause competitors of respondent to give employees of their customers, commissions and gratuities of substantially like amounts to those paid by respondent, as aforesaid, for the same purpose and with the same effect, as a means of protecting their trade and preventing respondent from obtaining the business enjoyed by them.

PAR. 4. That by reason of the facts recited, the respondent 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 Cowley Packing Company, Incorporated, charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before F. C. Baggary,

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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, Cowley Packing Company, Incorporated, is a corporation, organized under the laws of the State of Alabama, on the 25th day of May, 1920, with an authorized capital stock of \$5,000. Said respondent maintains its principal place of business and executive offices in the city of Mobile, State of Alabama.

PAR. 2. The respondent is now and has since its incorporation been engaged in the business of selling meats or provisions at retail in the city of Mobile, Ala., and for consumption and use upon vessels which reach the port of Mobile, while engaged in the transportation of 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, as described in paragraph 2 hereof, has solicited the business of and has sold and delivered to vessels plying between the ports of Mobile, Ala., and ports in other States of the United States, and has solicited the business of and has sold and delivered to vessels under foreign registry, including Norwegian, Swedish, and Danish, while said vessels were engaged in commerce, steward or food supplies necessary for the use and maintenance of the officers and crew of such vessels while in port and upon the high seas, all of which supplies so furnished were necessary in order that said vessels could continue to operate as instrumentalities of commerce.

PAR. 4. The respondent, in the course of its business as heretofore described, has given to captains of foreign vessels engaged in foreign commerce, and without the knowledge or consent of their employers or principals and without other consideration therefor, cash commissions or gratuities to an amount approximating 5 per cent of the invoice of sales so made, to induce such officers to purchase meats or provisions from respondent for use and consumption upon vessels while engaged in commerce and while operated by said officers for their principals or owners thereof, and particularly gave to captains of vessels for their personal use, sums of money in cash, the same

Findings.

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being approximately 5 per cent of the invoice sales covering ship supplies purchased on the following dates:

Dec. 31, 1920. Steamship Bratland.....	\$523.39
Feb. 18, 1921. Steamship Bratland.....	36.94
Apr. 29, 1921. Steamship Elka 3.....	152.75
May 25, 1920. Steamship Harold.....	242.45
May 29, 1920. Steamship Harold.....	79.60
July 15, 1920. Steamship Harold.....	269.94
July 28, 1920. Steamship Harold.....	309.08
July 11, 1920. Steamship Harold.....	305.90
Dec. 18, 1920. Steamship Harold.....	578.00
Dec. 10, 1920. Steamship Harold.....	261.00
Jan. 19, 1921. Steamship Harold.....	446.65
Dec. 13, 1921. Steamship Honduras.....	223.05
Dec. 31, 1921. Steamship Honduras.....	265.95
Jan. 2, 1921. Steamship Honduras.....	245.80
Jan. 28, 1921. Steamship Honduras.....	222.95
Feb. 23, 1921. Steamship Honduras.....	193.55
Mar. 7, 1921. Steamship Honduras.....	193.92
Apr. 8, 1921. Steamship Honduras.....	219.15
Mar. 2, 1920. Steamship Imperator.....	200.79
Mar. 1, 1921. Steamship Imperator.....	459.36
Feb. 25, 1921. Steamship Startford.....	110.15
Apr. 6, 1920. Steamship Thorgerd.....	487.70

Said sums of money allowed and paid to captains of vessels as commissions or gratuities, aggregating approximately 5 per cent of the volume of sales so made, is added by respondent to its cost of doing business, and respondent adds to the selling price of the supplies so sold by it an amount sufficient to cover the amount so expended which is an addition to the fair market value of such commodities, and such additional amount as paid becomes a charge against the owner or operator of said vessels and ultimately against the public.

Martin A. Blomberg, an officer of the respondent corporation, has from time to time entertained in his home, officers or employees of vessels engaged in commerce. The evidence does not disclose that such entertainment was in the nature of a gratuity or an inducement to said officers or employees to purchase supplies from said respondent corporation for the account of the principals or owners of such vessels.

PAR. 5. The giving of cash commissions or gratuities causes 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.

Memorandum.

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, and 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, Cowley Packing Company, Incorporated, Mobile, Ala., 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 consisting of meats or provisions or similar 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.

The Commission also issued findings and order involving commercial bribery on the part of a ship chandlery concern in the case of Amory & Moore, Inc. (Docket 780, Aug. 9, 1921.)

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

THE MENNEN COMPANY.

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

Docket 606—March 3, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale at fixed uniform list prices, freight prepaid, of talcum powder and other similar products of uniform grade and quality, all nationally known, did not consistently extend to all customers or prospective customers discounts based upon quantity, difference in cost of selling, transportation, or competitive conditions, but in accordance with a selection based upon the purchasers' purposes, policies and practices divided the same into two classes, to one of which it allowed more liberal discounts than to the other, regardless of quantity purchased; with the result that such discrimination placed the class discriminated against at a serious competitive disadvantage, tended to cause its retail customers to bestow their patronage upon the favored class, and tended dangerously unduly to hinder competition between retail as well as wholesale distributors of its products:

Held, That such practices, under the conditions and circumstances set forth, constituted unfair methods 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.

AMENDED COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Mennen Company, hereinafter referred to as the respondent, has during the two years last past violated and is violating Section 5 of an Act of Congress 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 this respect would be to the interest of the public, issues this amended complaint stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, The Mennen Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at the City of Newark, in the State of

New Jersey, and is now and at all times hereinafter mentioned [has been] engaged in the business of manufacturing and selling talcum powder, tooth paste, shaving soap, and various other toilet articles, causing same to be transported to purchasers thereof from the State of New Jersey, through and into various States of the United States, the Territories thereof, the District of Columbia and foreign countries, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That respondent has adopted a plan for the allowance of trade discounts in the marketing of its products; that in pursuance of such plan respondent has and continues to classify its customers into two groups according to a basis of selection adopted by it and has allowed and does allow to purchasers of the same quantity and quality of its products, different discount rates according to the classification of such purchasers by respondent.

PAR. 3. That this practice of varying discounts irrespective of quantity and quality, tends unduly to hinder competition between distributors of respondent's products to retailers or directly to the consuming 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.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Mennen Company, hereinafter referred to as respondent, has been and is violating the provisions of Section 2 of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the several recitals in Paragraphs One and Two of Count I thereof, are hereby charged as fully and completely as though the several paragraphs were repeated verbatim.

PAR. 2. That the varying discount rates allowed by the respondent are a discrimination in price between purchasers of respondent's commodities for use, consumption or resale within the United States and the District of Columbia, the effect of which may be to substantially lessen competition in the distribution of respondent's products or between distributors thereof.

Findings.

4 F. T. C.

PAR. 3. That such discrimination is not founded in difference in the grade, quality or quantity of the commodity sold and does not make only due allowance for difference in the cost of selling or transportation and is not made in good faith to meet competition; that the plan for classification of customers and the allowance of varying discount rates as previously set forth is not a selection of customers in bona fide transactions not in restraint of trade.

PAR. 4. That the actions and doings of the said respondent herein referred to and recited are contrary to the intent and meaning 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 an amended complaint upon the respondent, The Mennen Company, 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 2 of said Act of Congress approved October 15, 1914.

The respondent having entered its appearance by its attorney, Gilbert H. Montague, and filed its amended answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said amended complaint, and on behalf of the respondent, before John W. Bennett, 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 respondent, The Mennen Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the City of Newark, in the State of New Jersey.

PAR. 2. That respondent is now, and for more than five years last past has been, engaged in the business of manufacturing and selling talcum powder, tooth paste, shaving soap and various other toilet articles, and causing said articles or commodities to be transported to purchasers thereof, from the State of New Jersey through and into various States of the United States, the territories thereof, the District of Columbia and foreign countries, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent has adopted a plan for the allowance of trade discounts in the marketing of its products and in pursuance of such plan, respondent did, on or about January 1, 1917, classify, and continue to classify, its customers into groups according to a basis of selection adopted by it, and has allowed and does allow to purchasers of the same quantity and quality of the same products, different discount rates, according to the classification of such purchasers by respondent in the following manner:

(a) Prior to January 1, 1917, respondent made no classification of its customers for the purpose of giving different discounts to different customers or to different classes of customers, but gave the same discounts and the same prices to all customers alike who bought the same goods of respondent in identical quantities—that is to say, the quantity purchased was the only basis upon which respondent made discrimination between its customers as to discounts and prices.

(b) January 1, 1917, respondent took its first step in classifying its customers as a basis of giving different discounts, and in the course of that year made distinctions in two particulars, namely: On all goods of which the unit retail resale price named by respondent was 25 cents, the purchasers then classified and designated by respondent as “retailers” secured a discount of but 10 per cent from respondent’s list price, no matter what quantity they might purchase, while the customers classified and designated by respondent as “jobber” or “wholesaler” received from respondent, in the purchase of its goods, discounts from respondent’s list prices upon the goods named of 15 per cent, as a minimum, and from that amount to 17 per cent, on assorted quantity orders. Talcum powder, the retail package price of which was in 1917 named by respondent at 15 cents, was sold by respondent to “retailers” at a discount of 15 per cent from respondent’s list price, in any quantity above a certain fixed minimum, while in the sale of normal jobbing quantities to “jobbers,” respondent gave such “jobbers” or “wholesalers” a discount of 16 per cent or 17 per cent from such prices.

(c) In March, 1917, respondent announced that it contemplated such a change in sales methods as would develop a line of 25-cent

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packages upon which the demarcation between "jobbers" and "retailers" would be sharply drawn in the allowance of the different discounts.

(d) Respondent issued and circulated a price list of its products, designated by it "General Price List," effective January 1, 1917, canceling all previous lists, wherein it offered, on orders of not less than \$30 net, a trade discount of 15 per cent off list upon articles, including "Borated Talcum Powder," listed by respondent at \$1.50 a dozen as a minimum resale price from wholesaler to retailer, and 15 cents a package as a retail resale price, and a trade discount of 10 per cent off list price upon articles listed by respondent at \$2 a dozen as a minimum price from wholesaler to retailer, and 25 cents a package as a minimum resale price at retail. Terms were named in this price list at 2 per cent cash, 10 days, 30 days net, freight allowed, no cartage. Orders for less than \$30 net, respondent announced, would be supplied only through jobbers, at not less than list prices. At the time that such list was in force and effect, being until June 1, 1917, sales of its product were made by respondent to customers classified and designated by it as "retailers" at prices and on terms set forth in said "General Price List of 1917."

Sales of its products were not made by respondent, nor products offered to said customers so classified by it as "retailers" at prices less, nor discounts greater, than shown in said list, while said list was in force and effect, no matter what the quantities purchased at a single purchase. No other price list of respondent applying to customers classified by it as "retailers" was in force at this time.

(e) Respondent herein also issued and circulated another price list of its products, designated "Wholesale Price List, 1917," effective January 1, 1917, canceling all previous lists, wherein respondent offered, upon orders amounting to not less than \$150 net, a 15 per cent discount on such \$150 quantities; 16 per cent discount on \$250 quantities; 17 per cent discount upon \$500 quantities of respondent's products, including Borated Talcum Powder listed by it at \$1.50 a dozen of \$18 per gross minimum price from wholesaler to retailer, with cash discount not more than 2 per cent. Respondent also granted said wholesalers a like discount on shaving cream and other products listed by respondent at \$2 per dozen, or \$24 per gross, with cash discount of not more than 2 per cent. Terms upon purchases of goods in accordance with said "Wholesalers Price List, 1917," were announced therein as 2 per cent cash ten days, or 30 days net, freight allowed, no cartage. Sales were made by respondent of its goods at the time said "Wholesalers Price List, 1917," was in force and effect, being until June 1, 1917, at the prices and

upon the discounts and terms named in such price list to customers classified by it as "jobbers" or "wholesalers." Said price list was the only price list of respondent in force and effect between January 1, 1917, and June 1, 1917, applying to the class of customers classified and designated by it as "wholesalers."

(f) Respondent herein issued and circulated a "General Price List, 1917," effective June 1, 1917, canceling the previous list of January 1, 1917, whereby respondent offered for shipment direct from the factory, in single purchases of \$30 or more after all trade discounts had been deducted, to customers by it classified and designated as "Retailers," talcums at list prices "wholesaler to retailer," as follows:

1. "Large size," \$2.15 per dozen, trade discount 10 per cent.
2. "Medium size," \$1.50 per dozen, trade discount 15 per cent.
3. "Introductory size," 90 cents per dozen, trade discount 10 per cent. For large, medium, and introductory sizes respectively of talcum, in said last mentioned price list, respondent named 25 cents, 15 cents and 10 cents, respectively, as resale prices at retail.

Respondent also offered in said last mentioned price list, for shipment direct from its factory for single purchases of not less than \$30 after all trade discounts had been deducted, to customers by it classified and designated as "retailers," "other products," including shaving cream, at list prices "wholesaler to retailer" at \$2.15 per dozen, a trade discount of 10 per cent. Terms named in said list by said respondent were 2 per cent cash, 30 days net, freight allowed, no cartage. On orders for less than \$30 net, minimum, respondent announced in said list that customers would be supplied only through the jobber and at list prices.

At the times said last mentioned price list was in force and effect, being from June 1 to September 1, 1917, respondent sold its said products to said customers classified and designated by it as "retailers," at prices and discounts, and upon the terms, named in said last mentioned price list. Sales of its products were not made by respondent nor its products offered to said customers so classified and designated by it as "retailers" at prices less, nor at discounts greater, than shown in said list, while said list was in force, no matter what the quantities purchased at a single purchase. No other price list of said respondent applying to said customers classified and designated by it as "retailers," was in force and effect at that time.

(g) Respondent herein issued and circulated its price list designated "Wholesale Price List, 1917," effective June 1, 1917, canceling

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previous list of January 1, wherein it offered to customers classified and designated by it as "wholesalers," the following minimum prices from "wholesalers to retailers":

1. "Large Size Talcums" at \$2.15 per dozen.
2. "Other items" at \$2.15 per dozen.
3. "Medium Size Talcums" at \$1.50 per dozen.
4. "Introductory size Talcums" at 90 cents per dozen.

In said last mentioned price list, respondent stipulated that minimum jobbing prices should be charged on resale, as follows:

1. "Large Size Talcums" and "Other Items," jobbing price \$25.80 per gross, \$2.15 per dozen, with a cash discount of not over 2 per cent.
2. "Medium Size Talcums," jobbing price \$18.00 per gross, \$1.50 per dozen, with cash discount of not over 2 per cent.
3. "Introductory Size Talcum," jobbing price \$10.80 per gross, or 90 cents per dozen, with a cash discount of not over 2 per cent.

From said prices so offered in said last mentioned list, respondent also offered to its customers by it classified and designated as "jobbers" or "wholesalers," trade discounts as follows:

1. \$175 quantities, list less 15 per cent.
2. \$300 quantities, list less 16 per cent.
3. \$600 quantities, list less 17 per cent.

Terms 2 per cent cash 10 days, 30 days net, freight prepaid; no cartage.

During the time said last mentioned price list was in force and effect, being from June 1 to September 1, 1917, respondent sold its said products to its customers classified and designated by it as "wholesalers," at the prices and discounts and upon the terms named in said last mentioned price list. No other price list of said respondent applying to said customers so classified by it as "jobbers" or "wholesalers" was in force or effect until said list was canceled September 1, 1917 (from June 1, 1917).

(h) Respondent issued and circulated its price list of its products, which it designated "General Price List, 1917," effective September 1, canceling previous list of June 1, wherein it offered for direct shipment in purchases of \$30 minimum after all trade discounts had been deducted, to its customers by it classified and designated as "retailers," the following "wholesale prices":

1. "Large Size Talcums," \$2.50 per dozen, trade discount 10 per cent; 25 cents per package, resale price at retail.
2. "Other Items"—

Shaving Cream		\$3.00 per dozen;
Tar Shampooing Cream		3.00 per dozen;

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2. "Other Items"—Continued.

Cold Cream	\$2. 50 per dozen ;
Ruvia	2. 50 per dozen ;
Kora Konia	2. 50 per dozen ;
Borated Soap	2. 50 per dozen ;
Liquid Corn Plaster	2. 50 per dozen.

Trade discount 10 per cent.

Resale retail price, 25 cents and 35 cents.

3. "Medium Size Talcums," \$1.50 per dozen, trade discounts 10 per cent; 20 cents per package, resale price at retail.

Terms 2 per cent cash 10 days from date of invoice, or 30 days net. Freight allowed; no cartage.

Orders for less than minimum of \$30 for each purchase, it was announced in said last mentioned price list, would be supplied only through the jobber, at not less than list prices for each product.

At the time the said last mentioned price list was in force and effect, being from September 1, 1917, to March 11, 1918, respondent sold its said products to its said customers by it classified and designated as "retailers," at the prices and discounts and upon the terms named in said price list. Sales of its said products were not made by respondent, nor its products offered to said customers so classified and designated by it as "retailers," at prices less, nor discounts greater, than shown in said list so in force and effect, no matter what the quantities purchased at a single purchase. No other price list of said respondent applying to said customers so classified and designated by it as "retailers," was in force or effect until March 11, 1918 (and from September 1, 1917).

(i) Respondent issued and circulated its price list of its said products which it designated "Wholesalers Price List, 1917," effective September 1, canceling previous list of June 1, wherein respondent offered its products at "wholesale prices," as follows:

1. "Large Size Talcums"	\$2. 50 per dozen ;
2. "Other Items"—	
Shaving Cream	3. 00 per dozen ;
Tar Shampooing Cream	3. 00 per dozen ;
Cold Cream	2. 50 per dozen ;
Ruvia	2. 50 per dozen ;
Kora Konia	2. 50 per dozen ;
Borated Soap	2. 50 per dozen ;
Liquid Corn Plaster	2. 50 per dozen.
3. "Medium Size Talcums"	1. 75 per dozen.

In said price list, request was made that a minimum price of \$36 per gross and \$3 per dozen be made on Shaving Cream and on Tar Shampooing Cream, \$30 per gross or \$2.50 per dozen on items scheduled in said list at \$2.50 per dozen "wholesale prices" and \$21 per gross or \$1.75 per dozen on "Medium Size" talcums, with cash discount of not more than 2 per cent.

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From the above-named "wholesale prices" so named in last mentioned list, respondent offered in said list the following discounts to its customers classified and designated by it as "jobbers" or "wholesalers":

1. \$175 quantities, list less 15 per cent.
2. \$300 quantities, list less 16 per cent.
3. \$600 quantities, list less 17 per cent.

Terms 2 per cent, cash 10 days, or 30 days net, freight prepaid, no cartage.

At the time the said last mentioned list was in force and effect, being from September 1, 1917, to March 15, 1918, respondent sold to its customers so classified and designated by it as "jobbers" or "wholesalers," at the prices and discounts and upon the terms named in said last mentioned list. No other list of said respondent for its products applying to its said customers so classified and designated by it as "wholesalers" was in force and effect from the time said last mentioned list was made effective until on or about March 15, 1918.

(j) Respondent herein issued and circulated its price list for its products, dated March 11, 1918, in the form of a circular letter designated by it, "Introductory Offer," "March 15 to April 15, 1918," wherein respondent offered to its customers of all classes a trade discount of 10 per cent on orders of two gross or more to be shipped directly from its factory, and a cash discount of 5 per cent 10 days from date of invoice or sight draft bill of lading attached, freight allowed, no cartage. For the period of one month, being for orders taken between March 15, 1918, and April 15, 1918, respondent offered to its customers, in addition, an extra cash discount of 10 per cent, upon conditions named in said document designated "Introductory Offer." Incorporated in said document so designated "Introductory Offer" was a price list of respondent's products, as follows:

1. "Large Size Talcums"-----	\$2. 50 per dozen ;
2. "Medium Size Talcums"-----	1. 75 per dozen ;
3. "Other Items"—	
Borated Soap-----	2. 50 per dozen ;
Liquid Corn Plaster-----	2. 50 per dozen ;
Ruvia-----	2. 50 per dozen ;
Cold Cream in Tubes-----	2. 50 per dozen ;
Shaving Cream-----	3. 25 per dozen ;
Tar Shampooing Cream-----	3. 25 per dozen ;
Cream Dentifrice-----	3. 25 per dozen ;
Kora Konia-----	4. 50 per dozen.

Minimum shipments direct from the factory, respondent designated in said "Introductory Offer" as 2 gross. Orders for less than 2 gross, it was announced in said document, would be shipped through the "jobber" at his prices and terms only; and said document was circulated to all classes of customers and the details above outlined as to offers applied to all classes of customers, both "wholesalers" and "retailers" as classified and designated by respondent. In addition to the offer contained in said document designated as "Introductory Offer," however, said respondent also issued and circulated in connection therewith, "Notice to Wholesalers," being its customers so classified and designated by it, which offered trade and cash discounts on all wholesalers' invoices after March 15th, as follows:

1. Less than 10 gross—less 10 per cent and 5 per cent for cash.
2. Ten gross and over—less 10 per cent and 7 per cent for cash.
3. Twenty gross and over—less 10 per cent and 8 per cent for cash.
4. Thirty gross and over—less 10 per cent and 9 per cent for cash.

Freight prepaid as heretofore. No advance datings or drop shipments.

Discounts offered in said "Notice to Wholesalers" to respondent's customers classified and designated by it as "jobbers" and "wholesalers," were not offered nor given by it to respondent's customers classified and designated by it as "retailers," no matter what quantities they may have purchased. From on or about March 15, 1918, to on or about April 15, 1918, sales were made by respondent to its customers classified and designated by it as "retailers," at prices and upon discounts designated in said "Introductory Offer," and to its customers classified and designated by it as "jobbers" or "wholesalers" at prices and discounts designated in said "Introductory Offer" as modified by said "Notice to Wholesalers" accompanying said "Introductory Offer"; and no other list of said respondent for its products was in force or effect from about March 15, 1918, to about April 15, 1918.

(k) Respondent herein issued and circulated its price list of its products, dated April 15, 1918, designated by it as "Scale Prices," in which it announced that shipments direct from the factory must amount to 2 gross; that orders for less than the above 2 gross minimum would be shipped only through the jobber, at his prices and terms; that a trade discount of 10 per cent from list price would apply to all orders for 2 gross or more, and a cash discount of 5 per cent for payment within 10 days, or 30 days net, freight allowed, no cartage. In said "Scale of Prices" respondent announced its list prices as follows:

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1. "Large Size Talcums"-----	\$2. 50 per dozen ;
2. "Other Items"—	
Borated Soap -----	2. 50 per dozen ;
Liquid Corn Plaster-----	2. 50 per dozen ;
Ruvla -----	2. 50 per dozen ;
Cold Cream in tubes-----	2. 50 per dozen ;
Shaving Cream -----	3. 25 per dozen ;
Tar Shampooing Cream-----	3. 25 per dozen ;
Cream Dentifrice -----	3. 25 per dozen ;
Kora Konia -----	4. 50 per dozen.

Discounts of 10 per cent trade and 5 per cent cash were worked out by respondent and results placed in said list in parallel columns.

Said "Scale of Prices" embodied the list prices and discounts at which respondent herein sold its said products immediately after April 15, 1918, and until on or about August 5, 1918, to its customers classified and designated by it as "retailers," and said "retailers" were given by respondent no lower prices and no other nor greater discounts than designated in said "Scale of Prices," no matter in what quantities they may have purchased said products at a single purchase. On the other hand, respondent's customers classified and designated by it as "jobbers" and wholesalers," received upon their purchase of the goods of said respondent, between April 15, 1918, and August 5, 1918, when purchased in 10 gross or over at a single purchase, larger discounts, and therefore, lower prices, which discounts were designated in "Notice to Wholesalers," effective March 15, 1918, and no other list of said respondent's said products was in force and effect from April 15, 1918, to on or about August 5, 1918.

(7) Respondent herein issued and circulated its price list for its said products, or price list so dated August 5, 1918, designated by it "Scale of Prices," wherein it announced that shipments direct from its factory must amount to $1\frac{1}{2}$ gross, and that orders for less than $1\frac{1}{2}$ gross minimum would be supplied only through the "jobber" at his regular prices and terms, and that a trade discount of 10 per cent from list would be applied to orders for $1\frac{1}{2}$ gross or more, and a cash discount of 5 per cent may be taken within 10 days of the date of invoice or on sight draft attached to bill of lading; freight allowed, no cartage. In said "Scale of Prices" dated August 5, 1918, respondent herein announced the following list of prices for its products:

1. "Large Size Talcums"-----	\$2. 25 per dozen ;
2. "Other Items"—	
Borated Soap-----	2. 25 per dozen ;
Liquid Corn Plaster-----	2. 25 per dozen ;
Ruvla-----	2. 25 per dozen ;
Cold Cream in tubes-----	2. 25 per dozen ;
Shaving Cream-----	3. 25 per dozen ;
Tar Shampooing Cream-----	3. 25 per dozen ;
Cream Dentifrice -----	3. 25 per dozen ;
Kora Konia-----	4. 25 per dozen.

At the time immediately following August 5, 1918, and until on or about January 1, 1919, the respondent herein sold its said products at the prices and discounts and upon the terms designated in said "Scale of Prices" dated August 5, 1918, to its customers classified or designated by it as "retailers," and said "retailers" were given by respondent at said time no lower prices and no greater discounts than the discounts designated in said "Scale of Prices," no matter in what quantities they may have purchased its said products. On the other hand, the respondent's customers classified and designated by it as "jobbers," or "wholesalers," received from respondent upon their purchases of its said products, when purchased in 10 gross quantities or over at a single purchase, the larger discounts, and therefore lower prices designated in "Notice to Wholesalers," effective March 15, 1918, the list prices announced in said "Scale of Prices" dated August 5, 1918, being the basis upon which discounts were reckoned for both said classes of customers, and no other list of said respondent for its products was in force and effect from on or about August 5, 1918, to on or about January 1, 1919.

(m) Respondent herein issued and circulated its price lists for its said products designated by it "Scale of Prices," and dated January 1, 1919, wherein it announced that shipments direct from the factory must amount to $1\frac{1}{2}$ gross, and that orders for less than $1\frac{1}{2}$ gross would be supplied only through "jobber" at his regular prices and terms, and that its terms were 10 per cent trade discount upon all orders of $1\frac{1}{2}$ gross and over, and a cash discount of 5 per cent less, 10 days from the date of invoice, or 30 days net; freight prepaid; no cartage. It also announced in said "Scale of Prices" dated January 1, 1919, prices for its said products as follows:

1. "Large Size Talcums"-----	\$2.25 per dozen;
2. "Other Items"—	
Borated Soap-----	2.25 per dozen;
Liquid Corn Plaster-----	2.25 per dozen;
Cold Cream in tubes-----	2.25 per dozen;
Tar Shampooing Cream-----	3.25 per dozen;
Cream Dentifrice-----	3.25 per dozen;
Shaving Cream (large size only)-----	4.25 per dozen;
Kora Konia-----	4.25 per dozen.

Results of discounts above as applied to said list prices were set out also by respondent in parallel columns in its price schedule designated as "Scale of Prices," dated January 1, 1919.

Respondent herein, at the time immediately following January 1, 1919, and while said "Scale of Prices" was in force and effect, being until on or about June 1, 1920, sold its products at the prices and discounts, and upon the terms designated in its said last mentioned "Scale of Prices" to its customers classified and designated by it as

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"retailers," and said "retailers" were given by respondent at such times no lower prices and no greater discounts than the discounts designated in said "Scale of Prices," dated January 1, 1919, no matter in what quantities said "retailers" may have purchased its said products. On the other hand, respondent's customers classified and designated by it as "jobbers" or "wholesalers," received from respondent upon their purchases of its said products, when purchased in 10 gross quantities and over at a single purchase, between March 15, 1918, to, on or about January 1, 1920, the larger discounts, and, therefore, lower prices, designated in its "Notice to Wholesalers" effective March 15, 1918, and no other list of said respondent for its products applying to said customers classified and designated by it as "retailers" was in force or effect from on or about January 1, 1919, to on or about June 1, 1920.

(n) Respondent herein issued and circulated its price list dated January 1, 1920, designated by it "Wholesalers' Price List," wherein it announced that shipments direct from the factory must amount to a minimum of $1\frac{1}{2}$ gross, and that its terms and discounts were as follows:

1. For orders of $1\frac{1}{2}$ to 10 gross, list price less 10 per cent trade discount; cash discount 5 per cent for payment within 10 days from date of invoice, or 30 days net.
2. For orders of 10 gross or over, list price less 10 per cent and 5 per cent trade discount, and cash discount of 3 per cent for payment within 10 days from date of invoice, or 30 days net; freight prepaid; no cartage.

Said respondent, in said "Wholesalers' Price List," dated January 1, 1920, announced the following prices for its said products:

LIST PRICES:

1. Shaving Cream	\$3.00 per dozen;
Kora Konia.....	4.00 per dozen;
2. Tar Shampooing Cream.....	3.25 per dozen;
Cream Dentrifice.....	3.25 per dozen;
3. Borated Soap	2.25 per dozen;
Liquid Corn Plaster	2.25 per dozen;
Cold Cream in tubes.....	2.25 per dozen;
Borated	2.25 per dozen;
Violet	2.25 per dozen;
Flesh tint.....	2.25 per dozen;
Cream tint.....	2.25 per dozen;
Talcum for men.....	2.25 per dozen.

At the time immediately following January 1, 1920, and during the time that said "Wholesalers' Price List" dated January 1, 1920, was in force and effect, being from January 1, 1920, until June 1, 1920, respondent sold its said product to its customers classified and desig-

nated by it as "jobbers," or "wholesalers," at the prices and upon the terms set forth in said last-mentioned "Wholesalers' Price List," giving such "jobbers" or "wholesalers" trade discounts of 10 per cent and 5 per cent from list prices, and 3 per cent cash discount, in cases where said customers purchased respondents' products in quantities of 10 gross and over. On the other hand, customers of respondent classified and designated by it as "retailers" were given by respondent, upon their purchases of respondent's said products, at such times, but 10 per cent trade discount and 5 per cent cash discount, even though they may have purchased said products in 10-gross lots or over at a single purchase.

From January 1, 1920, until June 1, 1920, there was in force and effect no other price list of said respondent for its products, applying to its customers classified and designated by it as "wholesalers."

(o) Respondent herein issued and circulated its price list of its said products, dated June 1, 1920, and designated by it "Scale of Prices," wherein it announced that shipments direct from the factory must amount to $1\frac{1}{2}$ gross, and that orders for less than the above-stated minimum would be supplied only through the "jobber" at his regular prices and terms, and that its terms were trade discount of 10 per cent from list prices as applied to all orders for $1\frac{1}{2}$ gross or more, and a cash discount of 5 per cent within 10 days from date of invoice, or 30 days net, freight prepaid, no cartage. In said last-mentioned "Scale of Prices" respondent designated its list prices as follows:

Shaving Cream.....	\$4.00 per dozen;
Kora Konia.....	4.00 per dozen;
Tar Shaving Cream.....	3.25 per dozen;
Cream Dentifrice.....	3.25 per dozen;
Borated Soap.....	2.25 per dozen;
Liquid Corn Plaster.....	2.25 per dozen;
Cold Cream in tubes.....	2.25 per dozen;
"Borated".....	2.25 per dozen;
Violet.....	2.25 per dozen;
Flesh Tint.....	2.25 per dozen;
Cream Tint.....	2.25 per dozen;
Talcum for men.....	2.25 per dozen.

Respondent applied its discounts above mentioned in said "Scale of Prices" to its said list prices, and set forth the result in parallel columns in said "Scale of Prices." Immediately following, on or about June 1, 1920, and until October, 1920, respondent sold its said products to its said customers classified and designated by it as "retailers," at the prices and discounts, and upon the terms set forth in said last-mentioned "Scale of Prices," and said retailers were given by respondent at such times no lower prices and no greater

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discounts upon its said products than the discounts designated in said "Scale of Prices," dated June 1, 1920, even though they did or may purchase its products in quantities greater than 10 gross at a single purchase.

(p) Respondent issued and circulated its price list of its said products, dated June 1, 1920, designated by it, "Price List for Service Wholesalers," wherein it announced that shipments must amount to a minimum of $1\frac{1}{2}$ gross, and that its terms were, on $1\frac{1}{2}$ gross to 10 gross, list price less 10 per cent trade discount and cash discount of 5 per cent for payment within 10 days, or 30 days net, and upon purchases of 10 gross or over, list price less 10 per cent and 5 per cent trade discount, cash discount of 3 per cent for payment within 10 days from date of invoice, freight prepaid, no cartage. In said "Price List for Service Wholesalers," respondent announced its list prices as follows:

LIST PRICE:

1. Shaving Cream, large size-----	\$4. 00 per dozen;
Kora Konla-----	4. 00 per dozen;
Tar Shampooing Cream-----	3. 25 per dozen;
Cream Dentifrice-----	3. 25 per dozen;
Borated Soap-----	2. 25 per dozen;
Liquid Corn Plasters-----	2. 25 per dozen;
Cold Cream in tubes-----	2. 25 per dozen;
Borated-----	2. 25 per dozen;
Violet-----	2. 25 per dozen;
Flesh Tint-----	2. 25 per dozen;
Cream Tint-----	2. 25 per dozen;
Talcum for men-----	2. 25 per dozen.

At the time immediately following on or about June 1, 1920, and until on or about June 1, 1921, the period in which said price list for "Service Wholesalers" was in force and effect, said respondent sold its said products to its customers classified and designated by it as "jobbers" or "wholesalers," at the prices and upon the terms set forth in said "Price List for Service Wholesalers," and at said times no other price list applying to said customers classified and designated by it as "jobbers" and "wholesalers" was in force or effect.

(q) Respondent issued and circulated a price list of its said products, dated October 1, 1920, and designated by it "Scale of Prices," wherein it announced that shipments from the factory must amount to $1\frac{1}{2}$ gross and that orders for less than $1\frac{1}{2}$ gross minimum would be supplied only through the jobber at his regular price and terms, and that its terms were trade discount of 10 per cent from list applied to all orders of $1\frac{1}{2}$ gross or more, 5 per cent cash discount within 10 days from the date of invoice, 30 days net, freight prepaid,

no cartage. In its said "Scale of Prices," dated October 1, 1920, respondent set forth list prices for its products as follows:

1. Shaving Cream, large size only.....	\$4. 00 per dozen ;
Kora Konla	4. 00 per dozen ;
Tar Shampooing Cream.....	3. 25 per dozen ;
Cream Dentifrice	3. 25 per dozen ;
Borated Soap.....	2. 25 per dozen ;
Liquid Corn Plaster.....	2. 25 per dozen ;
Cold Cream in tubes.....	2. 25 per dozen ;
Borated.....	2. 25 per dozen ;
Violet.....	2. 25 per dozen ;
Flesh Tint.....	2. 25 per dozen ;
Cream Tint.....	2. 25 per dozen ;
Talcum for men.....	2. 25 per dozen.

Respondent applied its discounts above-named in said last-mentioned list to its list prices therein, and set forth therein the results in parallel columns. At the time immediately following October 1, 1920, and during such times as said last-mentioned "Scale of Prices" was in force and effect, being October 1, 1920, to January 3, 1921, respondent sold its said products to its customers classified and designated by it as "retailers" at the prices and discounts, and upon the terms set forth in said "Scale of Prices" dated October 1, 1920, and said "retailers" were given by respondent at such times no lower prices and no greater discounts upon its said products than the prices and discounts named in said last-mentioned "Scale of Prices," even in cases where they might or did purchase said products in quantities of 10 gross or over at a single purchase. From October 1, 1920, until January 3, 1921, no other price list of respondent for its products applying to its customers classified and designated by it as "retailers" was in force and effect.

(r) Respondent herein issued and circulated its price list dated January 3, 1921, and designated by it, "Scale of Prices," wherein it announced that shipments direct from the factory must amount to 1½ gross and orders for less than 1½ gross would be supplied only through the jobber at his regular prices and terms, and that its terms were, trade discount of 10 per cent from list applied to all orders of 1½ gross and over, 5 per cent cash discount within 10 days from date of invoice, or 30 days net, freight prepaid, no cartage. That said "Scale of Prices" dated January 3, 1921, set forth respondent's list prices for said products, as follows:

1. Mennen Shaving Cream.....	\$4. 00 per dozen ;
Mennen Kora Konla	4. 00 per dozen ;
Mennen Tar Shampooing Cream.....	4. 00 per dozen ;
2. Mennen Cream Dentifrice	3. 25 per dozen ;

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3. Mennen Borated Soap.....	\$2. 25 per dozen ;
Mennen Liquid Corn Plaster.....	2. 25 per dozen ;
Mennen Cold Cream in tubes.....	2. 25 per dozen ;
Mennen Borated Talcum.....	2. 25 per dozen ;
Mennen Violet Talcum.....	2. 25 per dozen ;
Mennen Flesh Tint Talcum.....	2. 25 per dozen ;
Mennen Cream Tint Talcum.....	2. 25 per dozen ;
Mennen Talcum for men.....	2. 25 per dozen.

Respondent applied its discounts above named in said last mentioned "Scale of Prices" to its said list prices, and set forth the results thereof in parallel columns therein.

At the times immediately following January 3, 1921, and during the time that said "Scale of Prices" dated January 3, 1921, was in force and effect, being from about January 3, 1921, until about June 1, 1921, said respondent sold its customers classified and designated by it as "retailers" its said products at the prices and discounts and upon the terms named in said "Scale of Prices" dated January 3, 1921. The said "retailers" were given by respondent at such times no lower prices and no greater discounts upon its said products than the prices and discounts named in said last mentioned "Scale of Prices," even though they did purchase said products in quantities of 10 gross and over. Between January 3, 1921, and June 1, 1921, no other price list of said respondent for its said products relating to its customers classified and designated by it as "retailers" was in force and effect.

(s) Respondent herein issued and circulated its price list for its products, dated June 1, 1921, and designated by it, "Scale of Prices," wherein it announced that shipments from the factory must amount to 1½ gross, and that orders for less than 1½ gross minimum would be supplied only through the jobber at his regular prices and terms, and that its terms were, trade discount of 10 per cent from list prices applied to all orders of 1½ gross and more, and 5 per cent cash discount within 10 days from date of invoice, or 30 days net, freight prepaid, no cartage.

In said "Scale of Prices," dated January 1, 1921, respondent set forth list prices for its products as follows:

1. Mennen Shaving Cream.....	\$4. 00 per dozen ;
Mennen Tar Shampooing Cream.....	4. 00 per dozen ;
2. Mennen Cream Dentifrice.....	3. 25 per dozen ;
Mennen Kora Konia.....	3. 25 per dozen ;
3. Mennen Borated Soap.....	2. 25 per dozen ;
Mennen Liquid Corn Plaster.....	2. 25 per dozen ;
Mennen Cold Cream in tubes.....	2. 25 per dozen ;
Mennen Borated Talcum.....	2. 25 per dozen ;
Mennen Violet Talcum.....	2. 25 per dozen ;
Mennen Flesh Tint.....	2. 25 per dozen ;
Mennen Cream Tint.....	2. 25 per dozen ;
Mennen Talcum for men.....	2. 25 per dozen.

Respondent applied its discounts above named in said last mentioned "Scale of Prices" to its said list prices, and set forth the results thereof in parallel columns therein.

At the times immediately following June 1, 1921, and during such times as said last mentioned "Scale of Prices" was in force and effect, being at least until September 14, 1921, the date of the commencement of the formal hearing in this proceeding, respondent sold to its customers classified and designated by it as "retailers" its said products, at the prices and discounts, and upon the terms set forth in said last mentioned "Scale of Prices," and said "retailers" were given by respondent no lower price and no higher discounts in the purchase of its goods than the prices and discounts set forth therein, even though they did purchase or may purchase said products in 10 gross lots or more.

Between June 1, 1921, and September 14, 1921, no other price list of said respondent for its said products was in force and effect applying to its customers classified and designated by it as "retailers."

(t) Respondent herein issued and circulated its price list of its said products dated June 1, 1921, designated by it "Price List for Service Wholesalers," wherein it announced that shipments must amount to a minimum of $1\frac{1}{2}$ gross, and that its terms for $1\frac{1}{2}$ to 10 gross were, list price less 10 per cent trade discount, cash discount 5 per cent for payment within 10 days from date of invoice or 30 days net; for 10 gross and over, list price less 10 per cent and 5 per cent trade discount, cash discount 3 per cent for payment within 10 days from date of invoice, or 30 days net, freight prepaid, no cartage. In said last-mentioned "Price List for Service Wholesalers" respondent set forth its list prices for its said products as follows:

1. Shaving Cream, large size only.....	\$4.00 per dozen;
Kora Kona.....	4.00 per dozen;
2. Tar Shaving Cream.....	3.25 per dozen;
Cream Dentifrice.....	3.25 per dozen;
3. Borated Soap.....	2.25 per dozen;
Liquid Corn Plaster.....	2.25 per dozen;
Cold Cream in tubes.....	2.25 per dozen;
Borated.....	2.25 per dozen;
Violet.....	2.25 per dozen;
Flesh Tint.....	2.25 per dozen;
Cream Tint.....	2.25 per dozen;
Talcum for men.....	2.25 per dozen.

At times immediately following June 21, 1921, and at such times as said last named "Price List for Service Wholesalers" was in force and effect, being from June 1, 1921, at least to September 14, 1921, the time of commencing formal hearings in this proceeding, said respondent sold to its customers by it classified and designated

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as "jobbers" or "wholesalers," said products, at the prices and upon the term set forth in said "Price List for Service Wholesalers" dated June 1, 1921.

Between June 1, 1921, and September 14, 1921, no other price list of respondent for its said products, applying to its customers classified and designated by it as "wholesalers," was in force and effect.

(u) *Summaries:*

At all times since January 1, 1920, said respondent has given its customers classified and designated by it as "jobbers" or "wholesalers," when selling in quantities of 10 gross or more, a trade discount of 10 per cent and 5 per cent from its list prices, and a cash discount of 3 per cent, while to its customers classified and designated by it as "retailers," when selling to them in quantities of 10 gross or more, it has given a trade discount of 10 per cent from its list prices, and a cash discount of 5 per cent, list prices being identical in both instances, thus discriminating in price between its customers buying like quantities, of the same commodities.

That previous to January 1, 1920, and subsequent to January 1, 1917, similar price discriminations were made by respondent between said classes of customers in the sale of like quantities of the same commodities, such discrimination having varied in amounts at various times between said last two dates mentioned.

PAR. 4. The price lists issued by respondent for its said products, applying to its customers classified and designated by it as "jobbers" or "wholesalers," were usually distinctive in color, and it was the practice of said respondent not to circulate said "Wholesalers Price List" among its customers classified and designated by it as "retailers," and as a consequence said "retailers" were at times, if not usually, in ignorance of the fact that such price lists had been issued or circulated, or that any other class of customers were being sold respondent's products by respondent at a lower price or at higher discounts from list than was being received by said retailers upon the same quantities of the same commodities.

PAR. 5. (a) Respondent has placed in the class designated by it as "retailers," cooperative and mutual corporations organized as corporate entities, buying from the manufacturers or importers in wholesale quantities, maintaining stocks of products of manufacturers and distributing said products in wholesale quantities to retail dealers in such products, and selling none of such products at retail or to ultimate consumers.

(b) That the distributors of respondent's products classified or designated by it as "jobbers" or "wholesalers" have no activity in common relevant to their classification as "retailers" [jobbers] or

“wholesalers,” in the ordinary acceptance of the terms, except in purchasing products in wholesale quantities from importers or manufacturers and distributing in wholesale quantities to dealers, and that many cooperative and mutual corporations classified and designated by respondent as “retailers” are also engaged in purchasing products in wholesale quantities from importers and manufacturers, and in distributing such products in wholesale quantities to dealers.

(c) That respondent classified and designated as “retailers,” and thus cut off their receiving its lowest prices or largest discounts in the purchase of its products in wholesale quantities, among others, the following corporations, as a rule cooperative in form, and functioning as distributors at wholesale:

Washington Wholesale Drug Exchange, Washington, D. C.,
June 8, 1917.

Philadelphia Wholesale Drug Company, Philadelphia, Pa., June
8, 1917.

Northwestern Drug Company, Minneapolis, Minn., June 8, 1917.

American Wholesale Drug Company, Denver, Colo.

Mutual Drug Company, Cleveland, Ohio, June 8, 1917.

Hoosier Drug Company, Indianapolis, Ind., June 8, 1917.

Jefferson Drug Company, Beaumont, Tex., February 7, 1920.

Marshall Drug Company, Cleveland, Ohio, June 8, 1917.

Elliott Drug Company, Buffalo, N. Y., June 8, 1917.

St. Louis Wholesale Drug Company, St. Louis, Mo.

(d) At least 53 concerns, many of them corporations cooperative or mutual in form and functioning as distributors at wholesale, were so classified and cut off by respondent from its best prices and discounts, when purchasing the same quantities of the same commodities as other buyers to whom such best prices and discounts were allowed.

(e) That in each and every case the corporation thus classified was in active competition in the sale of respondent's products with concerns classified and designated by respondent as “jobbers” and “wholesalers,” which were given lower prices and better discounts by respondent in the purchase of the same quantities of the same commodities.

PAR. 6. That such classification of its customers into “jobbers,” “wholesalers” and “retailers,” so designated by it, so far as it relates to corporations mutual or cooperative in form of organization, whose capital stock is held by retailers in the same line of trade, which said corporations function as wholesale distributors, is used by respondent as a basis for denying to such corporations the prices and terms in the purchase of said products of said respondent accorded to other concerns likewise functioning as wholesale distributors, but classified and designated by respondent as “jobbers” or “wholesalers.”

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PAR. 7. That discrimination in price by respondent in the sale of its said products, as more fully set forth in paragraph 3 hereof, between its customers classified and designated by it as "jobbers" or "wholesalers" and its customers classified and designated by it as "retailers" so far as it relates to corporations mutual or cooperative in form of organization, functioning as distributors at wholesale, is practiced by respondent for the purpose of placing such corporations at a competitive disadvantage as compared with the respondent and with the other concerns classified and designated by it as "jobbers" or "wholesalers," and is used and has been used as an instrument to "break up" such corporations, cooperative or mutual in form of organization and functioning as distributors at wholesale. That such policy was adopted after protests were made individually and at conventions of the National Wholesale Druggists' Association against respondent's policy practiced prior to January 1, 1917; that said policy was discussed by respondent with said "wholesalers" and approved by them, and that said policy consisted essentially in discriminating against said corporations, cooperative or mutual in form of organization, and functioning as distributors, at wholesale as compared with "jobbers" or "wholesalers" so classified and designated by respondent. That said policy of discrimination so practiced by respondent against said corporations cooperative in form and functioning as wholesalers, in favor of "jobbers" or "wholesalers" so designated by respondent, served as a basis for an understanding between said latter class and respondent herein, that said "jobbers" and "wholesalers" should push the sale of said respondent's products more vigorously than the sale of products of other manufacturers, refusing so to discriminate against such cooperative corporations and in favor of said "jobbers" or "wholesalers" so designated by respondent.

That in each section or territory where respondent, in the sale of its products, practiced or does practice discrimination in discounts, and therefore in prices, as hereinbefore set forth especially in paragraph 3 herein, such discrimination has a dangerous tendency unduly to hinder competition between the wholesale distributors of respondent's products in interstate commerce, and likewise retail distributors in the same line of commerce.

PAR. 8. That an overwhelming majority of manufacturers marketing drugs and kindred products sell to cooperative or mutual corporations engaged in selling exclusively to the retail trade at the same prices and upon the same terms as to other concerns engaged in selling exclusively to the retail trade. In the entire drug and sundry trade in the United States less than six manufacturers discriminate

in price, quantity and quality being the same, in favor of the class of purchasers designated by respondent as "jobbers," as against cooperative or mutual corporations engaged in selling exclusively at wholesale to the retail trade.

PAR. 9. That in the sale of its said products as wholesaler direct to retailers, in quantities of $1\frac{1}{2}$ gross or more, respondent is in direct competition in interstate commerce with wholesalers engaged in selling said products to retailers. Retailers who purchase respondent's products direct from respondent, in quantities of $1\frac{1}{2}$ gross or over, are given the same trade discounts and cash discounts, namely, 10 per cent trade and 5 per cent cash, that are given to cooperative or mutual corporations engaged in selling exclusively at wholesale to retailers. Respondent has used the situation thus created to take away from said cooperative or mutual corporations their retail customers for the products of respondent, or lessen the volume of such trade.

PAR. 10. That the policy of respondent in discriminating in price between purchasers selling at wholesale, as hereinbefore set forth, now has, and has had the tendency to cause the retail customers of such cooperative or mutual wholesalers to withdraw their custom or patronage from said cooperative or mutual wholesalers and to give their custom or patronage to respondent directly, or to other wholesalers, competitors of said cooperative or mutual wholesalers and who receive the benefit of this discrimination in price.

PAR. 11. (a) That competition on the part of corporations cooperative or mutual in form and functioning as distributors at wholesale, but classified and designated by respondent as "retailers," with concerns classified and designated by respondent as "jobbers" or "wholesalers" has arisen largely within the 15 years last past.

(b) Such cooperative corporations originated in an effort upon the part of small retailers to find some means of purchasing products at prices which would enable them to meet the competition of larger retail dealers which were able to purchase from manufacturers and wholesale distributors in larger quantities and at lower prices than said small retail competitors. Said cooperative corporations met the situation by offering retail customers wholesale distributing service at cost, and also offering to cut such cost to a minimum. Such costs were reduced:

- (1) By keeping in touch through membership or a permanent sales arrangement with customers, and thus eliminating the necessity and expense, to a large extent, of employing traveling salesmen making repeated personal solicitation for sale of goods.

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- (2) By substituting for personal solicitation solicitation over the telephone or by circular or catalogue.
 - (3) By securing quick turnovers (from 5 to 20 times per year) and thus avoiding the necessity of larger capitalization or of carrying large stocks, thus cutting down overhead expenses.
 - (4) By doing business upon a cash basis or upon short credit terms, thus eliminating bad debts and reducing the expenses of financing.
 - (5) By having few salaried officers.
- (c) Such service at cost was realized in practice by such cooperative associations, in some cases, by:
- (1) Giving customers cost prices, thus passing on to them, immediately, all lower prices or better discounts secured from producers, importers or manufacturers; or,
 - (2) Giving customers some species of dividend or profit of participation at the end of fixed periods.

(d) Such corporations, cooperative in form of organization and functioning as distributors at wholesale but classified and designated by respondent herein as "retailers," in several instances, in addition to sales methods outlined above in this paragraph, have employed a limited number of traveling salesmen who personally solicit customers in the sale of goods distributed by such corporations.

(e) Jobbers or wholesalers so classified and designated by respondent herein, generally demand of retailers and manufacturers a profit for wholesale distribution service in addition to the actual cost of such service. For a large group of such "jobbers" or "wholesalers" reporting to the National Wholesale Druggists' Association in 1919, the cost of their said distributing service was announced through said association as 12.75 per cent, reckoned in percentages on sales price and the cost of such service for a representative of said group in 1920 was 12.71 per cent, reckoned in percentages upon sales prices, 8 per cent of which was administrative and general, which includes everything not specifically named; 3.7 per cent of sales, salesmen, and delivery expenses; 55 per cent bad debts and other small items.

"Jobbers" so classified and designated by respondent herein, as a rule carry larger stocks in proportion to their annual sales, employ a greater number of traveling salesmen and extend credit for longer terms than corporations cooperative and mutual in form and functioning as distributors at wholesale, but classified and designated by respondent as "retailers." Some "jobbers" or "wholesalers," however, so classified and designated, by respondent, and receiving its

lowest prices and highest discounts in the sale of its said goods, do not employ traveling salesmen, nor issue catalogues, nor perform many other services rendered to purchasers by many cooperative or mutual corporations engaged in selling at wholesale.

(f) Growth of such cooperative corporations has been very rapid, both in number and in volume of business, so that at the present time they distribute at wholesale a substantial percentage of all the products manufactured in the United States in the drug and kindred lines, have millions of aggregate capital and carry stocks of goods worth millions in the aggregate. The aggregate gross sales for the year 1920, for 12 cooperative or mutual corporations engaged in selling exclusively at wholesale to the retail trade, totaled \$22,890,282.31.

(g) The great bulk of such distributing trade, however, is still in the hands of "jobbers" or "wholesalers," so classified and designated herein, such customers of respondent having numbered about 275, as compared with about 50 or less of the cooperative corporations. In one locality, at least, such a cooperative corporation is a dominant factor in the wholesale distributing trade in the field of drugs and kindred products.

PAR. 12. That the policy of respondent herein, of discriminating against corporations cooperative in form and functioning as distributors at wholesale, but classified by it as "retailers," has tended to and now tends to hinder and lessen competition between such distributors, and to drive from the field of distribution at wholesale such corporations, cooperative or mutual in form, and thus to close one channel of distribution at wholesale for such products, which channel of distribution is entitled to an unhindered opportunity to demonstrate its economic efficiency on equal terms with the previously existing methods or agencies of distribution.

PAR. 13. That respondent herein advertises its products nationally and extensively, and such products are in active demand by retailers who distribute that class of goods, so that it is practically necessary for all distributors at wholesale to handle such products in order to supply the wants of their customers, even though such products may be distributed at no profit, or at a loss, and for that reason the policy of respondent in discriminating in discounts, and therefore in prices, in favor of concerns classified and designated by it as "jobbers" or "wholesalers," and against corporations cooperative or mutual in form and functioning as distributors at wholesale and classified by respondent as "retailers," causes losses to the latter class and hinders its competitive effort to maintain itself on a basis of economic efficiency.

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PAR. 14. That respondent herein does a business in the manufacture and sale of its said products of about \$1,500,000 a year, and is in competition with many other manufacturers who make and sell similar product or products used for similar purposes—but one of the products of respondent, namely, Mennen Tar Shampooing Cream, is unique. That the products of respondent are of a uniform grade and quality, but one grade or quality of each item being sold or distributed.

PAR. 15. That respondent herein is not confined, in the distribution of its products at wholesale or at retail, to drug dealers or drug stores, but distributes its products through general stores, department stores, grocery stores, hardware stores, etc.

PAR. 16. That the varying discount rates given by respondent herein in the sale of its said products to its customers classified and designated by it as “retailers,” as compared with the class of its customers classified and designated by it as “jobbers” or “wholesalers,” as hereinbefore set forth more especially in paragraph 3 hereof, are discriminations in price between purchasers of respondent’s commodities, for their use, consumption and resale within the United States and in the District of Columbia, the effect of which may be to substantially lessen competition in the sale and distribution of respondent’s products, or between distributors thereof.

PAR. 17. (a) That said discrimination in price by respondent in the sale of its products between classes of its customers hereinabove set forth more especially in paragraph 3 hereof, is not on account of differences in grade, quality or quantity of the commodity sold; nor such as to only make due allowance for difference in cost of selling or transportation; nor is it made in good faith to meet competition; nor is it a selection of customers in bona fide transactions not in restraint of trade.

(b) All products sold by respondent are of the same grade or quality, and respondent pays transportation on all products sold to all customers, and does not vary its prices with localities. There is no evidence in this proceeding that it has cost respondent more to sell the class of purchasers from which it has exacted higher prices than it cost to sell to the class which it has given greater discounts and hence, lower prices; no competition has been shown or indicated compelling or tending to compel respondent to make such discrimination, since the great mass of its competitors do not so discriminate; nor has respondent selected its customers, or refused to sell, but has made sales of its products at varying, discriminating prices and discounts.

Order.

CONCLUSION.

1. That the practices of said respondent, as hereinbefore set forth and recited, in the circumstances and under the conditions as hereinbefore set forth, 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."

2. That the practices of said respondent as hereinbefore set forth and recited, in the circumstances and under the conditions hereinbefore set forth, are in violation of Section 2 of the Act of Congress 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, the amended answer of the respondent, the testimony and evidence and the argument of counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes":

It is now ordered, That the respondent, The Mennen 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 "jobbers," "wholesalers," or "retailers," or any similar classification which relates to the customers' form of organization, business policy, business methods, or to the business of the customers' membership or shareholders, 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.

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And it is further ordered, That respondent, The Mennen 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.

Complaint.

FEDERAL TRADE COMMISSION

v.

HALL-MARVIN COMPANY AND THE REYNOLDS-THOMPSON CORPORATION.

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

Docket 713—March 6, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of safes and vaults under the style of Herring-Hall-Marvin Safe Co., carried on its business under said name under which its products had become well and favorably known to the trade and to the purchasing public; and thereafter (1) a competing concern dealing in new and second-hand iron safes, vaults, and allied metal products, incorporated by a former employee of the Herring-Hall-Marvin Safe Co. and by a grandson and a son of the Marvin and Hall respectively, represented therein, and (2) a corporation organized and controlled by two former employees of said Herring-Hall-Marvin Safe Co., who also controlled said competing concern,

(a) Adopted the name Hall-Marvin Co.; and

(b) Advertised and sold safes, vaults, etc., under said name in a store opposite the office long used by said Herring-Hall-Marvin Safe Co., prominently displaying said name on the windows thereof and elsewhere, together with the name Reynolds-Thompson Co., Distributors;

With a tendency thereby to mislead the public into believing the safes, vaults, etc., sold by them to be those of the original concern:

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 Hall-Marvin Co. and the Reynolds-Thompson Co., 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 that respect on information and belief, as follows:

PARAGRAPH 1. That each of the respondents is a corporation organized and existing under the laws of the State of New York, with principal place of business in the city of New York, N. Y.

PAR. 2. That respondent Hall-Marvin Co. is engaged in the business of dealing in new and second-hand iron safes, vaults, banking-

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house equipment, and allied products, and causes such products 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 to foreign countries, in direct, active competition with other persons, partnerships and corporations similarly engaged. That said respondent Hall-Marvin Co. carries on a portion of its said business through the respondent Reynolds-Thompson Co., its subsidiary.

PAR. 3. That for a number of years prior to 1892 there were four separate corporations, viz: Herring & Co., Farrell & Co., Marvin Safe Co., and Hall Safe & Lock Co., which manufactured and sold iron safes and vaults suitable for banking-house equipment, which corporations were consolidated in 1892 into the Herring-Hall-Marvin Safe Co., a New Jersey Corporation, which corporation was later reorganized, in 1905, and which corporation succeeded to the business and property, including the good will of said constituent companies, and has at all times since said consolidation carried on the business of manufacturing and selling safes and vaults suitable for equipment of banking houses, and its products have become, were and are, well known to the trade and purchasing public.

PAR. 4. That in 1911, respondent Hall-Marvin Co. was organized, but for a number of years it did not engage in any business, but afterwards, in about the year 1914, respondent began business on a small scale and the original incorporators died, whereupon the capital stock of respondent was purchased by James A. Reynolds and Fred A. Thompson, who still own said stock except 20 per cent of same, which has been transferred to E. C. Kline, of the Victor Safe Co., of Cincinnati, Ohio, with which company respondent now has a working arrangement for the installation of Bank equipment and other purposes. That for a number of years prior to 1914 said James A. Reynolds and Fred A. Thompson were employed by the Herring-Hall-Marvin Safe Co., and in the course of such employment became possessed of numerous business and trade secrets and other confidential information of and concerning the said Herring-Hall-Marvin Safe Co. That said James A. Reynolds and Fred A. Thompson are the president and treasurer, respectively, of said respondent, Reynolds-Thompson Co., and own all of its capital stock.

PAR. 5. That respondent Hall-Marvin Co., in the course of its business as described in Paragraph Two hereof, has carried on its said business in such a manner as to mislead and deceive the purchasing public so as to pass off its business and goods as and for the business and goods of the Herring-Hall-Marvin Safe Co., and customers have been induced to buy safes and banking-house equipment from respondent, believing same to be the product of said Herring-

Hall-Marvin Safe Co. As a means of assisting respondent to pass its business and goods off as the business and product of the Herring-Hall-Marvin Safe Co., respondent established its office at 393 Broadway, in New York City, directly opposite the principal office of said Herring-Hall-Marvin Safe Co., and has had published in telephone directories and other directories, advertisements which were displayed in such a manner as to create the false impression that respondent and the Herring-Hall-Marvin Safe Co. was one and the same business organization.

PAR. 6. That by reason of the facts recited, the respondents 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, Hall-Marvin Company and Reynolds-Thompson Corporation (named in the complaint as the Reynolds-Thompson Company), charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed their answer, admitting certain allegations of the complaint, and denying others, and having 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, being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. For a number of years prior to 1892, there were four separate corporations, viz: Herring & Co.; Farrell & Co.; Marvin Safe Co.; and Hall Safe & Lock Co., which manufactured and sold iron safes and vaults suitable for banking-house equipment; in 1892 these corporations were consolidated into the Herring-Hall-Marvin Co., a New Jersey corporation which was in 1905 reorganized

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into the Herring-Hall-Marvin Safe Co., a New York corporation, which company succeeded to the business and property, including the good will, of the said constituent companies and has at all times since its consolidation carried on the business of manufacturing and selling safes and vaults suitable for equipment of banking houses, and its products have been and are well known to the trade and purchasing public under the corporate name of Herring-Hall-Marvin Safe Co.; for more than five years prior to the 26th day of January, 1921, its principal place of business has been at No. 400 Broadway, New York City; said corporation, in the conduct of its business, has caused its products to be transported to purchasers thereof from the State of New York through and into other states of the United States, and to foreign countries in competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The respondent, Hall-Marvin Co., for a period of more than two years prior to the 26th day of January, 1921, has been engaged in the business of dealing in and selling new and second-hand iron safes, vaults, banking-house equipment and allied metal products for the protection of valuables, and in the conduct of this business as aforesaid has caused such wares 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 to foreign countries, in competition with other persons, partnerships and corporations similarly engaged, including the Herring-Hall-Marvin Safe Co., a New York corporation with its principal place of business in the city of New York.

PAR. 3. The respondent, Hall-Marvin Co., was incorporated under the laws of the State of New York, in or about the month of October, 1911, its incorporators being Ezra Marvin, Charles O. Hall and Frederick A. Thomson; its capitalization consisting of one hundred shares at \$10 each, of which at the time of said incorporation said Marvin held 50 shares, said Hall 25 shares, and said Thomson 25 shares. Ezra Marvin, one of the incorporators, was a grandson of Walter K. Marvin, who gave his name to the Marvin Safe Co., one of the constituents of the Herring-Hall-Marvin Safe Co.; Charles O. Hall was a son of Joseph Hall, president of the Hall Safe & Lock Co., and had been connected with Hall's Safe Co., a separate corporation from those heretofore named. Frederick A. Thomson was the Thomson associated with James A. Reynolds in the Reynolds-Thomson Corporation, sued herein as Reynolds-Thomson Co., one of the respondents herein. On or about the year 1914 the said James A. Reynolds purchased 20 shares of the Hall-Marvin Co. from Ezra Marvin; about the year 1914 said Marvin died and thereafter his re-

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maining 30 shares of stock in the Hall-Marvin Co. were sold, 15 shares to Frederick A. Thomson and 15 shares to James A. Reynolds, above named. On or about January, 1918, said Charles O. Hall died and the 25 shares of stock in the Hall-Marvin Co., owned by him, were sold thereafter, 20 shares to Everett C. Kline, Cincinnati, Ohio, 2 shares to Frederick A. Thomson, 2 shares to James A. Reynolds and 1 share to Charles R. Larson. The stock of said company is now held as follows:

Frederick A. Thomson, 42 shares.

James A. Reynolds, 37 shares.

Everett C. Kline, 20 shares.

Charles R. Larson, 1 share.

PAR. 4. Prior to 1914, said James A. Reynolds and Frederick A. Thomson were employed by the Herring-Hall-Marvin Safe Co., named above, as salesmen, and the said James A. Reynolds was employed by said company as city sales manager. In or about the year 1914 the said James A. Reynolds and Frederick A. Thomson caused to be incorporated under the laws of the State of New York, the Reynolds-Thomson Corporation, sued herein as Reynolds-Thomson Co., one of the respondents, with a capitalization of 600 shares of \$50 each, which stock is now owned as follows:

Issued	\$15,900.00
Treasury stock	14,100.00
	<hr/>
Total	30,000.00
	<hr/> <hr/>
James A. Reynolds.....	150 shares.
Frederick A. Thomson.....	150 shares.
Joseph H. Richter.....	6 shares.
Ray Powers.....	6 shares.
James A. Reynolds, jr.....	6 shares.
	<hr/>
	318
	<hr/> <hr/>
	\$15,900.00

Soon after said incorporation they rented and occupied the store No. 393 Broadway, New York City, opposite the office of the Herring-Hall-Marvin Safe Co., and at said place of business, No. 393 Broadway, they advertised and sold safes, vaults, etc., under the name of Hall-Marvin Co., and said name was prominently displayed on the window of said office and elsewhere, together with the name Reynolds-Thomson Co., distributors. In the conduct of said business the Reynolds-Thomson Corporation caused safes and similar equipment sold by it under the name of Hall-Marvin Co. to be

Order.

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transported from the State of New York through and into other states of the United States and foreign countries.

PAR. 5. The use of the name Hall-Marvin by the Hall-Marvin Co. and the Reynolds-Thomson Corporation, as set forth in the previous paragraphs, in marking, advertising and selling safes, vaults, etc., in the facts and circumstances set forth therein, tended to lead the public to believe that goods offered for sale and sold by them were the product of the Herring-Hall-Marvin Safe Co.

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 constituted a violation of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission and the answer of the respondents and the 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 respondent Hall-Marvin Co., its officers, directors, members, representatives, agents and servants, cease and desist from—

Using as its corporate name, or displaying upon its letterheads, stationery, circulars or advertising or other printed matter, and in its trade-marks, trade names, labels or designs used in connection with the offering or advertising for sale and sales in interstate commerce, of safes, vaults or other articles of a similar nature for the protection of valuables, or displaying on such merchandise or packages or containers thereof, the words "Hall-Marvin," with or without the hyphen, alone or in combination with other word or words, unless accompanied in juxtaposition and in equally large and legible lettering as the words "Hall-Marvin," or conspicuously in red ink, by a statement to the effect that it has no connection with the Herring-Hall-Marvin Safe Co.; and

Order.

That the respondent, Reynolds-Thomson Co. cease and desist from so displaying the words "Hall-Marvin" with or without the hyphen, alone, or in combination with other word or words, in any manner above described unless accompanied by a statement, in the form and manner as above prescribed, that the Hall-Marvin Co. has no connection with the Herring-Hall-Marvin Safe Co.; and

That the respondents Hall-Marvin Co. and Reynolds-Thomson Corporation, their officers, directors, members, representatives, agents and servants, cease and desist from in any manner indicated heretofore in this order, or otherwise, representing, or knowingly permitting the representation by their agents or employees, that the Hall-Marvin Co. is the same as, or has any connection with the Herring-Hall-Marvin Safe Co., or from in any way representing that the merchandise handled by the former is the same as the product of the latter company.

And it is further ordered, That said respondents shall within thirty (30) 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.

Complaint.

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FEDERAL TRADE COMMISSION

v.

F. G. McFARLANE.

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

Docket 739—March 6, 1922.

SYLLABUS.

Where an individual engaged in the sale, chiefly pursuant to contracts secured abroad, of ship chandlery supplies mainly to coastwise and ocean-going ships of foreign registry, for the purpose of securing and retaining the business of vessels not under contract, and of taking an unlawful advantage of such of his competitors as did not adopt the same method,

- (a) Lavishly entertained, at an annual expense of thousands of dollars, the captains and other purchasing officers, with automobile parties, theater and dinner parties, etc.; and
- (b) Paid to said officers secret commissions amounting to five per cent of the invoices, and aggregating thousands of dollars annually;

With the effect of increasing the price of his products to his customers, and of taking an unfair advantage of the owners or employers who received no consideration in return for such expenditures:

Held, That such entertainments and 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 F. G. McFarlane, hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is engaged in the business of selling ship chandlery, including steward's supplies, deck, engine and cabin supplies, for ships engaged in coastwise and foreign commerce, at the city of New Orleans, State of Louisiana, causing said commodities to be delivered to ships reaching ports in the State of Louisiana, while engaged in transporting passengers and commodities between ports in various States of the United States bordering upon the southern and southeastern coast thereof, and in transport-

ing passengers and commodities from American ports to foreign countries in due course of commerce among the several States of the United States and with foreign countries; such supplies, so sold by respondent, being for consumption and use by the purchasers thereof, upon the high seas, in and beyond the territorial jurisdiction of the United States. Said business is and has been conducted by respondent in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the respondent in the course of his business as set out in paragraph one hereof, gives and has given to captains, engineers, stewards, and other officers of vessels to which he furnished ship chandlery supplies and to agents of the owners of such vessels, without the knowledge or consent of their employers or principals and without other consideration therefor, valuable gifts, cash gratuities in the form of large sums of money, and lavish entertainment consisting of automobile parties and joy rides, dinner and theater parties, tickets for prize fights, meals, lodging accommodations, and other forms of entertainment and amusement to induce such officers and agents to recommend or purchase ship chandlery supplies from the respondent for consumption and use upon the vessels operated by such officers for the owners thereof. That the valuable gifts, cash gratuities and entertainments so given by the respondent aggregate in value approximately 8 per cent of his entire volume of business, which volume of business averages approximately \$300,000 per year. That as a result of the giving of such valuable gifts, cash gratuities and entertainment respondent adds to his annual cost of doing business approximately \$24,000, and is compelled to and does add to the selling price of the commodities sold by him an amount approximating 8 per cent of the fair market value of such commodities, which is in addition to the fair market price of such commodities, and which additional amount the customers of the respondent, and eventually the public, must pay. That as a further result of the respondent's said practices all of his competitors are affected, and the giving of valuable gifts, cash gratuities, and entertainment by the respondent as aforesaid has tended to cause competitors of the respondent, who in many instances had not engaged in such practices, to give captains, engineers, stewards and other officers of vessels and agents of the owners of such vessels, valuable gifts, cash gratuities, and entertainment of substantially like value and amount to those given by respondent as aforesaid, for the same purposes and with the same effect, as a means of protecting their trade and as a means of preventing respondent from obtaining the business enjoyed by them.

Findings.

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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, F. G. McFarlane, charging him with the use of unfair methods of competition in violation of the provisions of said Act.

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

And thereupon this proceeding came on for final hearing and counsel for the Commission and the respondent having waived the filing of briefs and the hearing of oral argument herein, 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. F. G. McFarlane is engaged in the business of ship chandlery at 730 Camp Street, New Orleans, La., and supplies ships engaged in transporting cargoes in commerce from that port to ports in other States in the United States and between ports of the United States and ports in foreign countries, with goods, wares, and merchandise, commonly called ship chandlery stores, and is in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. He deals with British ships principally and most of his business is carried on under contracts secured by his agent in Great Britain. His agent is L. H. Bahmer and he is located in London and also has an office in Liverpool, and works on a commission basis.

PAR. 3. Respondent has been in the ship chandlery business from 1907 until 1918 as an employee of his father. From and including 1918 to March 23, 1921, respondent was in business for himself. The complaint in this case was served on the respondent March 3, 1921, when respondent conducted the business for himself and in his own name. On March 23, 1921, the respondent incorporated the said private business with a capital stock of \$100,000. The said respondent

and his wife own a controlling interest in said corporation. The other officials are Mr. Suarez, Mrs. Hesslin and Mr. Nix.

PAR. 4. The method of doing business was for the respondent to visit vessels in the harbor at New Orleans and if the vessel was under contract to do business with the respondent, the captain would be so advised. If the vessel was one known as a free ship, the captain's business would be solicited by the respondent. Upon securing the captain's business, the respondent would convey him ashore in a launch which was part of the equipment of the ship chandlery owned by respondent. The captain would be taken to respondent's place of business where headquarters would be provided for him. A room being furnished, known as the captain's room, for the captain's convenience, was used. Many times lavish entertainment was provided, consisting of automobile parties, joy rides, theater and dinner parties, tickets for a prize fight, meals, lodging accommodations, and other forms of entertainment and amusement as well as cash gratuities.

PAR. 5. During the year 1918, \$7,281.41 was spent for the entertainment of captains and other officers of vessels in entertainment such as above described. During this year there was also paid, as gratuities, to captains and other officers of ships, the sum of \$10,976.84.

PAR. 6. The purpose of the lavish entertainment was "to take good care of the men—make them like you so that they will continue to do business with you, but principally to keep them away from the opposition."

PAR. 7. Most of the owners of vessels to which the respondent furnishes supplies leave the purchasing or ordering of the supplies for their ships to the captain, steward, or chief engineer, particularly the captain, and the practice of giving gratuities to such officers by the respondent and his competitors is followed to such an extent that the captain or other purchasing officer of the vessel will patronize the ship chandler who will pay the gratuity. Many captains of these vessels get small salaries and this custom of receiving gratuities enables them to increase their compensation to the extent of the gratuity paid. The gratuity is not accounted for to the owners of the vessel. The amount of the gratuity differs among different chandlers—the minimum is 5 per cent and the maximum 10 per cent of the amount of the invoice. The respondent pays 5 per cent in addition to the cost of the entertainment furnished, and he adds to his cost of doing business the amount or value of all gratuities given by him as shown by these findings, and the price to his customer is his cost of doing business plus his profit.

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CONCLUSION.

That in this method of selling goods and supplies, etc., to coastwise and foreign ships, the respondent was engaged in commerce as defined by Section 4 of the Act of Congress approved September 26, 1914, creating a Federal Trade Commission and defining its powers and duties.

That this method of paying gratuities and providing unusual and extravagant entertainment is in violation of the provisions of Section 5 of the above recited Act; that in the payment of these gratuities and providing unusual and extravagant entertainment to captains, an unfair method was adopted because it created an unlawful advantage as against ship chandlers who would not pay such gratuities and provide such entertainment; that in the payment of gratuities and providing entertainment in this manner to captains, an unfair advantage was taken of the owners of the vessels and that there was no valuable consideration moving from the captain to the respondent that would support the giving of the same.

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, 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, F. G. McFarlane personally, or through any corporate agency in which he may own a controlling interest, and his agent, representative, servant or employee do cease and desist from directly or indirectly giving or offering to give to the captains or other officers or employees of vessels, without the knowledge and consent of their employers, lavish entertainment, money, cash bonuses, commissions, or loans of money or other things of value without an expectation of repayment, as an inducement to purchase, or as a reward for having purchased from respondent, or his agents, or any corporate agency controlled by him, for the owners of the vessels, provisions, merchandise or other supplies for such vessels.

It is further ordered, That respondent, F. G. McFarlane, 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.

Complaint.

FEDERAL TRADE COMMISSION

v.

PHILLIPS BROTHERS & COMPANY.

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

Docket 777—March 6, 1922.

SYLLABUS.

Where the surname of a manufacturer of sausage who began business in 1859 had become so well known in the trade as the brand name of the product of such manufacturer and his successors in business that it denoted the product of such manufacturer and his successors, and such surname had acquired a secondary significance and such product had acquired a widespread and valuable reputation; and thereafter, in 1920, grandsons of the original manufacturer, who had the same surname, organized a corporation which began to compete with the successors to such original manufacturer, and marketed its product under labels or wrappers which closely resembled in general appearance those used by the successors to the original manufacturer, and in which the surname of the original manufacturer was featured, with the result that there was confusion in the trade, and retail dealers were able to and did palm off the product of the later manufacturer as and for the product of the successors to the first manufacturer:

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 Phillips Brothers & 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 on or about September 21, 1920, under the laws of the District of Columbia, with principal place of business at Washington, in said District.

PAR. 2. That respondent, since October 1, 1920, has been engaged in the business of manufacturing and selling to the retail trade, hotels and restaurants in the District of Columbia, sausage and other pork products, and has carried on such business in direct,

active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That in 1859 there was established in the District of Columbia, by one Thomas W. Phillips, a business consisting of the manufacture and sale of pork sausage; that in 1885 Joseph Phillips, a son of said Thomas W. Phillips, became a partner in said business with said Thomas W. Phillips, which partnership continued until 1892, when said Thomas W. Phillips died, leaving as his sole heir said Joseph Phillips, who thereafter succeeded to the interest of the said Thomas W. Phillips in the property and business of said partnership, and said business was thereafter conducted by said Joseph Phillips, as the sole owner, until 1910, when said Joseph Phillips leased the said property and business to Fred A. Spicer and Charles H. Leavell, and gave them licenses to use all secret formulas for the manufacturing of pork sausage which had been owned by said Joseph Phillips, upon a stated annual rental and royalties, and said business has since been conducted by said Fred A. Spicer and Charles H. Leavell as partners, under the name and style of Jos. Phillips Co., who together with the former proprietors of said business have built up an extensive business in the sale of pork sausage, which product, for a great number of years prior to the organization of respondent, became well-known to the consuming public, and continued to be, and still is, so known.

PAR. 4. That respondent since its organization has marketed its product in packages, upon the wrappers of which appear the words "PHILLIPS All Pork OLD TIME Sausage, manufactured by Phillips Bros. & Co., 705 North Capitol Street, Washington, D. C. Net weight one pound.", with the words "Phillips" and "Old Time" in large display type, while the Joseph Phillips Company, described in Paragraph Three hereof and its predecessor, have marketed their product, since 1892, in packages, on the labels of which appear the words "Ask for JOS. PHILLIPS, manufacturer of the ORIGINAL All Pork Sausage, 1 lb. net, Washington, D. C.", with the words "Jos. Phillips" and "original" in large display type.

PAR. 5. That the adoption and use by respondent of the words "Phillips" and "Old Time" on the labels under which respondent markets its product, and the resulting resemblances in size, style of type, typographical arrangement and general appearance between respondent's labels and those of the Jos. Phillips Co., described in Paragraph Three hereof, was calculated to, and does mislead and deceive the consuming public, and enables the respondent and the retail dealers handling its said product to pass same off as and for the product of said Jos. Phillips Co., and the public has been induced

by such similarity in the labels to purchase respondent's product, under the mistaken belief that it was the product of said Joseph Phillips Company.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Phillips Brothers & 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 by its attorneys, and filed its answer herein, thereupon witnesses were examined and evidence received in support of the allegations of said complaint and on behalf of the respondent, before Edward M. Averill, an Examiner of the Federal Trade Commission, theretofore duly appointed, and the testimony so taken was reduced to writing and filed in the office of the Commission, whereupon the proceeding came on for final hearing by said Commission, and it having duly considered the complaint, the answer thereto, the evidence adduced and printed briefs, and being fully advised in the premises, and being of the opinion that the method of competition in question is prohibited by said Act, makes this its report, stating its findings as to the facts:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Phillips Brothers & Company, is a corporation, organized under the laws of the District of Columbia on or about September 21, 1920, with place of business in Washington, in said District.

PAR. 2. On or about October 1, 1920, Phillips Brothers & Company began to manufacture and sell in the District of Columbia, sausage and other pork products, selling to retail dealers, hotels and restaurants, the products of their manufacture in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. Prior to the outbreak of the Civil War, namely, about 1859, one Thomas W. Phillips, a resident of the District of Columbia, established in the said District a business of manufacturing and selling pork sausage, manufacturing said sausage under a secret

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formula known only to himself. The sausage so made was of superior quality and acquired, under the name and appellation of "Phillips' Sausage," a favorable and extensive reputation for excellence in the District of Columbia. About the year 1885, the health of the said Thomas W. Phillips became seriously impaired and his son Joseph Phillips, who had for years worked in the sausage manufactory with his father, took over the active management of, and continued to carry on, the business, Joseph Phillips then being about forty-four years of age. In the year 1892, Thomas W. Phillips died leaving, by will, to his daughter, Sarah MacQueen, a certain brick house in the District of Columbia and to his son, Joseph Phillips, all the rest and residue of his estate, real, personal and mixed.

PAR. 4. Thereafter Joseph Phillips, in his own name, continued to carry on the said business, manufacturing and selling the same sausage, sustaining and extending the business in and the good will and reputation of, the "Phillips' Sausage" until about the year 1910, when by contract an interest in the business was acquired by Fred A. Spicer and Charles H. Leavell and thereafter was carried on under the name of Joseph Phillips Company; and under successive contracts and agreements between Joseph Phillips on the one part and Fred A. Spicer and Charles H. Leavell on the other, is so carried on at this time. Joseph Phillips is now 80 years of age and physically incapable of taking an active part in the business, but in accordance with the secret formula and under his directions he causes to be prepared the seasoning which enters into the manufacture of the "Phillips Sausage" and for such seasoning and right to use his name and the good will acquired by over 50 years of uninterrupted manufacture and sale of the "Phillips' Sausage" Joseph Phillips has received in royalties, by the terms of the last contract, the sum of Twenty Thousand Dollars.

PAR. 5. The sausage, so manufactured and sold by Joseph Phillips Company, is put up in packages of one pound each with a wrapper reading:

Ask for
JOSEPH PHILLIPS
 Manufacturer of
THE ORIGINAL
 All Pork Sausage

The volume of the sale of such sausage has increased in the past 20 years from 4,000 pounds per week to 14,000 pounds per week for the season beginning October 1 of each year and ending on March 31 of the following year. Over half the retail dealers and half the hotels and restaurants have it on sale regularly. The consuming

public, in the District of Columbia, knew the sausage as manufactured and sold first by Thomas W. Phillips and later by his son, Joseph Phillips, as "Phillips' Sausage," asked for it at their dealers' by the name "Phillips' Sausage" and associated that name with the particular brand of sausage put up by Joseph Phillips and later by Joseph Phillips Company.

PAR. 6. Joseph Phillips had several sons, among them being Thomas C. Phillips and Harry M. Phillips, both of whom as boys worked in the sausage factory of their father. About the year 1891, owing to a disagreement with the father, Thomas C. Phillips left the employ of Joseph Phillips and started a sausage and pork-products business upon his own account in the District of Columbia and about the year 1894 entered into a partnership with one Joseph Henning; together they conducted the aforesaid business until the year 1904 when Thomas C. Phillips withdrew from said partnership and discontinued the manufacture or sale of sausage, engaging in the smoked meat business until about the year 1915, at which time he became engaged in an entirely different line of business. For 17 years prior to October 1, 1920, Thomas C. Phillips was not engaged in or connected with the manufacture or sale of sausage in any way.

Harry M. Phillips, while quite young, left his father and entered the employ of his brother Thomas C. Phillips, remaining in the sausage business between three to five years, after which he left the business and for 15 years prior to October 1, 1920, had not been engaged in any way with the sausage business.

PAR. 7. Between the years 1894 and 1904, Thomas C. Phillips and Joseph Henning, trading as Phillips & Henning, manufactured and sold in the District of Columbia a sausage put out as the "Thomas C. Phillips Sausage," made under a formula alleged to have been given by Thomas W. Phillips to his daughter, Sarah MacQueen, and by her given to her brother, Thomas C. Phillips, and upon the dissolution of the partnership aforesaid, Thomas C. Phillips transferred such rights, title, and interest as he had in such formula and the right to use the name "Thomas C. Phillips" to Joseph Henning, and since the year 1904 Joseph Henning, and after his death his widow and son, have continued uninterruptedly to manufacture and sell, and are now manufacturing and selling, in the District of Columbia, a sausage which is described on the wrapper of each package as

Phillips Genuine
T all pork C
HOME MADE SAUSAGE
P Company
Made and Prepared by
THOMAS C. PHILLIPS

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Upon this label there is, in red ink, the figure of a hog. This brand of sausage is known in the District of Columbia, but not to such an extent as the Joseph Phillips original sausage.

PAR. 8. In October, 1920, Thomas C. Phillips and Harry M. Phillips, in association with others, reentered upon the business of manufacturing and selling sausage in the District of Columbia, this time conducting business as a corporation under the name and style of Phillips Brothers & Company, putting the sausage manufactured by them up in packages bearing the label

PHILLIPS
All Pork
OLD TIME SAUSAGE
Manufactured by
Phillips Brothers & Company

and engaged in quite an extensive advertising campaign in the newspapers, published and circulated in the District of Columbia. Said advertisements contain, among others, the following statements:

"The flavor of plantation days. PHILLIPS OLD TIME SAUSAGE has just that flavor. The family will be quick to appreciate its full, fresh flavor and superb quality. Beware of substitutes. Always say: PHILLIPS OLD TIME, made by Phillips Brothers & Company."

"PHILLIPS 'OLD TIME' and what it means to you. Whenever you see 'OLD TIME' on a Phillips Sausage wrapper you know that the pork from which it is made is of the choicest quality, and that it has been prepared with the utmost care by grandsons of Thomas W. Phillips, who made Phillips Sausage famous in this City way back in 1860. Always say PHILLIPS 'OLD TIME.' Phillips Brothers & Company."

"The crowning delightful breakfast, PHILLIPS OLD TIME SAUSAGE. Thomas W. Phillips made it famous way back in 1860. His grandsons are making it now just as their granddad made it then. Accept no substitutes. See that the words 'OLD TIME' appear on the green wrapper. Phillips Brothers & Company."

There were also advertisements inserted in the newspapers in the District of Columbia, put out by customers of the respondent, and with the knowledge and approval of the respondent, the data for which was furnished by respondent, such advertisements reading:

"PHILLIPS OLD TIME SAUSAGE, famous for quality in 1860, even more so now. The only Phillips Sausage made and prepared by Phillips themselves."

"There is other sausage sold under the name of Phillips' in the City of Washington, but the sausage sold in our stores under the brand 'OLD TIME' is the only Phillips' Sausage made and prepared by the Phillips themselves."

"PHILLIPS 'OLD TIME' SAUSAGE. In 1860 Thomas W. Phillips made and placed on the market in the City of Washington a pure all pork sausage seasoned according to a recipe handed down by his forefathers. This sausage was a superb product and created a demand that he found difficult in those

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days to supply. The same sausage is now made by Phillips Brothers, grandsons of Thomas W. Phillips at 705 North Capitol Street and sold under the brand PHILLIPS 'OLD TIME.'"

The advertisements above referred to were inserted by the Piggly Wiggly.

"Beginning tomorrow all the stores of this company in the District of Columbia will carry in stock Phillips 'OLD TIME' SAUSAGE. Phillips 'OLD TIME' SAUSAGE made and prepared by grandsons of Thomas W. Phillips has the 'OLD TIME' quality and is the identical product made famous in the City of Washington by Thomas W. Phillips as far back as 1860."

This advertisement and similar ones, appeared in both the Washington Post and Times, newspapers published and circulated in the District of Columbia, on December 3, 1920, and were inserted with the knowledge, consent and approval of the respondents by the Great Atlantic & Pacific Tea Company.

PAR. 9. That the adoption and use by respondent of the words "Phillips" and "Old Time," in the labels under which respondent has marketed its product, as hereinbefore set out, and the resemblance of such labels to the labels of the Joseph Phillips Company, herein described, have misled and deceived the consuming public in the District of Columbia to the extent that retail dealers handling respondent's said product in the District of Columbia have been able, because of such labels, to pass off respondent's said product as and for the product of the Joseph Phillips Company; that by the use of such labels a substantial portion of the public in the District of Columbia has been induced to purchase respondent's said product under the mistaken belief that it was the product of the Joseph Phillips Company.

CONCLUSION.

That the practices of the respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the 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 printed briefs of counsel, and the Commission being of the opinion that the method of competition in question is prohibited by the Act of Congress approved Sep-

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tember 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 conclusion that the respondent has violated the provisions of said Act,

It is therefore ordered, That the respondent, Phillips Brothers Company, its officers, directors, agents, representatives and employees, cease and desist from directly or indirectly:

(1) Marketing in the District of Columbia, through retail dealers or by other means, sausage, upon the containers of which are placed wrappers or labels containing a description or brand name of such sausage, which description or brand name includes the words "Phillips" and "Old Time," or the word "Phillips" alone or in combination with other words.

(2) Using upon the containers of sausage marketed by it in the District of Columbia, through retail dealers or by other means, labels, or wrappers which closely resemble in style of type, typographic arrangement, color of ink, or general appearance, the labels or wrappers under which sausage manufactured by the Joseph Phillips Company is marketed in the District of Columbia.

It is further ordered, That respondent, Phillips Brothers & Company, 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 he has complied with the order to cease and desist hereinbefore set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

A. LISNER, TRADING UNDER THE NAME AND STYLE
OF PALAIS ROYAL.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 783—March 6, 1922.

SYLLABUS.

Where an individual dealing in notions and toilet articles advertised as "White Ivory" articles composed of nitrated cellulose or pyroxylin plastic and resembling ivory in color; with a tendency thereby to mislead and deceive the purchasing public as to the value or utility thereof and to induce the purchase thereof in the mistaken belief that they were made of ivory:

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 A. Lisner, doing business under the name and style of Palais Royal, 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 the respondent owns and operates a department store in the City of Washington, District of Columbia, under the name and style of Palais Royal, and sells merchandise and commodities 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 course of his business as described in Paragraph 1 hereof and for the purpose of bringing his merchandise and commodities to the attention of the purchasing public, causes advertisements of said merchandise and commodities to be inserted in newspapers and other advertising mediums having a general circulation in the District of Columbia; that many such advertisements contain false and misleading statements concerning

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the merchandise and commodities offered for sale and sold by him; that among such false and misleading statements are statements to the effect that certain toilet articles offered for sale and sold by him are "White Ivory"; whereas, in truth and in fact, such toilet articles are not made of ivory, but are made of nitrated cellulose, or some other compound, so manufactured as to more or less closely resemble ivory in appearance; and that such false and misleading statements are intended and calculated to, and actually do, deceive and mislead the public as to the quality of said articles.

PAR. 3. 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.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, A. Lisner, trading under the name and style of Palais Royal, 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 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 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, trading under the name and style of Palais Royal, is engaged in the business of conducting a department store in the District of Columbia, in which store respondent sells and offers for sale to the public, in due course of retail trade, various commodities, among which are notions and toilet

articles; that respondent carries on his said business in direct, active competition with other dealers in like commodities in the District of Columbia.

PAR. 2. That respondent in the course of his business as described in Paragraph 1 hereof, on January 3, 1921 and on other dates within two years prior to the issuance of the complaint herein, caused certain advertisements to be published in the Washington Post, as a means of bringing to the attention of the purchasing public the merchandise and commodities offered for sale and sold by him; that in said advertisements reference was made to certain toilet articles so offered for sale and sold by respondent, which articles were described in said advertisements as "White Ivory Toilet Articles," although said articles were not made of ivory, but were made of Nitrated Cellulose or Pyroxylin Plastic, sometimes known commercially as "Pyralin" and resembling ivory in color; that the reference to such toilet articles in said advertisements as "White Ivory" 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 utility of said articles, and in some instances, to induce the public to purchase said articles upon the mistaken belief that such articles were made of ivory.

PAR. 3. That respondent immediately prior to the issuance of the complaint herein, when his attention was called to the nature and subject matter of the advertisements described and referred to in Paragraph 2 hereof, immediately discontinued the use of advertisements in which articles made from nitrated cellulose or pyroxylin plastic sometimes known commercially as celluloid, pyralin, etc., were described as "White Ivory" or "Ivory," and has not since said date made use of advertisements which contained the same or similar descriptive matter concerning articles offered for sale and sold by him.

PAR. 4. That on May 17, 1920, at a conference of representatives of the manufacturers of and dealers in various basic materials sometimes known commercially as "Celluloid," "Pyralin," etc., and manufacturers of and dealers in various articles made from such basic materials, which conference was called by the Federal Trade Commission to meet at its offices in Washington, D. C., a resolution was passed at such conference which condemned the use, as applied to articles made from said basic materials, of the following and similar terms: "French Ivory," "Parisian Ivory," "Tortoise Shell" "Ivory Combs," "Florentine Shell" "Ivory Toilet Sets," "Pyralin Ivory," "Jade Necklaces," "Coral Necklaces," "American Ivory," etc.

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CONCLUSION.

That the practices of the respondent, under the conditions and circumstances set out in the foregoing findings as to the facts, constituted an unfair method of competition in commerce in the District of Columbia, and were in violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto and an agreed statement of facts filed herein, and the Commission having made its report in which it stated 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, A. Lisner, trading under the name and style of Palais Royal, his agents, representatives, servants, and employes, do cease and desist from directly or indirectly:

Causing advertisements to be published in newspapers, or making use of other forms of advertising matter, as a means of bringing to the attention of the purchasing public, commodities offered for sale or sold by him in the District of Columbia, which advertisements or advertising matter described as "White Ivory" or "Ivory," articles so offered for sale or sold by him and made of nitrated cellulose or of pyroxylin plastic, sometimes known commercially as "Celluloid," "Pyralin," etc.

It is further ordered, That the said respondent, A. Lisner, trading under the name and style of Palais Royal, 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 it has complied with the order of the Commission herein set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

M. NAGELBERG AND E. FEIGENBAUM, PARTNERS STYLING THEMSELVES ROCHESTER TAILORING CO.

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

Docket 824—March 6, 1922.

SYLLABUS.

Where manufacturers of men's and boys' clothing at Rochester, N. Y., and certain business organizations of the same place, had so advertised clothing made there that the word, "Rochester," as applied to such clothing had come to mean to the trade and the purchasing public goods of a high standard of quality made in said city, and a valuable good will had been acquired in the trade name or brand of "Rochester"; and thereafter competing manufacturers located elsewhere labeled their clothing "Rochester Tailoring Co., Builders of Fine Clothes"; with a tendency thereby to mislead the purchasing public into believing the clothing so labeled was made in Rochester, N. Y.:

Held, That such mislabeling, 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 M. Nagelberg and E. Feigenbaum, partners styling themselves the Rochester Tailoring 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 that respect on information and belief as follows:

PARAGRAPH 1. That respondents are engaged in Scranton, Pa., in the business of manufacturing and selling clothing for men and boys, and cause clothing 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 clothing manufactured by

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them in Scranton, Pa., tags or labels containing the words "Rochester Tailoring Co., builders of fine clothes," without other distinguishing marks to show the true place of origin of said clothing; that clothing for men and boys has been manufactured in large quantities in Rochester, N. Y., for a long period of time; that clothing and other products manufactured in Rochester, N. Y., have been given widely extensive advertising by the manufacturers operating in that city and by the Chamber of Commerce and other associations of business men in that city, in which advertising the words "Rochester," "made in Rochester," "tailored in Rochester," have been featured together with the claim that "Rochester-made means quality" and that clothing made in Rochester is not made by "sweat shop methods," and as a result of such advertising the word "Rochester," when used in connection with clothing for men and boys, has come to be understood by the trade and consuming public as indicating that such clothing was made in Rochester, N. Y., and is of the quality which in the mind of the consuming public, as the result of such advertising, has become associated with clothing for men and boys actually manufactured in Rochester, N. Y., and labeled and advertised as having been manufactured in that city; that the use by respondents of the word "Rochester" in labels placed on clothing manufactured in Scranton, Pa., and sold by them as aforesaid, is calculated to and does deceive the purchasing public, and such labels have been and are being used by respondents as a means of enabling them to pass off clothing not in fact made in Rochester, N. Y.

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 respondents, Michael Nagelberg and Emil Feigenbaum, partners, styling themselves Rochester Tailoring Co., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

Respondents having entered their appearance and filed their answer herein, admitting certain allegations of the complaint, 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 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, the Federal Trade Commission, being now fully advised in the premises, makes these its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Nagelberg and Feigenbaum, are co-partners, doing business under the firm name and style of Rochester Tailoring Co., and are engaged in the city of Scranton, Pa., in the business of manufacturing and selling clothing for men and boys, and cause clothing manufactured and 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. The respondents, in the course of their business, as described in Paragraph 1 hereof, have placed on clothing manufactured by them in Scranton, Pa., tags or labels containing the words "Rochester Tailoring Company, Builders of Fine Clothes," without other words to show the true place of manufacture of said clothing; that clothing for men and boys has been manufactured in large quantities in Rochester, N. Y., for a long period of time; that clothing manufactured in Rochester, N. Y., has been given extensive advertising by the manufacturers of that city and by the Chamber of Commerce and other associations of business men of that city, in which advertising the words "Rochester," "Made in Rochester," "Tailored in Rochester," have been featured, together with the claim that clothing made in Rochester is not "made by sweatshop methods," and that "Rochester-made Means Quality"; and as a result of such advertising the word "Rochester," when used in connection with clothing for men and boys, has come to be understood by the trade and the consuming public as indicating that such clothing was made in Rochester, N. Y., and is of the quality which, as the result of such advertising, has become associated in the minds of the consuming public and the trade, with clothing for men and boys actually manufactured in Rochester, N. Y., and labeled and advertised as having been manufactured in that city; that the use of the word "Rochester" by respondents in labels and tags on clothing made by them in Scranton, Pa., and sold by them as aforesaid, tends to mislead the

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purchasing public into believing that the clothing so labeled is made in Rochester, N. Y.

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

ORDER TO CEASE AND DESIST.

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

It is now ordered, That the respondents, Michael Nagelberg and Emil Feigenbaum, partners styling themselves Rochester Tailoring Co., each and both of them, their agents, representatives, servants and employes, do cease and desist from—

Using the words "Rochester Tailoring Company" or the word "Rochester," alone or in other combinations, on tags or labels on clothing manufactured by them in Scranton, Pa., or in any other place than the city of Rochester, N. Y., unless following such word or words, and in type or lettering equally conspicuous with them, appear the words "made in Scranton, Pennsylvania," if the clothing in fact is made in Scranton, Pa., or by words in which the true place of manufacture, town or city, and State, is stated.

It is further ordered, That the respondents, Michael Nagelberg and Emil Feigenbaum, partners styling themselves Rochester Tailoring Co., shall, within sixty (60) days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

E. E. WHITE, TRADING UNDER THE NAME AND STYLE
OF WHITE STAR MARKET.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 832—March 6, 1922.

SYLLABUS.

Where an individual engaged in the sale to coastwise and ocean-going vessels under foreign registry, of ship chandlery supplies required by them in order to operate as instrumentalities of interstate or foreign commerce, paid to the captains of such vessels, without the knowledge or consent of their employers or principals, cash commissions of 5 per cent of the invoices as an inducement for them to purchase of him; with the effect of increasing the price of his products to the employers or owners over and above their fair market value, and of compelling competitors to adopt the same method 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 E. E. White trading under the name and style of White Star Market, 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 respondent carries on business at Pensacola, Fla., under the name and style of White Star Market and is engaged in the business of selling meats and vegetables for consumption upon vessels which reach the port of Pensacola, Fla., while engaged in the transportation of passengers and cargoes between ports in various States of the United States and between ports of the United States and foreign countries; respondent carries on said business in direct, active competition with said persons, partnerships and corporations similarly engaged.

PAR. 2. That respondent in the course of his business as described in Paragraph 1 hereof, gives and has given to captains and other

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officers and employees of vessels, without the knowledge or consent of their employers or principals, cash commissions and gratuities to induce such officers and employees to purchase meats and vegetables from respondent for consumption upon such vessels operated by them, for the owners thereof, or as a reward for having purchased such supplies from respondent, and without other consideration therefor; that respondent expends for cash commissions and gratuities, as aforesaid, large sums of money aggregating approximately 5 per cent of the volume of sales so made, which sums are added to respondent's cost of doing business, and respondent is compelled to, and does, add to the selling price of the commodities so sold by him, an amount sufficient to cover the amount so expended, which is in addition to the fair market value of such commodities, which additional amount the customers of respondent, and eventually the public, must pay; that as a further result of respondent's said practices, all of his competitors are affected and such practices have tended to cause competitors of respondent to give to employees of their customers, commissions and gratuities of substantially like amounts to those paid by respondent, as aforesaid, for the same purposes and with the same effect, as a means of protecting their trade and preventing respondent from obtaining the business enjoyed by them.

PAR. 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, E. E. White, trading under the name and style of White Star Market, charging him with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent having entered his appearance and filed his answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before F. C. Baggarly, 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, E. E. White, trading under the name and style of White Star Market, is an individual having his principal office and place of business in the City of Pensacola, State of Florida.

PAR. 2. The respondent, trading as aforesaid, is now and has since July, 1920, been engaged in the selling of ship chandlery or steward supplies, consisting mostly of fish, oysters and meats for consumption upon vessels which reach the port of Pensacola, Fla., while engaged in the transportation of 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 his business as described in Paragraph 2 hereof, has solicited the business of and has sold and delivered to vessels of the United States Shipping Board, plying between the ports of Pensacola, Fla., 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 Italian and Portuguese, while said vessels were engaged in commerce, steward or food supplies necessary for the use and maintenance of the officers and crew of such vessels while in port and upon the high seas, all of which supplies so furnished were necessary in order that said vessels could operate as an instrumentality of interstate or foreign commerce.

PAR. 4. The respondent, trading as aforesaid and in the course of his business as heretofore described, has given to captains of foreign vessels, engaged in foreign commerce, and without the knowledge or consent of their employers or principals and without other consideration therefor, cash commissions or gratuities to an amount of 5 per cent of the invoice of sales so made to induce such officers to purchase provisions or steward supplies from respondent, and particularly gave to captains of foreign vessels for their personal use sums of money aggregating 5 per cent commission upon the amounts covering supplies purchased on the following dates:

Jan. 8, 1921, Italian, <i>Rosendo</i>	invoice...	\$224. 85
Jan. 18, 1921, Portuguese, <i>Cuavas</i>	do.....	783. 00
Mar. 19, 1921, Portuguese, <i>Dainantino</i>	do.....	288. 45
Mar. 19, 1921, Italian, <i>Rosa M</i>	do.....	438. 00
May 7, 1921, Italian, <i>Sulima</i>	do.....	78. 90

Said sums of money allowed and paid to captains of vessels as cash commissions or gratuities, aggregating 5 per cent of the volume of sales so made are added by respondent to his cost of doing busi-

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ness, and respondent adds to the selling price of the supplies so sold by him an amount sufficient to cover the amount so expended, which is in addition to the fair market value of such commodities, which additional amount the vessel owner pays.

PAR. 5. The giving of such cash commissions or gratuities causes 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 foreign commerce and constitute a violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and 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 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, E. E. White, of Pensacola, Fla., and his representatives, agents, servants and employees, cease and desist from directly or indirectly giving to captains, masters, stewards, engineers or other employees of vessels engaged in commerce, without the knowledge and consent of their employers, cash or other gratuities, as inducements to influence their employers to purchase and as gratuities for purchasing for said employers, ship chandlery or other 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 him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

SOL GOODMAN, ADOLPH GREENSPAN AND IRVINE
GREENSPAN, PARTNERS TRADING UNDER THE NAME
AND STYLE OF SOLUS MANUFACTURERS COMPANY.

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

Docket 855—March 6, 1922.

SYLLABUS.

Where a firm engaged under the style of Solus Manufacturers Co. in the sale by mail of razors which were bought by them for approximately 45¢ each and were packed in individual containers labeled, at their request, "Solus Manufacturers Company, Nashville, Tennessee, Price \$3.50. Fully warranted," advertised, offered and sold said razors, so packed, on approval at \$1.95, offering free to purchasers a hone costing from 15¢ to 20¢ each and usually retailing at 50¢, which they advertised as "A fine \$1.00 razor hone"; thereby intentionally misleading and deceiving the purchasing public into believing that they were offering and selling razors of special quality at manufacturers' prices, and inducing the public to purchase said razors in the mistaken belief that they were securing a high grade razor at a greatly reduced price:

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 Sol Goodman, Adolph Greenspan and Irvine Greenspan, partners trading under the name and style of Solus Manufacturers 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 that respect upon information and belief, as follows:

PARAGRAPH 1. That respondents are partners trading under the name and style of Solus Manufacturers Company, and carry on business at Nashville, Tennessee, and are engaged, in part, in the business of buying at wholesale, razors, and selling same upon mail orders to the general public in various States of the United States; and respondents cause razors sold by them to be transported to the purchasers thereof from the State of Tennessee through and into other

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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, cause advertisements to be published in newspapers and periodicals having general circulation throughout various States of the United States, in which advertisements the offer is made by respondents to send razors to prospective purchasers for free trial for a period of fifteen days, and that after such trial, if the customer should desire to purchase such razor, and send to respondents \$1.95 in payment of same, that respondents would then send to such customer a razor hone which is described and represented in said advertisement to be "a fine, \$1.00 razor hone" free; the customer is further given the option of returning the razor without charge if he should not desire to purchase it after trying it.

PAR. 3. That the razors sent by respondents to prospective purchasers in accordance with the terms of the advertisements described and referred to in Paragraph Two hereof are not manufactured by respondents, but are purchased by respondents from manufacturers at prices of approximately 45¢ each, and are packed singly in containers upon which there is printed at the instance and request of respondents, "Solus Manufacturers Company, Nashville, Tennessee. Price \$3.50. Fully Warranted." That such printed matter is false and misleading and is intended by respondents to deceive the purchasing public, and does actually mislead and deceive the purchasing public into believing that the respondents are manufacturers of razors, and are offering for sale and selling razors of a special quality at the manufacturers' price, without the intervention of a middleman; whereas, respondents do not sell such razors at the manufacturers' price, but at a price in excess of that at which razors of like grade and quality sell for in the usual course of retail trade.

PAR. 4. That the descriptions contained in respondents' said advertisements of the razor hone which respondents offer to give and give free to customers who purchase razors, is false and misleading, in that such hones are not "fine \$1.00 razor hones," but are purchased by respondents at prices ranging from 15¢ to 20¢ each, and are sold in due course of retail trade at about 50¢ each.

PAR. 5. That the price mark printed upon the containers of the razors sold by respondents, as set out in Paragraphs Two and Three hereof, and the claimed price of the hones given free to each purchaser of a razor are false and fictitious and greatly in excess of the price at which razors and hones of like grade and quality sell for

in the usual course of retail trade, and such price marks and claimed prices are used by respondents for the purpose of misleading and deceiving the purchasing public, and thereby inducing the public to purchase such razors at \$1.95 with the hone given free, upon the mistaken belief that they are purchasing a high grade razor at a greatly reduced price, when in truth and in fact they are paying an excessive price for a razor of inferior quality; that in selling the razors in containers upon which are printed such false and fictitious price marks, respondents come in direct competition with other dealers in razors who do not make use of such false and fictitious price marks.

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, Sol Goodman, Adolph Greenspan and Irvine Greenspan, partners trading under the name and style of Solus Manufacturers Company, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answer herein, and testimony having been adduced before George McCorkle, an examiner of the Federal Trade Commission duly appointed and qualified to take testimony herein, and respondent having filed with the Commission its stipulation admitting the facts alleged in the complaint, and having formerly waived a hearing in the matter, and the matter having come regularly on to be heard before the Commission upon the testimony and the stipulation hereinbefore referred to, and the matter being fully considered, and the Commission being fully advised in the premises, makes the following

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Sol Goodman, Adolph Greenspan and Irvine Greenspan, are partners trading under the name and style of Solus Manufacturers Company, and carry on business at Nashville, Tennessee, and are engaged, in part, in the business of buying at wholesale, razors, and selling same upon mail orders to the general

public in various States of the United States; and respondents cause razors sold by them to be transported to the purchasers thereof from the State of Tennessee 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. Respondents, in the course of their business as described in the next preceding paragraph hereof, cause advertisements to be published in newspapers and periodicals having general circulation throughout various States of the United States, in which advertisements the offer is made by respondents to send razors to prospective purchasers for free trial for a period of fifteen days, and that after such trial, if the customer should desire to purchase such razor, and send to respondents \$1.95 in payment of same, that respondents would then send to such customer a razor hone which is described and represented in said advertisement to be "a fine, \$1.00 razor hone" free; the customer is further given the option of returning the razor without charge if he should not desire to purchase it after trying it.

PAR. 3. The razors sent by respondents to prospective purchasers in accordance with the terms of the advertisements described and referred to in Paragraph One hereof are not manufactured by respondents, but are purchased by respondents from manufacturers at prices of approximately 45 cents each, and are packed singly in containers upon which there is printed at the instance and request of respondents, "Solus Manufacturers Company, Nashville, Tennessee. Price \$3.50. Fully Warranted." Such printed matter is false and misleading and is intended by respondents to deceive the purchasing public, and does actually mislead and deceive the purchasing public into believing that the respondents are manufacturers of razors, and are offering for sale and selling razors of a special quality at the manufacturers' price, without the intervention of a middleman; whereas, respondents do not sell such razors at the manufacturers' price, but at a price in excess of that at which razors of like grade and quality sell for in the usual course of retail trade.

PAR. 4. The descriptions contained in respondents' said advertisements of the razor hone which respondents offer to give and give free to customers who purchase razors, is false and misleading, in that such hones are not "fine \$1.00 razor hones," but are purchased by respondents at prices ranging from 15 cents to 20 cents each, and are sold in due course of retail trade at about 50 cents each.

PAR. 5. The price mark printed upon the containers of the razors sold by respondents, as set out in Paragraphs One and Two hereof, and the claimed price of the hones given free to each purchaser of a razor are false and fictitious and greatly in excess of the price at

which razors and hones of like grade and quality sell for in the usual course of retail trade, and such price marks and claimed prices are used by respondents for the purpose of misleading and deceiving the purchasing public, and thereby inducing the public to purchase such razors at \$1.95 with the hone given free, upon the mistaken belief that they are purchasing a high-grade razor at a greatly reduced price, when in truth and in fact they are paying an excessive price for a razor of inferior quality; that in selling the razors in containers upon which are printed such false and fictitious price marks, respondents come in direct competition with other dealers in razors who do not make use of such false and fictitious price marks.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and the stipulation of facts heretofore filed herein by the respondents and approved by the Commission, and the Commission having made its findings of facts and conclusion that the respondents have violated the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now, therefore, ordered, That the respondents Sol Goodman, Adolph Greenspan and Irvine Greenspan, partners trading under the name and style of Solus Manufacturers Company, their agents, representatives, servants and employees, cease and desist, directly or indirectly;

From selling, offering for sale, or advertising in interstate commerce, razors in containers or otherwise marked with false and fictitious prices or selling, offering for sale, or advertising in interstate commerce, razor hones at values which are false and fictitious.

It is further ordered, That respondents cease and desist from using the word, "manufacturers" as a part of the trade name or firm style of business under which respondents conduct the selling of razors and

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razor hones unless and until respondents engage in manufacturing razors and razor hones.

It is further ordered, That the respondents, Sol Goodman, Adolph Greenspan and Irvine Greenspan, partners trading under the name and style of Solus Manufacturers Company, shall within sixty days from the date of service of this order upon them, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

MARY L. HICKS, DOING BUSINESS UNDER THE NAME
OF LOUISE.

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

Docket 843—March 8, 1922.

SYLLABUS.

Where an individual engaged in the sale of millinery as successor to a business known as the “Louise” store, continued to carry on the same under the brand, trade name, and trade-mark of “*Marie Louise*,” under which name the business had become widely and favorably known and to which a valuable good will had attached; and thereafter a competitor, with full knowledge of the existence and conduct of the other business, adopted and used for her own business, which she located near by, the brand, trade name, and trademark, “Louise,” written in a style similar to that of the original brand and advertised the same accordingly with the addition of her own name in an inconspicuous place and type; with the result that her competitor’s customers and the public were deceived and misled into believing her business to be identical with that of her competitor, and that many of said customers did business with her believing they were dealing with the other establishment:

Held, That such simulation of brand, trade name and trademark, 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 Mary L. Hicks, doing business under the name Louise, hereinafter referred to as the respondent, has been and is 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, 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 in the year 1909 one Marie Louise Fisher established a millinery business in the City of Washington and District of Columbia at the premises known as number 904 14th St., N.W., in said city and District where she engaged in the making and selling of ladies hats and bonnets; that shortly after commencing

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said business, said Marie Louise Fisher adopted therefor the trade name "Marie Louise" and further adopted as a sign and mark for said business a device consisting of said words "Marie Louise," written in script in a distinctive manner, which said mark she caused to be placed upon her show windows and stationery and upon the lining of the hats and bonnets sold by her and upon the containers wherein said merchandise was delivered; that said Marie Louise Fisher continuously thereafter conducted her said business under said trade name and in connection with said sign and mark, at said premises until the month of June, 1914, when she removed her said business to the premises known as 1516 H St., N.W., in said City and District and there so continued to conduct said business until the month of May, 1920; that in the course and conduct of said business said Marie Louise Fisher acquired a valuable trade, custom and good will among the citizens of said City and District; which said trade, custom and good will was associated with and appertained to said trade name "Marie Louise" and with the device used as a sign and mark therefor as above set out and the said business became well known to the residents of said District under said trade name and associated with said device.

PAR. 2. That in the month of May, 1920, said Marie Louise Fisher sold her said business to one Mary E. Baker, together with the good will thereof and the right to use said trade name "Marie Louise" and said device; that said Mary E. Baker has continuously since said date conducted said business under said trade name, and used said device upon her show windows and stationery and upon the linings of hats and bonnets and upon the containers wherein said merchandise is delivered, in like manner as used by her said vendor.

PAR. 3. That the good will acquired by said Marie Louise Fisher in her said business and associated with the said trade name and with said device was continuously enjoyed by her, and the identification of said business with said trade name and with said device among the citizens of said District continuously persisted until the sale of said business to said Mary E. Baker above set out and since said sale said Mary E. Baker has continued to enjoy said good will and still enjoys the same; and said identification of said business among the residents of said District with said trade name and with said device continued to persist after said sale and still exists.

PAR. 4. That in the month of July, 1920, respondent established a millinery business in the City of Washington and District of Columbia at the premises known as number 1623 H St. N. W., in said City and District where respondent has ever since said date conducted and now conducts a retail business in ladies hats and bonnets, and

in conducting said business has continuously been and is now in competition with all other persons similarly engaged in said District; that upon the opening of her said business respondent, with the intention and purpose of appropriating the business and good will of said Mary E. Baker and with the intention and purpose of misleading and deceiving the public, including the customers of said Mary E. Baker into the belief that respondent's said business was identical with the business of said Mary E. Baker and that the shop of respondent was identical with the shop of said Mary E. Baker or a branch thereof, adopted as a trade name for her, respondent's, said business, the name "Louise" and further adopted as a sign and mark for her said business, a device consisting of said word "Louise" written in script in a form and style similar to the word "Louise" as same appears in the device "Marie Louise" adopted by said Marie Louise Fisher for a sign and mark and now used as such by said Mary E. Baker as hereinbefore set out; that respondent, in furtherance of her said intention and purpose, caused said sign and mark "Louise" to be placed upon her show window and stationery and upon the linings of the hats and bonnets made and sold by her and upon the containers in which said merchandise is delivered, and has, ever since the adoption of her said trade name and device, continuously used and now uses the same with the intention and for the purpose hereinbefore set out.

PAR. 5. That by reason of the acts and things done by respondent as above set out, the residents of the District of Columbia, including customers and prospective customers of said Mary E. Baker and persons engaged in the millinery trade, were and are misled and deceived into the belief that the business of respondent is identical with the business of said Mary E. Baker, that the shop of respondent is identical with or a branch of, the shop of said Mary E. Baker and that the hats, bonnets and other articles of millinery made and sold by respondent are hats, bonnets and millinery made and sold by said Mary E. Baker; that by reason of the premises many residents of said District, including customers and prospective customers of said Mary E. Baker are led to, and do, deal and trade with respondent in the belief that they are trading and dealing with said Mary E. Baker.

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, Mary L. Hicks, doing business under the trade name and style of "Louise," charging her with unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having entered her appearance by her attorney, Lawrence J. Heller, Washington, D. C., and filed her answer, and testimony having been submitted by the Commission and by the respondent before George McCorkle, an Examiner of the Commission, and the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That in the year 1909, Marie Louise Fisher established a millinery business in the City of Washington, District of Columbia, at the premises known as No. 904 14th Street, Northwest, in said City and District, where she engaged in making and selling ladies' hats and bonnets; that shortly after commencing her said business, Marie Louise Fisher adopted therefor the trade name "*Marie Louise*," and also adopted as a sign and mark for said business, a device consisting of said words, "*Marie Louise*," written in script and peculiar in position, which she caused to be placed upon her show windows and stationery, and also upon the lining of the hats and bonnets sold by her, and upon the containers in which her said merchandise was delivered; that said Marie Louise Fisher continuously conducted her said business under the said trade name as represented, at said premises, until the month of June, 1914, when she removed her said business to the premises known as 1516 H Street, Northwest, in said City and District, and so continued her said business until the month of May, 1920; that in the course and conduct of her said business, Marie Louise Fisher acquired a valuable trade, custom and good will among the citizens of said City and District of Columbia, which said trade, custom and good will was associated with and appertained to said trade name "*Marie Louise*," and with the device used in the sign and mark therefor, as above set out; that said business became well known to the residents of said District under said trade name and as associated with said device; that the said business so advertised and associated with the said trade name "*Marie Louise*," was and is also known and spoken of as the "Louise" millinery store, by the residents of said City of Washington in said District of Columbia.

PAR. 2. That during the month of May, 1920, said Marie Louise Fisher sold her said business to one Mary E. Baker, together with the good will thereof, and the right to use the said name of “ Marie Louise ” and said device; that said Mary E. Baker has continuously, since said date, conducted said business under said trade name, and in connection therewith the said Mary E. Baker has continued to advertise her said business under the said trade name on her show windows and stationery and upon the linings of the hats and bonnets made and sold by her, and upon the containers wherein said merchandise is delivered, in like manner as the same was used by her said vendor, Marie Louise Fisher.

PAR. 3. That the good will acquired by the said Marie Louise Fisher in the said business and associated with the trade name and with said device aforesaid, was continuously enjoyed by her, and the identification of said business with said trade name and with said device among the citizens of said District persisted without interruption until the sale of said business to said Mary E. Baker, as above set out, and since said sale, said Mary E. Baker has continuously enjoyed said good will and still enjoys the same. Identification of said business among the residents of the District of Columbia with said trade name and with said device continued after said sale of said trade name and good will to Mary E. Baker, by Marie Louise Fisher, and continues to exist to this time. That application was made by Mary E. Baker, vendee as aforesaid, July 29, 1920, to the United States Patent Office for registration of her said trade name, and in compliance therewith, the same was duly registered January 4, 1921.

PAR. 4. That in the month of July, 1920, respondent, Mary L. Hicks, a resident of the City of Washington, District of Columbia, established a millinery business in said City of Washington and District of Columbia, at the premises known as No. 1623 H Street, Northwest, in said City and District, at which place respondent has been, ever since said date, and is now, conducting a retail business in ladies' hats and bonnets, and in conducting said business has been and is now in competition with all other persons similarly engaged in said District of Columbia; that respondent adopted as a trade name for her said business the name “ Louise, ” and further adopted as a sign and mark for her said business, a device consisting of the word “ Louise, ” written in script, in form and style similar to the word “ Louise ” as same appears in the device “ Marie Louise, ” adopted by said Marie Louise Fisher for a sign and mark, and now used as such by said Mary E. Baker, as hereinbefore set out; that respondent caused said sign and mark, “ Louise ” to be placed upon her show

Findings.

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windows and stationery and upon the linings of the hats and bonnets made and sold by her, and upon the containers in which said merchandise is delivered, and has, since the adoption of the said trade name and device, continuously used the same to the present time.

PAR. 5. That respondent, upon the opening of her said business at the time and place above stated, knew that a similar business was then being conducted at 1516 H Street, Northwest, in said City and District, under the trade name of "Marie Louise," and that the same business, so conducted under said trade name, was a popular business among the residents of said City and District of Columbia, and within three squares or city blocks of said location respondent set up her said millinery business at the premises numbered 1623 H Street, Northwest, and adopted as a trade name for her business the name "Louise," and further adopted as a sign and mark in her said business the device consisting of the word "Louise," written in script in form and style similar to the word "Louise," as the same appears in the device "Marie Louise," adopted by said Marie Louise Fisher for a sign and mark, and now used by Mary E. Baker, as hereinbefore set out.

PAR. 6. That the respondent, Mary L. Hicks, was given the name "Mary Louise" by her parents, whose surname was Macaboy, and was confirmed in said name according to the rites of some Christian Church, but respondent has always "gone by" the name of "Lula Macaboy," or, since her marriage, as "Lula Hicks," which name was accepted by respondent and used by her in correspondence and applications for work.

PAR. 7. That respondent, in advertising her said millinery business in the newspapers, published and circulating in the City of Washington, District of Columbia, under the trade name of "Louise" as the same appears in the device "Marie Louise," adopted by said Marie Louise Fisher, vendor of Mary E. Baker, placed her said name of M. L. Hicks, or Louise M. Hicks, in an inconspicuous place in said advertisements, and in comparatively small type.

PAR. 8. That the residents of the District of Columbia and customers of Mary E. Baker were and are deceived and misled by the acts of respondent, as above set out, into the belief that the business of respondent is identical with the business of Mary E. Baker, and by reason of the confusion brought about under the conditions above set forth, many customers of the millinery business of Mary E. Baker, trading under the name of "Marie Louise," have thereafter traded with respondent Mary L. Hicks, under the impression that they were dealing with Mary E. Baker, or the "Marie Louise" millinery store.

CONCLUSION.

That the acts and things done by respondent, as set out in the above findings as to the facts, constitute an unfair method of competition in interstate commerce in the District of Columbia, 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, Mary L. Hicks, doing business under the trade name and style of “Louise,” having entered her appearance by her attorney, Lawrence J. Heller, and having filed her answer and the Commission having submitted testimony in support of the charges in the complaint and the respondent having offered testimony in support of her defense, and the attorneys for the Commission and for the respondent having filed their briefs, and the Commission having made and filed its report setting forth 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, Mary L. Hicks, cease and desist:

(1) From using or permitting to be used in her behalf, the word “Louise” standing alone or in conjunction with other words or names except the whole name of respondent, in connection with the sale or distribution of ladies’ millinery or in advertisement thereof, and

(2) From simulating the form and manner or appearance of the signs, advertisements or labels of “Marie Louise” or “Louise” as the same are now or may hereafter be used.

It is further ordered, That the respondent, Mary L. Hicks, file a report with the Commission within sixty (60) days from the date of service of this order, setting forth the manner and form of her compliance therewith.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION
v.
NATIONAL FURNITURE COMPANY.

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

Docket 765—March 13, 1922.

SYLLABUS.

Where a retail furniture dealer advertised "No extra charge for credit," notwithstanding the fact that it gave purchasers for cash a substantial discount from its marked or quoted prices; with a tendency and capacity thereby to cause the purchasing public to buy its goods on a credit basis in the mistaken belief that no better price would obtain for cash purchases:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the National Furniture 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 District of Columbia, with principal place of business at Washington, in said District.

PAR. 2. That respondent is engaged in the business of selling furniture and general house furnishing goods at retail, in the District of Columbia, 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, causes advertisements to be published in newspapers of general circulation, published in the District of Columbia, which advertisements contain certain deceptive and misleading statements of and concerning the terms of sale of goods sold by respondent; that among such deceptive and misleading statements is a statement that respondent makes "no extra charge for credit,"

whereas respondent gives and has given in all instances, to customers paying cash for goods, a substantial discount from the quoted or marked prices; that goods sold by respondent are quoted or marked at prices which are to prevail if such goods be sold on a credit basis, but with a substantial discount from such prices when goods are sold for cash.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, the National Furniture 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 by its attorney, and filed its answer herein, an agreed statement of facts was thereupon executed by counsel for both parties, and duly filed in this cause, said agreed statement of facts being in lieu of evidence, no testimony being taken or other evidence offered herein.

The respondent, by such agreed statement of facts, waived the presentation of argument and consented that the Commission should thereupon make and enter its report of findings as to the facts, and its order, disposing of this cause.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, National Furniture Company, is, and was, at and during all the times herein mentioned, a corporation organized and existing under and by virtue of the laws of the District of Columbia, having its office and principal place of business in the City of Washington, in said District, and that at and during all of the times herein mentioned the said respondent was engaged in the business of selling furniture and other merchandise at retail in the District of Columbia, in active competition with other persons, firms and corporations similarly engaged.

Order.

4 F. T. C.

PAR. 2. In conducting its business during the past year, the respondent has, from time to time, caused advertisements to be published in newspapers published and generally circulated in the District of Columbia, which advertisements have contained the following statement: "No extra charge for credit." In carrying on its said business it is the respondent's general business practice to cause all its goods to be quoted or marked at prices which are to prevail if such goods are sold on a credit basis. When goods so quoted or marked are sold for cash, the respondent causes a substantial discount therefrom to be given all cash customers.

PAR. 3 That the advertisement, "No extra charge for credit," under the conditions and circumstances set forth above, was false and misleading and had the tendency and capacity to cause the purchasing public to buy respondent's goods on a credit basis under the belief that no better price would obtain if said goods were purchased for cash.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and upon agreed statement of facts herein whereby it was duly stipulated and agreed that such statement of facts should be taken as the facts in this case, and the Commission on the date hereof having made and filed its report, findings of fact and conclusion that respondent has violated the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is referred to and made a part hereof, now therefore,

It is ordered, That the respondent, National Furniture Company, its officers, directors, agents, servants, and employees, cease and desist from inserting advertisements in newspapers, or by circulating in any manner the statement "No extra charge for credit" or any statement of similar import, unless in truth and in fact the respondent's prices to cash and credit customers are one and the same.

Memorandum.

It is further ordered, That the respondent within thirty (30) 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.

The Commission also made similar findings and order in the case of Julius Lansburgh Furniture Co., Inc. (of Washington, D. C., Dock. 766), decided March 13, 1922, in which the facts involved appear to have been identically or substantially identical with those in the preceding case.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

N. SHURE COMPANY.

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

Docket 809—March 13, 1922.

SYLLABUS.

Where a corporation engaged in the sale to retailers of razors packed in individual containers bearing the legend "EXTRA HOLLOW GROUND. Fully Warranted. Price \$3.00," sold the same so packed at approximately \$6.00 per dozen; the fact being that said marked price was not the price at which it was contemplated that they were to be sold to the ultimate purchasers, but was a false and fictitious price used to mislead purchasers into believing that said razors were reasonably worth the price so marked: *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 the N. Shure 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 Illinois, with its principal place of business in Chicago, in said State.

PAR. 2. That respondent is engaged in buying and selling, in wholesale quantities, jewelry, cutlery, notions, novelties, etc., 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.

PAR. 3. That respondent in the course of its business described in Paragraph Two hereof, places special orders with manufacturers for razors costing respondent approximately \$5.00 per dozen, upon the condition that the razors will be packed singly in boxes or con-

tainers upon which is printed "Extra Hollow Ground. Fully Warranted. Price \$3.00"; that upon delivery to respondent it resells said razors so boxed to the trade at approximately \$6.00 per dozen; that such indicated resale price so printed on said boxes is false and fictitious, and does not represent the true value of such razors, or the price at which it is calculated by respondent or the retail dealers through whom such razors are distributed, that such razors shall be resold in the usual course of retail trade; but such price mark is placed upon the containers for the purpose of creating in the minds of the purchasers at retail, the erroneous belief that such razors are of good quality and reasonably worth the price so printed on such containers; that the retail dealers through whom such razors are distributed, generally offer to sell and sell such razors to the public at a price substantially less than that printed on the containers, whereby the public is misled and deceived and induced to purchase such razors upon the mistaken belief that a razor of good quality is being sold at a greatly reduced price.

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, N. Shure 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, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Edward M. Averill, an Examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing upon the 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, N. Shure 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.

Order.

4 F. T. C.

PAR. 2. The respondent is engaged in the business of buying from manufacturers in wholesale quantities, cutlery, including razors, which it in turn sells to retailers, and in the course of its regular business buys and sells razors which said razors it causes to be transported to the purchasers thereof from the State of Illinois, through and into other States of the United States in interstate commerce and carries on such business in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. The respondent in the course of its business buys from manufacturers, razors costing respondent approximately \$5.00 per dozen, said razors being packed singly in boxes or containers upon which said containers is printed:

“EXTRA HOLLOW GROUND.

Fully Warranted.

Price \$3.00.”

and sells the said razors so boxed or put up in containers, to its trade at approximately \$6.00 per dozen. The price \$3.00 stamped upon the container of such razor was not the price at which, to the knowledge and intent of the respondent, the razor was to be sold to the ultimate purchaser, but is a false and fictitious price, placed upon the container for the purpose of creating in the mind of the purchaser at retail the erroneous belief that such razors are reasonably worth the price so printed on such containers.

PAR. 4. The respondent did not initiate the foregoing practice of marking up the supposed retail price of razors, it being a common custom in the razor business, and respondent followed the custom as it found it.

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 answer of the respondent, the testimony and evidence submitted, and the Commission having made its findings as to the facts with its conclusion that the

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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, N. Shure 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.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

IRVING STERN, IRVING KESTIN, S. W. SINGER AND
D. M. ROSENBERG, PARTNERS STYLING THEMSELVES
SINGER, STERN & CO.

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

Docket 811—March 13, 1922.

SYLLABUS.

Where a firm engaged in the sale of cutlery, novelties, etc., sold to retailers at prices ranging from \$4.25 to \$4.75 per dozen, and at \$2.25 per dozen, respectively, two styles of knives mounted upon display cards respectively bearing the legends "The Latest Bathing Girl Pocket Knife, Choice \$1.50" and "Gold Filled Knives, Warranted Steel Blades, \$.98, Regular Price \$2.00," the fact being that said marked prices did not represent the prices at which it was contemplated that they were to be sold to the ultimate purchasers, but were fictitious prices used to mislead such purchasers into believing that said knives were of good quality and reasonably worth the prices so marked:

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 Irving Stern, Irving Kestin, S. W. Singer and D. M. Rosenberg, partners styling themselves Singer, Stern & 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 that respect on information and belief as follows:

PARAGRAPH 1. That respondents constitute a partnership and carry on business in New York, N. Y., under the firm name and style of Singer, Stern & Co., and are engaged in the business of buying and selling in wholesale quantities, cutlery, novelties, specialties, etc., and cause commodities 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 principally to retail dealers, pocket knives, in wholesale quantities, which knives are attached to display cards, usually one dozen knives to a card, upon which cards are printed false and fictitious proposed resale prices; that in one line so sold by respondents, the knives are attached to cards upon which is printed "The Latest Bathing Girl Pocket Knife, Choice \$1.50"; in another line the knives are attached to cards upon which is printed, "Gold Filled Knives, Warranted Steel Blades, 98 cents, Regular Price \$2.00"; that such indicated prices of \$1.50 and \$2.00 respectively do not represent the true value of such knives, or the prices at which it is contemplated by respondent, or the retail dealers through whom such knives are distributed, such knives shall be re-sold in the usual course of retail trade; but such indicated prices are put upon the display cards for the purpose of creating in the minds of the purchasers at retail the erroneous belief that such knives are of good quality and reasonably worth the prices so printed on such cards; that the retailers dealers through whom such cards are distributed, generally offer to sell and sell such knives to the public at prices substantially less than those printed on the display cards, whereby the public is misled and deceived, and induced to purchase such knives upon the mistaken belief that knives of good quality are being sold at greatly reduced prices.

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, Irving Stern, Irving Kestin, S. W. Singer, and D. M. Rosenberg, partners styling themselves Singer, Stern & 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 and filed their answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Edward M. Averill, an Examiner of the Federal Trade Commission theretofore duly appointed.

Findings.

4 F. T. C.

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 respondents, Irving Stern, Irving Kestin, S. W. Singer and D. M. Rosenberg are partners trading under the name and style of Singer, Stern & Company, with principal office and place of business in the City of New York, State of New York.

PAR. 2. The respondents, Singer, Stern & Company, are engaged in the business of buying and selling in wholesale quantities cutlery, novelties, specialties, etc., and cause the commodities 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 in interstate commerce; and carry on such business in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. The respondents in the course of their business sold to retail dealers a certain class and style of knife mounted upon display cards, one dozen knives to each card, and upon said display cards there was printed "The Latest Bathing Girl Pocket Knife, Choice \$1.50," the figures \$1.50 referring to the price of each knife. These knives so marked, were sold and distributed by the respondents to their customers in interstate commerce at prices varying from \$4.25 to \$4.75 per dozen knives.

PAR. 4. The knives so sold and distributed by respondents were at no time of a value of \$1.50 each and said price did not represent the true value of the knife or the price at which it was contemplated by the respondents that the knife should be sold to the ultimate purchasers; the said price was placed upon the display card for the purpose of creating in the minds of the purchaser at retail the erroneous belief that said knives were of good quality and reasonably worth the price so printed upon said cards and said price of \$1.50 was a false, fictitious and misleading price.

PAR. 5. The respondents likewise in the course of their business sold to retail dealers another class or style of knife, mounted upon display cards, one dozen knives to each card, upon which said display card was printed "Gold Filled Knives, Warranted Steel Blades \$.98, Regular Price \$2.00," the figures \$.98 and \$2.00 referring to the price of each knife. These knives so mounted were sold by the respondents to their customers at \$2.25 per dozen knives.

PAR. 6. The knives so marked "\$.98, Regular Price \$2.00," were at no time of a value approximating \$2.00, the alleged regular price; no such price had been at any time established, nor was any such price ever contemplated as a price at which the knives could or were in-

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tended to be sold to the ultimate purchaser but was a fictitious, grossly exaggerated and misleading statement calculated and intended to deceive the purchasing public.

PAR. 7. The respondents handled only a small quantity of the two classes or styles of knives hereinbefore described, did not originate the practice of marking up the price, such practice was a common custom in the trade and respondents followed the custom as they found it.

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

It is now ordered, That the respondents, Irving Stern, Irving Kestin, S. W. Singer and D. M. Rosenberg, partners styling themselves Singer, Stern & Company, their agents, servants and employees do cease and desist from marketing in interstate commerce, knives bearing upon the cards to which said knives are attached, or upon any container in which the knives may be packed, any false, fictitious or misleading statement of or concerning the price of said knives, or any false, fictitious or misleading statement as to the value of said knives.

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

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

M. S. RODENBERG COMPANY.

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

Docket 813—March 13, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale, exclusively to jobbers or wholesalers, of jewelry, cutlery, etc., sold at prices ranging from \$3.75 to \$6.00 per dozen, a certain style of knife, mounted upon display cards bearing the legend "The latest Bathing Girl Pocket Knife, Choice \$1.50"; the fact being that said marked price did not represent the price at which it was contemplated they were to be sold to the ultimate purchasers, but was a fictitious price used for the purpose of misleading such purchasers into believing that said knives were of good quality and reasonably worth the price so marked:

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 the M. S. Rodenberg Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition 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 Rhode Island, with its principal place of business in the City of Providence, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling jewelry, cutlery, novelties, etc., including pocketknives, and causes commodities sold by it to be transported to the purchasers thereof from the State of Rhode Island 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, sells to jobbers and retail dealers pocket-

knives attached to display cards, usually one dozen knives to a card, upon which cards are printed false and fictitious proposed resale prices; that among the knives sold as aforesaid, are knives which are sold by respondent to jobbers or wholesalers at \$3.75 to \$4.00 per dozen, and which are resold by jobbers and wholesalers to retail dealers at \$4.75 per dozen; that upon the display cards to which such knives are attached are printed the words and figures following: "The Latest Bathing Girl Pocket Knife, Choice \$1.50"; that said price, \$1.50, does not represent the true value of such knives, or the price at which it is contemplated by respondent or the dealers through whom such knives are distributed, at which such knives shall be sold in the usual course of retail trade, but such indicated price is placed upon the display cards for the purpose of creating in the minds of the purchasers at retail the erroneous belief that such knives are of good quality and reasonably worth the price so printed on such cards; that the retail dealers through whom such knives are distributed generally offer to sell and sell such knives to the public, at prices substantially less than those printed on the display cards, whereby the public is misled and deceived and induced to purchase such knives upon the mistaken belief that a knife of good quality is being sold at a greatly reduced price.

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, M. S. Rodenberg Company, charging it with unfair methods of competition in violation of the provisions of said Act.

The respondent, M. S. Rodenberg Company, having entered its appearance and having filed its answer herein, hearings were had, testimony taken, and evidence introduced before Edward M. Averill, a Trial Examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing upon the testimony and evidence introduced and upon the exceptions to the report of the said Trial Examiner, and the Commission having duly

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4 F. T. C.

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, M. S. Rodenberg Company, is a corporation organized and existing under the laws of the State of Rhode Island with its principal place of business in the city of Providence in said State.

PAR. 2. The respondent is engaged in the business of manufacturing and selling jewelry, cutlery, novelties, etc., including pocket knives and causes such commodities sold by it to be transported to the purchasers thereof from the State of Rhode Island 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. The respondent, during the course of its business, does not sell to retailers or to the ultimate consumer or purchaser, but sells exclusively in quantities to the jobber or wholesaler. During the year 1919, the respondent as a novelty or fad manufactured and sold a certain style of knife which was mounted on painted display cards, one dozen knives to a card, the said card having thereon a female clad in a bathing suit and the following words and figures; to wit: "The Latest Bathing Girl Pocket Knife Choice \$1.50." These knives so mounted were sold and distributed by respondent in interstate commerce to its consumers at prices varying from \$3.75 to \$6.00 per dozen.

PAR. 4. The knives so manufactured, mounted upon cards, sold and distributed by the respondent, were at no time of a value of \$1.50 and such price did not represent the true value of such knives or the price at which it was contemplated by the respondent that the said knives should be sold to the ultimate purchaser; but such indicated price was placed upon the display card for the purpose of creating in the minds of the purchasers at retail the erroneous belief that such knives were of good quality and reasonably worth the price so printed upon such cards, and such price of \$1.50 was a false, fictitious and misleading price.

PAR. 5. The respondent sold during the years 1919-1920 approximately 120 cards, each card containing one dozen knives and realized from this branch of its business approximately \$550, and in December, 1920, the attention of respondent having been called to the fictitious and misleading statement as to the price, the respondent discontinued the sale of such knives so mounted and destroyed

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all cards bearing any price and has not since that time distributed any such merchandise containing any false, fictitious or misleading price.

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

It is now ordered, That the respondent, M. S. Rodenberg Company, a corporation organized and existing under the laws of the State of Rhode Island, its officers, directors, agents, servants and employees, do cease and desist from marketing in interstate commerce, knives bearing upon the cards to which said knives are attached or upon any container in which the knives may be packed, any false, fictitious or misleading statement of or concerning the price of said knives or any false, fictitious or misleading statement as to the value of said knives.

It is further ordered, That the respondent within sixty 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.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

D. A. FAZZANO, MICHAEL MIRANDO, AND FELIX MIRANDO, PARTNERS STYLING THEMSELVES THE IMPERIAL KNIFE CO.

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

Docket 814—March 13, 1922.

SYLLABUS.

Where a firm engaged in the manufacture and sale, exclusively to jobbers or wholesalers, of pocket knives, at prices ranging from \$21.00 to \$33.00 per gross, advertised and sold a certain style thereof mounted upon display cards bearing the legend "GOLD FILLED KNIVES—WARRANTED STEEL BLADES, \$.98," and in smaller letters "Regular Price \$2.00"; the fact being that said knives frequently retailed at \$.25, and that said purported "regular" price did not represent the price at which it was contemplated they were to be sold to the ultimate purchasers, but was a fictitious, exaggerated, and misleading price calculated and intended to deceive the purchasing public:

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 D. A. Fazzano, Michael Mirando and Felix Mirando, partners styling themselves the Imperial Knife 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 that respect on information and belief as follows:

PARAGRAPH 1. That respondents constitute a partnership and carry on business at Providence, R. I., under the firm name and style of the Imperial Knife Company, and are engaged in the business of manufacturing and selling pocket knives, and cause knives sold by them to be transported to the purchasers thereof from the State of Rhode Island 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 described in paragraph one hereof, sell to jobbers, at \$21.00 per gross, small brass pocket knives attached to display cards, usually one dozen knives to a card, upon which cards are printed false and fictitious proposed resale prices, together with other false and misleading descriptive matter, viz: "Gold Filled Knives, Warranted Steel Blades, 98¢, Regular price \$2.00"; that other knives of like quality, sold by respondent at \$21.00 per gross, are placed upon display cards upon which is printed similar false and misleading descriptive matter, with indicated prices of 48¢, 65¢, \$1.75, \$1.98 and \$2.25, respectively, together with the statement that the regular prices of such knives were, respectively, \$2.00, \$2.50, \$4.00 and \$4.50; that neither the indicated proposed resale prices of such knives, nor the alleged regular prices of such knives, represent the true value of such knives, or the prices at which it is contemplated by respondents, or the dealers through whom such knives are distributed, that such knives shall be sold in the usual course of retail trade, but such prices are placed upon the display cards for the purpose of creating in the minds of the purchasers at retail the erroneous belief that such knives are of good quality and reasonably worth the prices so printed on such cards; that the retail dealers through whom such knives are distributed generally offer to sell and sell such knives to the public at prices substantially less than those printed on such display cards, whereby the public is misled and deceived and induced to purchase such knives through a mistaken belief that knives of good quality are being sold at greatly reduced prices.

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, D. A. Fazzano, Michael Mirando, and Felix Mirando, partners styling themselves The Imperial Knife Company, charging them with 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 answers herein, hearings were had and evidence

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was thereupon introduced in support of the allegations of said complaint and on behalf of the respondents before Edward M. Averill, a Trial 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 respondents, D. A. Fazzano, Michael Mirando and Felix Mirando are partners trading under the name and style of The Imperial Knife Company, with factory and principal place of business in Providence, State of Rhode Island, and are engaged in the business of manufacturing and selling pocket knives, and cause pocket knives so manufactured and sold by them to be transported to the purchasers thereof from the State of Rhode Island through and to other States of the United States in interstate commerce; and carry on such business in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The respondents in the course of their regular business do not sell their products at retail or to the ultimate consumers or purchasers of the knives, but sell exclusively in quantities to the jobber or wholesaler. About November, 1918, the respondents started to manufacture a particular class or style of knife which said knife was at first packed in bulk by the dozen and no price was indicated upon the container in which the knives were packed, but later customers of the respondents requested said respondents to put up the knives on display cards, each card containing one dozen knives, the said display card bearing the following words and figures: "GOLD FILLED KNIVES—WARRANTED STEEL BLADES 98¢," and in smaller letters "Regular Price, \$2.00." The figures 98¢ and \$2.00 referred to the price per knife. The respondents also sold to their customers similar knives mounted upon similar cards bearing different and higher prices, a small proportion of such cards bearing the legend "\$2.25, Regular Price \$4.50" and during the year 1920 respondents sold 7,500 gross of knives so mounted of which total sales 90 per cent were marked "98¢ Regular Price \$2.00" and 10 per cent were marked with various higher prices.

PAR. 3. The respondents also advertised by catalogues sent out through the mail and distributed in various cities of the United States, and by insertions in the trade journals circulated in various States of the United States, the class and style of knives aforesaid,

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said catalogues and trade journals carrying [a] fac-simile of the mounted card described in paragraph two hereof.

PAR. 4. The respondents have since 1918, in the usual course of their business, sold the said knives so mounted on display cards as hereinbefore described, the price varying with the market and competitive conditions from \$33.00 to \$21.00 per gross.

PAR. 5. The knives so manufactured, advertised, mounted upon display cards and sold, were at no time of a value anywhere approaching \$2.00, the alleged regular price, no such price having at any time been established, nor was any such price ever contemplated as a price at which the knife could or was intended to be sold to the ultimate purchaser; but was a fictitious, grossly exaggerated, and misleading statement, calculated and intended to deceive the purchasing public, and in truth and in fact the said knives were generally and customarily sold to the ultimate purchaser at prices greatly below even the 98¢ marked upon said card, in many instances being sold for 25¢.

PAR. 6. The respondents did not originate the practice hereinbefore described. The practice was a common custom in the trade and respondents followed the custom as they found it.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the testimony and evidence, 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, D. A. Fazzano, Michael Mirando, and Felix Mirando, partners styling themselves The Imperial Knife Company, their agents, servants and employees cease

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and desist from marketing in interstate commerce, knives bearing upon the cards to which said knives are attached or upon any container in which the knives may be packed, any false, fictitious or misleading statement of or concerning the price of said knives, or any false, fictitious or misleading statement as to the value of said knives.

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

Complaint.

FEDERAL TRADE COMMISSION

v.

THE BRACHER COMPANY, INC.

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

Docket 816—March 13, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of razor hones packed in individual containers bearing the legends "Standard Razor Hone Price \$1.00," "Iris Razor Hone Price \$1.00," or "The Dixie Razor Hone Price \$1.00," sold the same so packed at prices ranging from \$18.00 per thousand to \$40.00 per thousand, the fact being that said marked price did not represent the actual or contemplated retail price of said hones; with the effect of misleading retailers and the purchasing public into believing that said hones were of good quality and reasonably worth the price so marked:

Held, That such mislabelling 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 The Bracher Company, Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in 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 Jersey, with its principal place of business in the City of Belleville, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling razor hones, oil stones and similar specialties, and causes products sold by it to be transported to the purchasers thereof from the State of New Jersey 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, sells to jobbers and retail dealers, razor hones at \$18.00 per thousand, which hones are packed singly in con-

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tainers, upon which containers is printed a false and fictitious proposed resale price; that said price, \$1.00, does not represent the true value of such hones, or the price at which it is contemplated by the respondent, or the dealers through whom such hones shall be distributed, such hones shall be sold in the usual course of retail trade; but such indicated price is placed upon the containers of such hones for the purpose of creating in the minds of the purchasers at retail, the erroneous belief that such hones are of good quality, and reasonably worth the price so printed on such containers; that the retail dealers through whom such hones are distributed, generally offer to sell and sell such hones to the public at prices substantially less than those printed on such containers; whereby the public is misled and deceived, and induced to purchase such hones on the mistaken belief that a hone of good quality is being sold at a greatly reduced price.

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, The Bracher Company, Inc., charging said respondent with the use of unfair methods of competition in violation of the provisions of the said Act.

The respondent, The Bracher Company, Inc., having entered its appearance and having filed its answer herein, hearings were had, testimony taken, and evidence introduced before Edward M. Averill, a Trial Examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing upon the 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 Bracher Co., Inc., is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Belleville in said State.

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PAR. 2. The respondent is engaged in the business of manufacturing and selling razor hones and similar specialties and causes the products sold by it to be transported to the purchasers thereof from the State of New Jersey through and into other States of the United States in interstate commerce and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. The respondent in the course of its business manufactures and sells to jobbers razor hones, which said razor hones are packed singly in cases upon which containers are printed a proposed retail price the words and figures upon said containers being: "Standard Razor Hone, Price \$1.00"; "Iris Razor Hone, Price \$1.00"; "The Dixie Razor Hone, Price \$1.00." These hones so packed with the containers so marked were sold by the respondent to jobbers during the following years at the following prices: For the year 1914, \$18.00 per thousand; 1916, \$20.00 per thousand; 1917, \$22.50 per thousand; 1918, \$25.00 per thousand; and 1919, \$35.00 and \$40.00 per thousand, and are sold by the jobbers to the retailers at an advance of approximately \$5.00 per thousand and are sold to the ultimate purchaser at retail at prices substantially less than the proposed retail price of \$1.00 printed upon the containers.

PAR. 4. The price of \$1.00 so printed upon the container does not represent the true value of the hone, but such price is false and fictitious and which said price has a tendency to create and has created in the minds of purchasers and retailers the erroneous belief that such hones are of good quality and reasonably worth the price so printed on such containers, whereby the purchasing public is misled and deceived, but said prices so marked upon the containers were not the prices at which, to the knowledge and intent of the respondent, the said hones were to be sold to the ultimate purchaser.

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 answer of the re-

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

It is now ordered, That the respondent, The Bracher Company, Inc., a corporation organized and existing under the laws of the State of New Jersey, its officers, directors, agents, servants and employees, do cease and desist from marketing in interstate commerce razor hones bearing upon the containers in which said hones are packed any false, fictitious or misleading statement of or concerning the price of said hones, or any false, fictitious or misleading statement as to the value of said hones.

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 by the Commission.

Complaint.

FEDERAL TRADE COMMISSION

v.

SOUTH BEND BAIT COMPANY.

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

Docket 729—March 14, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale at fixed uniform list prices, of fishing tackle, artificial bait and other like products of uniform grade or quality, and doing a very substantial part of all such business in the United States, did not consistently extend to purchasers discounts based upon quantity, difference in cost of selling, transportation, or selection of customers in bona fide transactions and not in restraint of trade, but in accordance with certain standards or definitions adopted by it, divided purchasers into four classes which it respectively called jobbers, wholesalers, retailers, and consumers, and varied its discounts accordingly; with the result that discriminations in price between purchasers of its products were brought about, distributor purchasers were favored and consumer purchasers were compelled to pay list prices regardless of the source from which they purchased, and a substantial subsequent lessening of competition in the sale of such products thereby became possible:

Held, That such practices, under the conditions and circumstances set forth, constituted unfair methods 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.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the South Bend Bait 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 under the laws of the State of Indiana, with principal place of business at South Bend, in said State.

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PAR. 2. That respondent is engaged in the business of manufacturing and selling fishing tackle, artificial bait, etc., and causes said commodities to be transported to the purchasers thereof from the State of Indiana through and into other States of the United States, in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That the respondent in the course of its business, as described in Paragraph Two hereof, has adopted and put into effect a plan for the allowance of trade discounts in the marketing of its products. That in the furtherance of its said plan it has classified its actual and prospective customers into groups according to a basis of selection adopted by it, that to such of its customers as may come within the classification of one of said groups, respondent allows certain trade discounts, to-wit, 33½ per cent; that to such of its customers as may come within the classification of another of said groups, respondent allows greater trade discounts, to-wit, 40 per cent; that to such of its customers as may come within still another of said groups, respondent allows still higher trade discounts, to-wit, 50 per cent, wholly irrespective of the quantity purchased by a customer in any one of said groups, and respondent thereby makes discriminations in price between its customers.

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.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the South Bend Bait Company, hereinafter referred to as respondent, has been and is violating the provisions of Section 2 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," 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 One, Two and Three of Count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraphs are incorporated herein by reference and adopted as a part of the allegations of this Count.

Findings.

PAR. 2. That the use of the plan by respondent as described in Paragraph Three of Count I hereof, has a dangerous tendency unduly to hinder competition in the interstate sale of fishing tackle, artificial bait, etc., and has tended to create for respondent a monopoly in the line of commerce engaged in by it, as described in Paragraph Two of Count I hereof, contrary to the intent and meaning 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 respondent, South Bend Bait Company, 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 2 of said Act of Congress approved October 15, 1914.

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 John W. Bennett, 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 respondent, South Bend Bait Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located in the city of South Bend, in said State.

PAR. 2. That respondent is now and for more than three years last past has been engaged in the business of manufacturing and selling fishing tackle, artificial bait and other like products, and causing said articles or commodities to be transported to purchasers thereof from

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the State of Indiana through and into various other States of the United States, the Territories thereof, the District of Columbia and foreign countries, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That the quantity of fishing tackle, artificial bait and similar products sold and distributed as aforesaid is substantial and the same forms an important item of commerce among the several States and Territories of the United States and the District of Columbia. That the total net sales of such fishing tackle and artificial bait in the United States by all manufacturers is approximately \$7,950,000 net per annum, or about one-third of the volume of all "sporting goods" manufactured and sold within the United States. That the respondent sells from 5 to 8 per cent of all such fishing tackle, artificial bait and similar products sold within the United States.

PAR. 4. That during the three years last past the respondent, South Bend Bait Co., in the course of its said business has put into effect a plan for the allowance of trade discounts and the making of prices to purchasers in the marketing of its said products, substantially as follows, to wit: That respondent has classified its customers into four classes, namely, "jobbers," "wholesalers," "dealers" or "retailers" and "consumers"; that respondent sells its said products to "consumers" at fixed or list prices named in catalogues, circulars and other advertising matter issued by respondent and in some cases marked upon the article offered for sale; that respondent sells its said products to purchasers who are "retailers," by it so classified and designated, at a discount of 33½ per cent off said list prices named in said catalogues, circulars, etc., provided that if said "retailers" or "dealers" purchase \$300.00 worth net, or more, of said products at a single purchase, said "retailers" or "dealers" so buying are given a discount of 40 per cent off said list prices so named in catalogues, etc.; that respondent sells its said products to purchasers who are "wholesalers" by it so classified and designated, at a discount of 40 per cent off said list prices so named in said catalogues, regardless of the amount purchased; that respondent sells its said products to purchasers who are "jobbers" by it so classified and designated, at a discount of 50 per cent off said list prices so named in said catalogues, regardless of the amount purchased; that respondent suggests to retailers that they shall sell such products to "consumers" at prices identical with list prices so named in said catalogues, etc.; that respondent suggests to "wholesalers" and "jobbers" that they shall sell to "retailers" at a discount of 33½ off list prices so named in said catalogues, etc.; that respondent insists on the maintenance by "jobbers," "wholesalers" and "retailers" and

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Findings.

"dealers" of such suggested resale prices to the extent of, in one instance, cutting off the supplies of one dealer who failed to maintain said list prices to consumers; that in exceptional cases other and different discounts are given in the sale of its products by respondent to purchasers who are "jobbers," "wholesalers" and "dealers" or "retailers" by it so classified and designated; that respondent in making said classification defines "jobbers" as follows: "that they must be a recognized jobber—meaning that they travel salesmen, issue a catalogue, and conduct a jobbing business, that is, calling on and selling to the retail trade and not doing a retail business"; that respondent in making said classification defines "wholesalers" as "customers doing a combination retail and jobbing business"; that respondent in making said classification defines "retailer" or "dealer" as "a customer who maintains a store, carries stock and sells fishing tackle to the consumer"; that respondent in the making of said classification defines "consumer" as "the user; he is the party who buys the tackle to fish with."

PAR. 5. That sales of said products made by respondent to single or individual customers who are "jobbers" as above classified and designated, for a period of twelve months ending in July, 1921, varied in volume from \$15.92 net, to \$12,351.39 net, and that many sales by respondent to purchasers who were "jobbers" in said period were in volume less than \$300.00 net; that sales of said products made by respondent to single or individual purchasers who were "wholesalers" as above classified or designated by it for a period of twelve months ending July, 1921, varied in volume from \$10.80 to \$635.79 net, and that respondent made many sales to said class of "wholesalers" in said period less in volume than \$300.00 net, and respondent made several sales larger in volume than \$300.00 net; that sales of said products made by said respondent to single or individual purchasers who were "retailers" or "dealers," as by it above classified and designated, varied in volume from 55 cents or less net, to \$312.27 net and that several sales made by respondent in said period to said class of "retailers" or "dealers" were greater in volume than \$300.00 net, while the great bulk of said sales to said "dealers" or "retailers" were less than \$300.00 net in volume during said period; that the average purchase from respondent by purchasers who were "jobbers" by it so designated and classified was \$1,460.00; that the average purchase from respondent by purchasers who were "wholesalers" by it so classified and designated was \$410.00; that the average purchase from respondent by "dealers" or "retailers" by it so classified or designated was \$57.00; that the total volume of sales of said products by said respondent to all purchasers for the eight months ending May

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31, 1921, were \$427,568.00 net, of which \$9,363.00 net or 2.2 per cent of the whole were made to purchasers who were "consumers" as above classified or designated; \$65,888.00 or 15.4 per cent of the whole to "dealers" or "retailers" as above classified or designated; \$50,499.00 or 18.8 per cent of the whole to purchasers who were "wholesalers" as above classified or designated; and \$301,865.00 net or 70.6 per cent of the whole to purchasers who were "jobbers" as above classified or designated by it; that the said business of said respondent has been and is rapidly expanding in volume of sales; that the total volume of net sales for the year ending September 30, 1912, the first year of its business career, amounted to \$10,546.00; that for the year ending September 30, 1920, the total volume of business had increased to \$399,879.00 net; that for the eight months ending May 31, 1921, the volume of respondent's business totaled \$427,568.00.

PAR. 6. That said plan of trade discounts made and applied by respondent in the sale of its products, as described herein, are discriminations in price between purchasers of respondent's products for use, consumption and resale within the United States; that the tendency and effect of said plan of discounts so made and applied by respondent is to make discriminating prices to purchasers who are distributors, and to compel purchasers who are consumers to pay a fixed or list price for said products of respondent from whatever source said consumers may purchase; that the effect of such discrimination in price by respondent between distributors of its said products may be to substantially lessen competition in the sale of fishing tackle, artificial bait and like products in the sale of such products in interstate commerce.

PAR. 7. That said plan of trade discounts made and applied by respondent in the sale of its said products as described herein, and the resulting discrimination in prices between purchasers, was and is not a discrimination in price between purchasers of said products that made only due allowance for cost of selling or transportation; that cost to respondent of selling and transporting its said products to some purchasers by it so classified and designated as "retailers" or "dealers" has been a less percentage of the selling price of said products than the cost to respondent of selling its said products to some "jobbers" or to some "wholesalers" by it so designated, such latter cost being reckoned also as a percentage of the selling price.

PAR. 8. That said plan of trade discounts made and applied by respondent in the sale of its said products described herein and the resulting discrimination in prices between purchasers was and is not a discrimination in price between purchasers of said products because of difference in quantities of said products sold to said purchasers;

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that some purchasers designated and classified as "dealers" or "retailers" and allowed by respondent a trade discount of 33 $\frac{1}{3}$ per cent off said prices made by respondent in its catalogues, etc., actually have purchased at a single purchase or for a fixed period, greater quantities of the said products of said respondent than did some purchasers, by respondent designated as "jobbers," at a single purchase or for a similar fixed period, but said "jobbers" were allowed by respondent trade discounts of 50 per cent off said lists.

PAR. 9. That said plan of trade discounts made and applied by respondent in the sale of its said products as described herein, and the resulting discrimination in prices between purchasers was not a discrimination because of differences in grade or quality, that said respondent sells but one grade or quality of said products; nor a discrimination in price in good faith to meet competition; nor a selection of customers in bona fide transactions and not in restraint of trade.

CONCLUSIONS.

1. That the practices of said respondent as hereinbefore set forth and recited, in the circumstances and under the conditions as hereinbefore set forth, 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."

2. That the practices of said respondent as hereinbefore set forth and recited, in the circumstances and under the conditions as hereinbefore set forth, are in violation of 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."

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, testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of the Act of Congress approved October 15, 1914, entitled "An Act to supple-

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ment existing laws against unlawful restraints and monopolies, and for other purposes,"

It is now ordered, That the respondent, South Bend Bait 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 "jobbers," "wholesalers," "retailers" or "consumers" or any similar classification which relates to the customers' business policy, business methods, or to the customers' manner of doing business, in any transaction in, or directly affecting interstate commerce, in the distribution of its products:

Provided, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition; and

It is further ordered, That the respondent, South Bend Bait 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 catalogues, advertisements and other printed matter in which are set forth plans of trade discounts or the making of prices to purchasers of the products of said respondent.

Complaint.

FEDERAL TRADE COMMISSION

v.

CLARA L. DOLL, DOING BUSINESS UNDER THE TRADE
NAME OF BURHAM SAFETY RAZOR COMPANY.

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

Docket 755—March 14, 1922.

SYLLABUS.

Where a dealer in safety razors sold same to the consuming public at from 20 cents to 30 cents each (which was approximately a fair value therefor), in individual containers bearing legends falsely indicating that the razor therein contained usually retailed at, and was worth, \$2.00 or \$2.50, and \$3.00 or \$3.50, respectively; with the effect of misleading purchasers into believing that said figures represented the usual retail price of such razors:

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 Clara L. Doll, doing business under the trade name of Burham Safety Razor 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 respondent, Clara L. Doll, doing business under the trade name of Burham Safety Razor Company, with her principal place of business at New York, State of New York, is engaged in the business of assembling safety razors and selling the same in or with individual boxes or containers therefor, in the State of New York, and in other States of the United States, and of causing such safety razors, and the boxes or containers so sold to be transported to the purchasers thereof from the State of New York through and into other States of the United States, and in the conduct of such business is in competition with other individuals, copartnerships and corporations similarly engaged.

Findings.

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PAR. 2. That respondent, in the course of her business as described in paragraph 1 hereof, sells at from twenty cents to sixty-six and two-thirds cents apiece safety razors packed in individual boxes or containers; that such individual boxes or containers containing safety razors are stamped, marked, or branded so as to indicate that the price of the articles is \$2.00 or \$2.50, or \$3.00 or \$3.50; that these prices, stamped, marked or branded on such individual boxes or containers containing safety razors, do not indicate the true value nor actual retail price of said articles; that said prices, thus indicated on said boxes or containers, are fictitious, misleading, and excessive, and are calculated to, and actually do, mislead and deceive the public as to the grade or quality of safety razors contained in said boxes or containers.

PAR. 3. That by reason of the facts set out in the foregoing paragraphs of this complaint, the respondent has been 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, Clara L. Doll, doing business under the trade name of Burham Safety Razor Company, charging the respondent with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered her appearance and filed her answer herein, and having stipulated and agreed that a statement of facts signed and executed by the respondent and Adrien F. Busick, Acting Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, are the facts in this proceeding and shall be taken by the Federal Trade Commission as such and in lieu of testimony, and that the said Federal Trade Commission shall forthwith proceed upon said agreed statement of facts and the answer herein to make and enter its findings as to the facts, its conclusion and order disposing of this proceeding, without the introduction of testimony, the respondent waiving any and all rights she may have to the introduction of same.

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, Clara L. Doll, doing business under the trade name of Burham Safety Razor Company, has been and now is conducting her said business in the City of New York and State of New York; that S. J. Johnson is and was manager of the said business for the said Clara L. Doll and that said business consists of assembling safety razors, packing them singly in boxes or containers therefor, and selling and causing such safety razors and the boxes or containers in which they are packed, to be transported to purchasers thereof from the City of New York, in the State of New York, through and into other States of the United States, and the District of Columbia, and in the conduct of such business the said respondent is in competition with other individuals, copartnerships and corporations similarly engaged.

PAR. 2. That respondent assembles and sells safety razors packed singly in boxes or containers which are sold to the public at prices ranging from twenty cents (20¢) to thirty cents (30¢) each; that during the months of July, August, and September, 1920, the said respondent was engaged in interstate commerce as hereinbefore set forth, and while engaged in such commerce, packed, sold and transported some of the safety razors so packed and sold by her in boxes which had stamped, marked or printed thereon price marks which indicated that the razors contained therein were worth \$2.00 or \$2.50 and \$3.00 or \$3.50.

PAR. 3. That not all of the safety razors which were sold by respondent during the months of July, August and September, 1920, were sold in boxes or containers with such fictitious prices marked thereon but only a small portion so sold by the respondent was so marked; that such containers so marked do not represent the value of the safety razors contained therein, but such prices marked on said containers were false and fictitious prices, nor were the prices marked thereon the usual or actual retail prices at which such safety razors were sold.

PAR. 4. That the fictitious and misleading prices marked on the containers in which razors were packed and so sold in interstate commerce were calculated to deceive and mislead and did actually mislead and deceive the public as to the grade and quality, or the true value of the razors contained therein, and did actually cause the purchasing public to be mislead and deceived and to believe that the safety razors contained in such boxes or containers were worth the prices printed on such containers or a sum approximating such prices,

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but such razors were really sold for from twenty cents (20¢) to thirty cents (30¢) each, which is approximately a fair and reasonable value for them.

PAR. 5. That the respondent did not make a universal practice of using containers with false and fictitious prices marked thereon but did during the time hereinafter [before] set forth use and introduce into interstate commerce boxes and containers which were purchased as a job lot of boxes that were originally made for the Young Safety Razor Company, of Philadelphia, which had discontinued business, and that said respondent also purchased another job lot of razor boxes from a party who had discontinued business on which were already printed prices; that this supply of these razor boxes having thereupon prices that were far in excess of any reasonable prices for the razors contained therein had become nearly exhausted prior to the time of the filing of the complaint herein; that on such containers as remained respondent immediately thereafter, upon notification from an agent of the Commission, obliterated the said marks or relabeled them with plain, unlettered labels.

PAR. 6. That with the exceptions of the instances set forth in paragraph 5 herein, where two job lots of boxes or containers were purchased from firms which had discontinued business and on which boxes were already printed such false and fictitious prices, the respondent has never used boxes or containers having printed thereon any false, fictitious or misleading prices.

CONCLUSION.

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

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Order.

It is now ordered, That the respondent, Clara L. Doll, doing business under the trade name of Burham Safety Razor Company, her manager, agents 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 the same.

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

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION
v.
GENEVA CUTLERY CORPORATION.

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

Docket 772—March 14, 1922.

SYLLABUS.

Where a corporation competitively engaged in the manufacture and sale to wholesalers of razors packed in individual containers, at the request of its customer dealers conspicuously marked upon the containers of razors sold by it at prices ranging from 39 cents to \$1.25 each, the legend "Price \$3.00 to \$3.50," "Price \$4.00" or "Price \$5.00," respectively; knowing that said marked prices were substantially in excess of those at which such razors were intended to be sold to the ultimate purchasers by retailers and mail order houses; thereby enabling and assisting the latter, by selling at less than the figure indicated, to mislead and deceive the public into believing that it was obtaining the razors at a greatly reduced price:

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 the Geneva Cutlery Corporation, 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 New York, with its principal place of business in Geneva, in said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling razors, and causes razors 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, the territories thereof, the District of Columbia and foreign countries, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That the respondent in the course of its business described in Paragraph Two hereof, sells at wholesale razors manufactured by it packed singly in cases upon which it conspicuously prints false, fictitious and misleading price marks, well knowing that the prices so marked are not the prices at which its customers, the retailers and mail order houses sell or expect to sell said razors at retail and well knowing that such prices do not represent the true value or the actual or usual retail prices of said razors but that said false, fictitious and misleading price marks are used for the purpose of deceiving the public, who purchase such razors in said cases at retail for personal use, into the belief that they are obtaining, at a greatly reduced price, a razor which ordinarily sells for a much higher price; that among other false, fictitious and misleading prices so marked by the respondent on its razor cases are the following: Razors which it sells at wholesale at from 39¢ to 46¢ are marked by the respondent "Price \$3.50"; razors which it sells at wholesale for about 50¢ are marked by it "Price \$4"; and razors which it sells at wholesale from \$1 to \$1.25 are marked by it "Price \$5"; that the respondent well knows that the said razors are to be offered for resale at prices much less than those printed on the case and that said price marks are to be used to deceive purchasers; that in selling razors so marked the respondent comes in direct competition with other razor manufacturers who do not mark their razors with such false, fictitious and misleading prices, and the said respondent by the means aforesaid aids, abets and assists retailers and mail order houses engaged in interstate commerce to whom it sells such razors so marked, to use unfair methods of competition against others similarly engaged but who do not sell razors marked with false, fictitious and misleading price marks.

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, Geneva Cutlery 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 and evidence was there-

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upon introduced in support of the allegations of said complaint and on behalf of the respondent before Warren R. Choate, a Trial 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. That the respondent is a corporation organized and existing under the laws of the State of New York, with its principal place of business in Geneva, in said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling razors, and causes the razors 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, territories thereof, and the District of Columbia and foreign countries, and carries on such business in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That the respondent in the course of its business sells in wholesale quantities to wholesalers, razors manufactured by it, packed singly in cases or containers upon which it conspicuously prints false and misleading price marks, knowing that the prices so marked are not the prices at which the razors will be sold to the ultimate purchasers.

PAR. 4. That the respondent marks prices on the containers only on special orders from its customers and in these cases respondent's name does not appear upon the razor or its container nor is any contract or agreement made fixing a resale price. That razors which it sells at wholesale at from 39 cents to 46 cents apiece are marked by respondent on the container "Price \$3.00 to \$3.50"; that razors which it sells at wholesale for about 50 cents apiece are marked by it "Price \$4.00"; those sold for from \$1.00 to \$1.25 apiece are marked "Price \$5.00"; that the retailer and mail order houses in selling razors marked as above described, sell them for sums materially less than the price marked on the container, and the respondent knows, at the time that it prints such prices on such containers, that the retailer will sell such razors at such less prices and the respondent by so doing puts it in the power of, and assists the retailer and mail order house to mislead and deceive the public.

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PAR. 5. That razors so marked with such false and misleading prices come into direct competition in interstate commerce with razors which are not so marked; that the respondent did not originate this practice of printing false and fictitious proposed retail prices on the razor containers, but followed the custom which has grown up in the razor trade of marking razors with false and fictitious prices, as aforesaid, at the request of dealers, in order that the misleading prices marked upon the razors may be undercut by the retailer and the razor still sold at a substantial profit, and yet at a price materially less than that [with] which it is marked, thereby misleading and deceiving the public into believing that it is obtaining, for a much less price, a razor worth at least the price marked on the boxes or containers.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provision of an Act of 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 Geneva Cutlery Corporation, its officers, directors, agents, servants and employees, 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 the respondent within sixty 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.

Memorandum.

4 F. T. C. .

The Commission also made similar findings and order in the case of The J. R. Torrey Razor Company (of Worcester, Mass., Dock. 773), decided March 14, 1922, in which the facts involved appear to have been identical, or substantially identical, with those in the preceding case.

Complaint.

FEDERAL TRADE COMMISSION

v.

HARRY ROSE, TRADING UNDER THE NAME AND STYLE
OF SHEFFIELD RAZOR COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 803—March 14, 1922.

SYLLABUS.

Where razors and other cutlery of fine quality had long been made in Sheffield, England, and the word "Sheffield" when applied to such articles had come to mean to the trade and purchasing public articles of high grade and fine quality there made; and thereafter an individual engaged at Norfolk, Va., in the sale by mail of razors purchased by him from domestic merchants exclusively, with the tendency and effect of misleading the purchasing public,

- (a) Adopted and used as a trade name the name Sheffield Razor Company;
- (b) Falsely advertised his concern as "importers and jobbers"; and
- (c) Advertised that he sold a \$5.00 razor for \$1.15 and that purchasers of him at said greatly reduced price saved the middleman's profit, the fact being that said razors, regardless of any middleman's profit, were worth not to exceed the amount asked:

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 Harry Rose, trading under the name and style of Sheffield Razor 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 respondent carries on business at Norfolk, Virginia, under the name and style of Sheffield Razor Company and is engaged in the business of selling razors and causes razors sold by him to be transported to the purchasers thereof from the State of Virginia through and into other States of the United States; and in carrying on such business, respondent has been in

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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, makes use of advertising matter which he gives general circulation in various States of the United States, in which advertising matter he describes the Sheffield Razor Company as "importers and jobbers," whereas the respondent imports no razors, but sells only an inferior grade of razors made in the United States, and does not do a jobbing business, but only conducts a mail order business in which razors are sold to the consuming public; that the representation in such advertising matter to the effect that the Sheffield Razor Company are importers and jobbers is false and misleading and is calculated to and does mislead and deceive the purchasing public.

PAR. 3. That respondent makes the further statement in the advertising matter described in paragraph 2 hereof that he sells a \$5.00 razor for \$1.15, and that purchasers of such razors from respondent save the middleman's profit, whereas such razors are of inferior quality and are not worth to exceed the prices received for same by respondent in due course of retail trade, and the purchasers of said razors do not save the middleman's profit, for respondent is the middleman in the distribution of such razors and makes an excessive profit on razors so sold by him; that the representations in such advertising matter to the effect that respondent sells a \$5.00 razor for \$1.15, and the purchasers save the middleman's profit are false and misleading, and are calculated to and do mislead and deceive the purchasing public.

PAR. 4. That the use by respondent of the name Sheffield Razor Company, in the business conducted by him as described in paragraph 1 hereof, is calculated to and does mislead and deceive the purchasing public, for the reason that razors of high quality have been manufactured in Sheffield, England, for a long period of time, and the word "Sheffield," when used in connection with razors, has come to be understood by the purchasing public as indicating that such razors are made in Sheffield, England, and are of good quality, and the use of such name by respondent as aforesaid is calculated to and does enable him to pass off an inferior grade of razors as and for razors of good quality made in Sheffield, England.

PAR. 5. That the statements so made by the respondent in respect to its business and the price and nature of the product advertised for sale and sold by it, as set forth in paragraphs 2, 3 and 4 herein, are false and misleading and were, at the time that they were made, known to respondent to be false and misleading, and that they were

made for the purpose of deceiving the purchasing public; that such statements were of a nature calculated to deceive and their natural and probable result was the deception of the purchasing public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Harry Rose, trading under the name and style of Sheffield Razor Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having failed to file an answer herein and having entered his appearance in person, and having stipulated and agreed that the statement of facts signed and executed by the respondent and counsel for the Commission, subject to the approval of the Commission, shall be taken by the Federal Trade Commission as the evidence in this case and in lieu of testimony, and that the said Federal Trade Commission shall thereupon make its report stating its findings as to the facts and its conclusion and make its order, disposing of this proceeding without the introduction of testimony, the filing of briefs or the presentation of oral argument.

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, Harry Rose, trading as the Sheffield Razor Company, is an individual residing and having his place of business at and in the city of Norfolk, State of Virginia, and engaged in the business of selling razors, in interstate commerce, and shipping them to purchasers throughout the various States of the United States and the District of Columbia, in direct and active competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. That respondent made use of advertising matter which he caused to be circulated throughout the various States of the United States, in which advertising matter respondent held out and described his said company as "importers and jobbers"; whereas the

Conclusion.

4 F. T. C.

said company in fact was not a jobber and was not an importer, but was and is engaged altogether in domestic business, purchasing its said razors from American merchants; that respondent's manner of selling is carried on through what is known as the mail order system, selling and shipping his razors as a result of extensive advertising, to purchasers throughout the various States of the United States by mail and by express from his place of business in the city of Norfolk, Virginia, on orders received by him from the said purchasers through the mails and otherwise.

PAR. 3. That respondent advertises by circulars and by other means that he sells a \$5.00 razor for \$1.15 and that purchasers of his said razors at the apparently greatly reduced price save the so-called middleman's profit; whereas, in truth, regardless of any middleman's profits respondent's razors are not worth over said amount; that respondent is not a manufacturer and does not make his said razors but is a merchant and sells razors as such on orders received by him through the United States mail, to purchasers throughout the country from his said place of business in the said city of Norfolk, State of Virginia.

PAR. 4. That the word "Sheffield" is the name of a city in England where for many years a very high grade and fine quality of razors and other cutlery have been, and are now, manufactured, and said name of "Sheffield" has become associated with a high grade and fine quality of razors and cutlery, and where the word "Sheffield" is used in connection with razors or other cutlery it is generally accepted in the trade and by the purchasing public as indicating that such razors are made in Sheffield, England, and represent the quality of the goods manufactured in said city; that the respondent has no place of business in Sheffield, England, nor any place in any other country by that name, and does not purchase the razors he sells from Sheffield, England, nor the steel from which they are made from any place by such name; that the word "Sheffield" used in respondent's name does not indicate the name of the place at which respondent's business is located.

PAR. 5. That the advertisements and representations used and made by the respondent as set forth in paragraphs 2, 3 and 4 herein have a tendency and capacity to mislead and deceive, and do mislead and deceive the public in the purchase of razors.

CONCLUSION.

The practices of the 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 provisions of an Act of Congress

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission 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 now ordered, That the respondent, Harry Rose, trading under the name and style of Sheffield Razor Company, his agents, representatives, servants and employees, cease and desist from:

1. Advertising by means of letters, circulars, newspapers, or by any other means whatsoever that the said respondent, Harry Rose, trading under the name and style of Sheffield Razor Company, is an "importer and jobber" when said statement is untrue and false.

2. Advertising through any means whatsoever that his said razors are "\$5.00 razors" or are worth the sum of \$5.00 and are being sold by respondent at the reduced price of \$1.15 because of the elimination of the so-called "middleman's" or jobber's profits, when the same is untrue and false.

3. Using the word "Sheffield" in connection with the sale of razors which are not imported from the city of Sheffield, England, or manufactured from steel imported from Sheffield, England.

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.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

AMERICAN HONE COMPANY.

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

Docket 812—March 14, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of razor hones packed in individual containers bearing the legend "The Razor Hone That Makes the Velvet Edge. THE BEST \$1.00 Hone. Uniform—Lasting—Reliable—Economical," or the legend "'FAST AND FINE' RAZOR HONE FOR BARBERS' USE. Preferred to All Others, Surface Will Remain Perfect Through Years of Service, Price \$1.00," sold the same so packed at prices ranging from \$6.00 to \$20.00 per thousand to jobbers who resold them to street peddlers and razor hone mail order houses; the fact being that said marked price did not represent either the usual or contemplated retail price of said hones, but was a fictitious price used for the purpose of misleading purchasers at retail into believing that they were of good value and reasonably worth the prices marked:

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 the American Hone 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 under the laws of the State of New York, with its principal place of business at Olean in said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling razor hones, and causes hones 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 the 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 Two hereof, sells razor hones in wholesale quantities to retail dealers, which hones are packed singly in containers, upon which containers are printed false and fictitious proposed resale prices; that among the hones so sold by respondent are hones for which respondent receives \$13.50 to \$15.00 per gross, upon the containers of which is printed "The best \$1.00 Hone"; other hones are sold by respondent for \$9.00 per dozen, and are packed in containers upon which is printed, "Price \$2.00"; that such suggested resale prices do not represent the true value of such hones or the prices at which it is contemplated by respondent or the dealers through whom such hones are distributed, such hones may be sold in the usual course of retail trade, but such indicated prices are placed upon the containers of such hones for the purpose of creating in the minds of purchasers at retail the erroneous belief that such hones are of good quality and reasonably worth the prices so printed on such containers; that the retail dealers through whom such hones are distributed generally offer to sell and sell such hones to the public at prices substantially less than those printed on such containers, whereby the public is misled and deceived and induced to purchase such hones upon the mistaken belief that hones of good quality are being sold at greatly reduced prices.

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, American Hone Company, 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 and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondent before Edward M. Averill, a Trial 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

Findings.

4 F. T. C.

advised in the premises makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, American Hone Company, is a corporation organized under the laws of the State of New York with its principal place of business at Olean, in said State.

PAR. 2. The respondent is engaged in the business of manufacturing and selling razor hones, and causes hones sold by it to be transported to the purchasers thereof from the State of New York through and into other States of the United States in interstate commerce and carries on the said business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. The respondent in the course of its business sells in wholesale quantities to jobbers, hones packed singly in containers upon which said containers appear the following words and figures:

“The Razor Hone That Makes The Velvet Edge.
THE BEST \$1.00 HONE
Uniform—Lasting—Reliable—Economical.”

(Com. Ex. 1.)¹

and upon other containers the words and figures:

“‘FAST AND FINE’ RAZOR HONES
For Barbers’ Use
Preferred To All Others.
Surface Will Remain Perfect
Through Years of Service.
Price \$1.00.”

(Com. Ex. 2.)¹

The said hones, packed singly in containers as described, are sold by the respondent to the jobber at prices varying from \$6.00 to \$20.00 per thousand hones and are by said jobbers sold to street peddlers and razor hone mail order houses who in turn sell to the purchasing public. Very rarely are such hones so marked “\$1.00” sold to the ultimate purchaser at \$1.00 but are sold at prices substantially less than \$1.00.

PAR. 4. The said price of \$1.00 so printed upon the said containers is a false, fictitious proposed retail price, and does not represent the price at which it is contemplated by the respondent the hones shall be sold to the ultimate purchaser; but such indicated price is placed upon the container for the purpose of creating in the minds of the

¹ Not printed.

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purchasers at retail the erroneous belief that such hones are of good value or reasonably worth the price so printed on such containers.

PAR. 5. The sale of hones packed singly in containers marked as above described constitutes a very small percentage of the respondent's business and the respondent did not initiate such practices, it being a common custom in the razor and razor hone trade, and the respondent followed the custom as it found it.

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 answer of the respondent, the testimony and evidence, 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 American Hone Company, its officers, directors, agents, servants, and employees, cease and desist from marketing in interstate commerce, razor hones bearing upon the containers in which said hones are packed, any false, fictitious or misleading statement of, or concerning the price of said hones, or any false, fictitious or misleading statement as to the value of said hones.

It is further ordered, That the respondent within sixty 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.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

GEORGE BORGFELDT & COMPANY.

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

Docket 817—March 14, 1922.

SYLLABUS.

Where a corporation engaged in the sale of imported razors and razor hones to jobbers at approximately \$6.00 a dozen, and at \$45.00 to \$50.00 a thousand, respectively,

- (a) Sold said razors packed in individual containers bearing the legend "Extra Hollow Ground. Fully Warranted. Germany. Price \$3.00 Each"; and
- (b) Sold said hones packed in individual containers bearing the legend "Boss Barber Razor Hone Price \$1.00";

The fact being that said marked prices did not represent the actual or contemplated retail prices thereof, but were fictitious prices used for the purpose and with the effect of misleading purchasers at retail into believing that the same were of good quality and reasonably worth the prices so marked:

Held, That such mislabelling, or misrepresentations 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 George Borgfeldt & 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 New Jersey, with its principal place of business in the City of New York, N. Y.

PAR. 2. That respondent is engaged in the business of buying and selling in wholesale quantities, both imported and domestic hardware specialties, among which are razors, and respondent causes the 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 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, sells to jobbers imported German razors of inferior quality, which razors are packed singly in cases upon which are printed false and fictitious proposed resale prices; that among the razors sold as aforesaid are razors which are sold by respondent to retail dealers at \$6.00 per dozen, upon the containers of which are placed the words and figures following: "Extra Hollow Ground, Fully Warranted, Germany. Price \$3.00 each"; that said price of \$3.00 does not represent the true value of such razors, or the price at which it is calculated by respondent, or the retail dealers through whom such razors are distributed, that such razors shall be sold in the usual course of retail trade, but such price mark is placed upon the containers for the purpose of creating in the minds of purchasers at retail the erroneous belief that such razors are of good quality and reasonably worth the price so printed on such containers; that the retail dealers, generally, offer to sell and sell such razors to the public at prices substantially less than that printed on the case of such razors, whereby the public is misled and deceived and induced to purchase such razors upon the mistaken belief that a razor of good quality is being sold at a greatly reduced price. Respondent further, in the course of its said business, sells razor hones packed singly in containers on which are printed false and fictitious proposed resale prices; that among the hones sold as aforesaid are hones which are sold by respondent to jobbers at 10 cents each, upon the individual containers of which is printed, "Price \$1.00"; that said price of \$1.00 does not represent the true value of such hones or the price at which it is calculated by respondent, or the retail dealers through whom such hones are distributed, that such hones should be sold in the usual course of retail trade, but such price mark is placed upon the containers for the purpose of creating in the minds of the purchasers at retail the erroneous belief that such hones are of good quality and reasonably worth the price so printed on such container; that the dealers who sell such hones at retail, generally, offer to sell and sell such hones to the public at prices substantially less than that printed on such containers, whereby the public is misled and deceived and induced to purchase such hones upon the mistaken belief that a hone of good quality is being sold at a greatly reduced price.

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

The respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Edward M. Averill, 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 conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. George Borgfeldt & Co., is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in the City of New York, N. Y.

PAR. 2. The respondent is engaged in the business of buying and selling in wholesale quantities both imported and domestic hardware specialties, among which are razors and razor hones and respondent causes the razors and razor hones 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 such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. The respondent in the course of its business sells to jobbers razors imported from Germany, which razors are packed singly in cases upon which cases are printed a proposed retail price, the words and figures upon said containers being: "Extra Hollow Ground. Fully Warranted. Germany. Price \$3.00 each." These razors so packed with the containers marked as aforesaid cost the respondent approximately \$5.00 a dozen laid down in New York, and are sold by the respondent to jobbers at approximately \$6.00 per dozen and are sold to the ultimate purchaser at prices substantially less than the proposed retail price of \$3.00 printed upon the containers.

PAR. 4. The price of \$3.00 does not represent the true value of the razors or the price at which it is contemplated by the respondent that the said razors shall be sold to the ultimate purchaser; but such price is a false and fictitious price placed upon the container for the purpose

of creating in the minds of purchasers at retail the erroneous belief that such razors are of good quality and reasonably worth the price so printed on such containers, whereby the purchasing public is misled and deceived.

PAR. 5. The respondent, also, in the course of its business, sold to jobbers razor hones, which said razor hones are packed singly in containers upon which are printed a proposed retail price, the words and figures upon said containers being "Boss Barber Razor Hone. Price \$1.00." These hones so packed with the containers marked as aforesaid cost the respondent approximately \$40.00 a thousand and are sold by the respondent to the jobbers for \$45.00 to \$50.00 per thousand and are sold to the ultimate purchaser at prices substantially less than the proposed retail price of \$1.00 printed upon the container.

PAR. 6. The price of \$1.00 does not represent the true value of the hone or the price at which it is contemplated by the respondent that the said hone shall be sold to the ultimate purchaser, but such price is a false and fictitious price placed upon the container for the purpose of creating upon the minds of the purchasers at retail the erroneous belief that such hones are of good quality and reasonably worth the price so printed on such containers, whereby the purchasing public is misled and deceived.

PAR. 7. The practice of so marking up the price on razors and razor hones was not originated by the respondent but was a long established custom in the razor and razor hone trade and respondent followed the custom as it found it.

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 answer of the respondent, 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

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Federal Trade Commission, to define its powers and duties and for other purposes,"

It is now ordered, That the respondent, George Borgefeldt & Co., a corporation organized and existing under the laws of the State of New Jersey, its officers, directors, agents, servants and employees do cease and desist from marketing in interstate commerce razors and razor hones bearing upon the containers in which said razors and razor hones are packed any false, fictitious or misleading statement of or concerning the price of said razors or razor hones, or any false, fictitious or misleading statements as to the value of said razors or razor hones.

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.

Complaint.

FEDERAL TRADE COMMISSION

v.

CHEMICAL FUEL COMPANY OF AMERICA, INC.

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

Docket 791—March 20, 1922.

SYLLABUS.

Where a corporation competitively engaged in the manufacture and sale of a motor fuel, made the false and misleading claim, in advertising its product, that the same had "been thoroughly tested by the Government Bureau of Mines in Washington, D. C., successfully fulfilling every claim made for it by its inventor as a fuel par excellence not only for automobiles, but for all classes of aircraft, seaplanes, etc., because of its easy and complete vaporization in the rarified and extremely cold and changeable atmospheric conditions met with at high altitudes, * * *"; thereby misleading the purchasing public into believing said product to be of an unusually high grade or character:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Chemical Fuel Co. of America, 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 Delaware, with principal place of business at Louisville, Ky.

PAR. 2. That respondent is engaged in the business of manufacturing and selling a motor fuel which it designates as Tri-oxyalene, causing same to be transported to the purchasers thereof from the State of Kentucky through and into other States of the United States, in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in Paragraph 2 hereof, makes use of advertising matter which con-

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tains certain statements of and concerning Tri-oxyalene, which statements are false and misleading and are calculated to and do mislead and deceive the purchasing public; that among such false and misleading statements are statements to the effect that Tri-oxyalene has been thoroughly tested by the United States Government Bureau of Mines and has fulfilled every claim made for it by its inventor as a fuel par excellence, for all classes of aircraft, seaplanes, etc.; that the inventor has spent many years in the automobile industry and is thoroughly informed as to the necessity of the internal combustion engine and that Tri-oxyalene is the most perfect fuel ever presented to the automobile owner, whereas no official test of Tri-oxyalene had been made by the Bureau of Mines, but chemical engineers in that Bureau who made unofficial tests of said product, did not regard said product as having any commercial merit or being of any scientific interest.

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, Chemical Fuel Co. of America, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent entered its appearance by its attorney, filed its answer herein and made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondent, that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Chemical Fuel Co. of America, Inc., is a corporation organized under the laws of the State of Delaware, and is engaged in the business of manufacturing and selling a

motor fuel which it designates as "Tri-Oxyalene" with its factory and principal place of business at Louisville, Ky.

PAR. 2. That the respondent sells a motor fuel which it designates as "Tri-Oxyalene" and causes same to be transported to purchasers thereof from its factory at Louisville, Ky., through and into certain States of the United States including Ohio, Indiana, Illinois, Missouri and North Carolina, in direct and active competition with other persons, partnerships, and corporations similarly engaged and there has been at all times herein mentioned a continuous current of trade to and from said respondent's factory at Louisville, Ky., in said commodity among and between the several States of the United States.

PAR. 3. That during the year 1920 the respondent in the course of its business as hereinbefore described, caused the following statement to be inserted as advertising matter in a circular which respondent published and caused to be sent through the United States mails from respondent's principal place of business at Louisville, Ky., to customers and prospective customers in the different States of the United States:

"That it has been thoroughly tested by the Government Bureau of Mines in Washington, D. C., successfully fulfilling every claim made for it by its inventor as a fuel par excellence, not only for automobiles, but for all classes of aircraft, sea planes, etc., because of its easy and complete vaporization in the rarefied and extremely cold and changeable atmospheric conditions met with at high altitudes. Those conditions are well known to seriously interfere with the vaporization of gasoline because of its high per cent of carbon, but they are overcome by the use of 'Tri-Oxyalene' one of whose principal ingredients is oxygen."

PAR. 4. That respondent's product "Tri-Oxyalene" has never been tested by the Government Bureau of Mines in Washington, D. C., nor by any other branch, agency, or department of the United States Government.

PAR. 5. That the purchasing public believes that motor fuel which has been tested and which is approved or recommended by the Government Bureau of Mines at Washington, D. C., is of an unusually high grade and character because of such approval or recommendation.

PAR. 6. That the purchasing public is misled by respondent's advertising as hereinbefore set out, into the belief that such motor fuel "Tri-Oxyalene" is of an unusually high grade or character and is approved or recommended by the Government Bureau of Mines at Washington, D. C.

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PAR. 7. That during the year 1920, there were and now are manufacturers selling and shipping in commerce, among the several States of the United States, motor fuel similar to that made and sold by the respondent but [who] did not advertise in the conduct of their business that their products have been tested and have been approved or recommended by the Government Bureau of Mines in Washington, D. C., or words to that effect.

CONCLUSION.

The practices of said respondent under the conditions and circumstances described in the foregoing findings 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, and an 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 a provision of an Act of 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, Chemical Fuel Co. of America, Inc., its officers, agents, servants and representatives do cease and desist directly or indirectly:

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 that respondent's product "Tri-Oxylene" has been tested and has been approved or recommended by the Government Bureau of Mines in Washington, D. C., or words to that effect.

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

Complaint.

FEDERAL TRADE COMMISSION

v.

PLANTERS MANUFACTURING COMPANY.

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

Docket 819—March 20, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of containers used for packing fruits and vegetables for shipment to market, under the style of Planters Manufacturing Company, so branded or marked its products, and through years of labor and expense built up a well and favorably known business, which it carried on under said name; and thereafter a concern not theretofore so engaged, with full knowledge of the existence and conduct of the business of said corporation, adopted its name and entered into competition therewith; with the result that customers and the public were confused respecting the identity of the two concerns, and the business of said corporation was thereby obstructed and diminished:

Held, That such appropriation and use of corporate name, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Planters Manufacturing 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 under the laws of the State of North Carolina, with principal place of business at Mount Olive, in said State; that said corporation was originally organized in August, 1919, under the name of "Mount Olive Oil & Fertilizer Co.," which name was changed by amendment of its charter, in February, 1921, to Planters Manufacturing Company.

PAR. 2. That respondent is engaged, among other things, in the business of manufacturing and selling containers, such as barrels, crates and baskets, for the packing of fruits and vegetables, which business is and has been, carried on by respondent in direct, active competition with other persons; partnerships and corporations en-

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gaged in the manufacture and sale of like containers in the State of North Carolina and other States of the United States, which competitors have caused such containers to be transported to the purchasers thereof from the States where manufactured, through and into other States, in due course of commerce among the States.

PAR. 3. That in 1892 a corporation was organized under the laws of the State of Virginia, with principal place of business at Portsmouth, in said State, with the name of "Planters Manufacturing Company" which corporation has been continuously since its organization, engaged in the business of manufacturing and selling containers including crates, barrels and baskets, for the packing of fruits and vegetables, causing such containers to be transported to the purchasers thereof from the State of Virginia, through and into other States of the United States, including North Carolina, and had succeeded in building up an extensive and profitable business in said State of North Carolina, and particularly in the vicinity of Mount Olive, in said State, and the containers manufactured and sold by it, as aforesaid, were well and favorably known to the trade, in the State of North Carolina and States adjacent thereto, at and for many years prior to February, 1921. That at the time respondent changed its corporate name to Planters Manufacturing Company, it had full and complete knowledge of the existence of the Planters Manufacturing Company, the said Virginia corporation, the nature of the business in which that corporation was engaged, the reputation of its products, its general standing with the trade and the fact that its products were in great demand in the States of North Carolina, South Carolina, Georgia, Florida, and States adjacent thereto.

PAR. 4. That the adoption by respondent of the exact corporate name of the Virginia corporation described in Paragraph Three hereof, was calculated to, and does, mislead and deceive the purchasing public, and by the use of such name respondent has induced packers of fruit and vegetables to purchase containers manufactured by it, upon the mistaken belief that such containers were the product of said Virginia corporation; that confusion in the trade has resulted as to the containers sold by respondent and containers sold by said Virginia corporation.

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

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

The respondent, having entered its appearance by M. J. Hatcher, Attorney at Law, and filed its answer, and testimony having been submitted by the Commission, and by the respondent before George McCorkle, an examiner of the 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 conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Planters Manufacturing Company, is a corporation organized under the laws of North Carolina, having its principal office and place of business at the town of Mount Olive in said State; that originally respondent was organized in 1918, under the laws of the said State under the name of Mount Olive Oil & Fertilizer Company, which name was subsequently, by amendment of its charter in February, 1921, changed to Planters Manufacturing Company. Prior to amending its charter as aforesaid, respondent was engaged entirely in ginning cotton and manufactured no oil or fertilizer.

PAR. 2. That since its said charter was amended, respondent has been and is now engaged in manufacturing and selling containers, such as barrels, crates, baskets and other similar products used for packing fruits and vegetables for shipment to market, and respondent has carried on its said business in direct active competition with other firms, partnerships and corporations engaged in manufacturing and selling similar products in interstate commerce.

PAR. 3. That respondent, since its organization in February of the present year, under its corporate title of Planters Manufacturing Company, has been and was at the time of the hearing, in this case, carrying on a successful and growing business reaching out into other states than North Carolina for trade and business. Telegrams to prospective customers residing in other states were sent by respondent soliciting their trade, also communications, the letterheads of which carried its name and business, and information as to freight rates and prices of its commodities. Subsequently, respondent

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shipped to said prospective customers in South Carolina and in other states "packages of samples" of its manufacture such as barrels, baskets, crates and other containers.

PAR. 4. That in 1904, a corporation was organized under the laws of the State of Virginia, under the corporate name of Planters Manufacturing Company, having its principal office and place of business in the City of Portsmouth, State of Virginia, and engaged in manufacturing and selling containers used for packing fruits and vegetables for shipment to market, which products of the said company were similar in all respects to those of the respondent; that from the year 1892 to the date of its incorporation in 1904, the said company was engaged in the same line of business under the firm name of Southern Fruit Packing Company and has continued all the while in the same line of business to the present time. It manufactures its said fruit and vegetable containers at Portsmouth, West Norfolk, Churchland, Bloxon, Cheriton, Driver, Olive Branch and Gloucester Point, in the State of Virginia, and at Youngs Island, South Carolina, besides operating a logging and sawing plant at Hobgood, North Carolina, about 75 miles from the home of respondent, and sells and ships its products throughout the various Eastern States of the United States, and in Texas, and Indiana, selling especially large quantities of its products in the States of North and South Carolina. In 1920, the said company shipped 20 to 25 carloads of its containers to customers at the home town of respondent, and 60 to 75 carloads within a radius of 18 to 20 miles of the town of Mount Olive.

PAR. 5. That the said Planters Manufacturing Company of Portsmouth, Virginia, has spent thousands of dollars in advertising its business by means of circulars, catalogs, newspapers, magazines, etc., also stamping its name on its barrels, and other containers as "Made by the Planters Manufacturing Company" and through years of labor and expense has built a business that is well and favorably known throughout all Eastern States of the United States.

PAR. 6. That the name of the Planters Manufacturing Company of Portsmouth, Virginia, was known to some of the officers and organizers of the Planters Manufacturing Company of Mount Olive, respondent, at the time of its adoption of the Portsmouth Company's name, and the said respondent company engaged as it was in manufacturing the same products as the Planters Manufacturing Company of Portsmouth, selling them in markets formerly largely supplied by the said Portsmouth Company, and with identical names, as above stated, is calculated to and has resulted in confusion to customers and the general public as to the identity of the respective corporations. That officials of the said Portsmouth Company in Virginia, and the

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salesmen of said company while visiting their trade in North and South Carolina have been frequently asked if the Planters Manufacturing Company of Portsmouth had established a branch plant at Mount Olive, North Carolina. That as many as a dozen times bills and accounts for unpaid goods have been received by the Planters Manufacturing Company of Portsmouth, which belonged and should have been sent to the respondent. One of said bills is dated September 26, 1921, from Taylor & Parker for \$53.90 (Exhibit No. 1) ¹; another one, through confusion in the names of said companies, was from the Tide Water Supply Company, and returned by the Planters Manufacturing Company of Portsmouth to the respondent. In a letter to Planters Manufacturing Company of Portsmouth, dated October 5, 1921, the Tide Water Supply Company said:

"GENTLEMEN: Regarding the conversation relative to your account being confused with the Planters Manufacturing Company, Mount Olive, North Carolina, we wish to advise that the first purchase these people made from us the account was posted in error to the Planters Manufacturing Company, Portsmouth, Virginia. This, however, has been reposed to the proper parties.

Yours very truly,

TIDE WATER SUPPLY COMPANY,
J. W. BEASLEY,
President & Treasurer."

PAR. 7. That for 25 years before the organization of the respondent, under the name of Planters Manufacturing Company, the Planters Manufacturing Company of Portsmouth, Virginia, enjoyed a large trade in the State of respondent, shipping, as before stated, as many as 25 carloads of containers annually to the town of Mount Olive, and as many as 75 to 100 carloads within a radius of 18 miles of respondent's place of business, but since the adoption of its name by respondent in the spring of 1921, the trade and custom of the Planters Manufacturing Company of Portsmouth, in North Carolina and particularly in the immediate neighborhood of respondent's plant, has been seriously affected. Instead of 25 carloads of containers in 1920 shipped by the Portsmouth Company to Mount Olive, none has been shipped in 1921; instead of 68 "carload customers," some of whom used as many as 20 cars in North Carolina and South Carolina supplied by the said Portsmouth Company, in 1920, scarcely none was supplied by the said company in 1921 in said sections. That said conditions were brought about in part by reason of respondent's adopting the name of the Planters Manufacturing Company of Portsmouth, and likewise the confusion of customers and the general public as to the identity of the two corporations as evidenced by the bills and accounts received through the United States mail by the

¹ Not printed.

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Portsmouth Company which belonged to respondent, in consequence of which the interstate trade and commerce of the Planters Manufacturing Company of Portsmouth, Virginia, was directly affected and obstructed.

PAR. 8. That respondent, at the hearing of this case, at the close of the testimony offered by the Commission and by the respondent, stated and agreed to the issuance of an order by the Commission directing respondent to "adopt a name not in conflict with other manufacturing companies in the same line of business."

CONCLUSION.

That the acts and conduct of the respondent, under the conditions and circumstances above set forth, are unfair methods of competition in 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 the complaint of the Commission, the answer of the respondent, the testimony and evidence and briefs of counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Planters Manufacturing Company of Mount Olive, North Carolina, its officers and agents cease and desist from using as a part of the corporate name of respondent the word "Planters" or any word or combination of words likely to be confused with the name of the Planters Manufacturing Company of Portsmouth, Virginia,

And it is further ordered, That said respondent shall file within sixty (60) days from the date of service of this order a report with the Commission setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

UNION SOAP COMPANY.

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

Docket 848—April 3, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale, to peddlers exclusively, of an inferior grade and quality of toilet soap, sold the same in wrappers and containers bearing legends misrepresenting the composition thereof, as well as its own name and place of business, and bearing also fictitious and exaggerated pretended resale prices, which it knew had been and were to be used to mislead and deceive the purchasing public respecting the grade and quality thereof:

Held, That such mislabeling, or misrepresentation of composition, business identity, and 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 Union Soap Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Indiana, with principal place of business at Indianapolis, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling soap, and causes soap 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, manufactures and sells laundry and toilet soaps of inferior grade and quality, usually upon special orders from peddlers, house to house canvassers, street fakers, fair workers, auctioneers and other itinerant vendors of merchandise; that respondent markets its said products under various misleading and fanciful

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brand names, among which are "Olive Cream Castile", "Cucumber Cream", "Almond Cream", "Hot Springs Mineral", etc., although all of said soaps are made of the same ingredients except for a slight variation in the use of coloring matter and perfume; that each of said soaps contain approximately the following proportions of the various ingredients, viz, water, 33 per cent; coconut oil, 15 per cent; caustic lye, 25 per cent; silica, 7 per cent; filler, 20 per cent; that soaps so sold by respondent are packed in boxes, three cakes to the box, each cake wrapped in individual wrappers, upon which boxes and wrappers are printed what purports to be proposed resale prices, but which prices are false, fictitious and misleading; in that such prices are greatly in excess of the prices at which respondent or its vendees contemplate that such soap will be resold, and are greatly in excess of the actual prices at which such soaps sell in the usual course of retail trade; that said soaps are sold by respondent with full knowledge that the price marks on the boxes and wrappers are to be used for the purpose of misleading and deceiving the purchasing public and to induce the public to purchase said soaps when offered for sale at prices substantially below those printed on said boxes and wrappers, upon the mistaken belief that such soaps are being sold at a greatly reduced price; that among soaps so sold by respondent at prices ranging from 1 cent to 2 cents per cake, are soaps packed in boxes three cakes to a box, upon which boxes are printed, "Price 75¢", and upon the individual wrappers of each cake "Price 25¢", and other grades are packed in boxes six cakes to a box, upon which boxes are printed "Price \$1.00"; that in the sale of its products in boxes and wrappers so marked, respondent comes in direct competition with other manufacturers of soaps who do not market their product in containers and wrappers upon which are printed false, fictitious and misleading price marks; that respondent by the means aforesaid, aids, abets and assists its customers in using unfair methods of competition against others similarly engaged, but who do not sell soaps in containers marked with such false, fictitious and misleading price marks.

PAR. 4. That respondent further in the course of its business, markets its products in containers upon which are printed what purports to be the name of the manufacturer, but respondent instead of using its own name and place of business, uses various fanciful names of concerns that do not exist, with places of business designated as being in cities and states other than the State of Indiana, thereby misleading and deceiving the purchasing public and preventing the public from discovering the true manufacturer of the products.

PAR. 5. 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 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 Union Soap Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the complaint before George McCorkle, 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. That respondent is a corporation organized and doing business under the laws of the State of Indiana with its principal office and place of business in the City of Indianapolis in said State and engaged in the business of manufacturing soap and selling and shipping same to purchasers residing in said State and in the various other states of the United States, in competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. That respondent in the course of its business as described in Paragraph 1 hereof, for several years prior to June, 1921, manufactured and sold various brands of toilet soap designating them as "Cucumber Cream," "Olive Cream Castile," "Almond Cream," and "Hot Springs Mineral"; that at the date of the hearing in this case, on January 25, 1922, respondent had abandoned the manufacture of all brands of soap except "Cucumber Cream" and "Olive Cream Castile"; that all of said brands contained the same material and were of the same grade and quality, the ingredients being water 33 per cent, lye 25 per cent, filler 20 per cent, coconut oil 15 per cent and silica 7 per cent; there is a slight variation as to the perfumes and coloring matter used in the different brands. The said soap is of inferior grade and quality and as appears from the above analysis, contains nothing from the cucumber vegetable, nor does the "Olive Cream Castile" contain any olive oil. The said brands of soap,

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together with some varieties of laundry soap, are sold exclusively to peddlers. The fanciful brands made by respondent are packed in boxes, three cakes to the box, each cake wrapped in an individual wrapper upon which boxes and wrappers are printed what purports to be certain proposed resale prices, but which in truth are not resale prices but are fictitious, false, and misleading in that such prices are greatly in excess of the prices at which respondent and its vendees contemplated that said soap would be resold, and in fact is sold; that the said soaps are sold to respondent's customers with full knowledge on the part of respondent that the price marks on the said boxes and wrappers have been, and are being, used as a means of misleading and deceiving the purchasing public as to the grade and quality of the said soap; that the said toilet soaps are sold by respondent at forty cents for twelve bars plus ten bars of laundry soap. The boxes in which the said soap is packed have printed upon them in conspicuous type the following:

One Fourth Dozen		Price 75 cents.
Toilet	CUCUMBER	Cleansing
Bath		Purifying
Shampooing	CREAM SOAP	Fragrant
NEW YORK	U. S. SOAP COMPANY.	LOS ANGELES.

PAR. 3. That respondent has an agent in Los Angeles and one in New York City, but has no office or other place of business in said cities, and no books or accounts of any kind are kept, and no business is transacted, by respondent, under the name of "U. S. Soap Company," which name appears on the soap boxes above referred to.

PAR. 4. That there are other dealers in toilet soap who do not sell their said products in containers marked with false and fictitious prices.

CONCLUSION.

That the practices of respondent as set forth in the foregoing report 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 answer of the respondent, and the testimony and evidence submitted, and the Commission

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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 Union Soap Co., its officers, directors, agents, and employees do cease and desist from selling, offering for sale, or advertising for sale, in interstate commerce, toilet soap or other kinds of soap bearing upon the boxes or wrappers in which said soap is packed or wrapped, or upon the soap itself, or in any advertising or written matter in relation to said soap:

(1) Any false, fictitious, or misleading statement or representation as to the ingredients or price of said soap;

(2) Any statements or representations which falsely state or represent the name of the manufacturer to be other than the Union Soap Co.;

(3) Any statements or representations which falsely state or represent the address or location of the respondent Union Soap Co.'s office or place of business.

It is further ordered, That the respondent, within sixty (60) days after the date of the service upon it of this order, shall 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 hereinbefore set forth.

Complaint.

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FEDERAL TRADE COMMISSION
v.
HYGRADE KNITTING COMPANY, INC.

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

Docket 763—April 6, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale to retailers of high grade sweaters, scarfs, and other knitted outer wear for women, under the style of Hygrade Knitting Mills, carried on its business under the said name and advertised, labeled, featured and sold its products as "Hygrade," under which name they had come to be widely and favorably known to the trade and purchasing public as goods made by it; and thereafter a competitor adopted the name Hygrade Knitting Company, Inc., and featured the word "Hygrade" in its labels, stationery, etc.; with the result that customers and the public were confused respecting the identity of the two concerns and their products, and said competitor was thereby enabled to and did pass off its goods as and for those of said corporation:

Held, That such simulation of corporate and trade names and marks, 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 Hygrade Knitting 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 on May 6th, 1919, under the laws of the State of New York, with principal place of business at New York City in said State.

PAR. 2. That respondent is engaged in the business of selling in wholesale quantities, knitted outward wearing apparel, principally sweaters and scarfs for ladies, and causes goods 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 such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That on December 12, 1916, there was organized under the laws of the State of New Jersey the Hygrade Knitting Mills, a corporation, which has since its organization been engaged in the business of manufacturing and selling knitted outward wearing apparel, principally sweaters and scarfs for ladies, and causes its products to be transported to the purchasers thereof from the State of New Jersey through and into other 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 Hygrade Knitting Mills has built up an extensive business in the sale of its products, particularly in the eastern States of the United States and the New England States.

PAR. 4. That the corporate name of the respondent so closely resembles that of the Hygrade Knitting Mills, described in paragraph 3 hereof, that confusion in the trade as to goods sold by respondent and the products of said Hygrade Knitting Mills has resulted; that the adoption of the corporate name, Hygrade Knitting Company, Inc., by respondent was calculated to and does mislead and deceive the purchasing public, and purchasers have been thereby induced to purchase goods sold by respondent under the mistaken belief that they were the product of said Hygrade Knitting Mills; that respondent, as a means of enabling or assisting it to pass off goods sold by it as and for the product of said Hygrade Knitting Mills, has made use of letterheads, bill heads, invoices, and other office stationery which were printed in a style and size of type and with such typographical arrangement with the word "Hygrade" displayed in large type, as to closely resemble in general appearance the stationery of said Hygrade Knitting Mills, and the letterheads of respondent have printed thereon in addition to its name and address, the following: "Manufacturers of sweaters and fancy knit goods"; while the printed matter on the letterheads of said Hygrade Knitting Mills has printed thereon in addition to its name and address the following: "Manufacturers of knit goods of quality."

PAR. 5. That since its organization the said Hygrade Knitting Mills has marketed its product in boxes or containers upon which were placed labels with the word "Hygrade" in the center in large type and the words "The sweater of quality" at one end of such label; that respondent has marketed goods sold by it in boxes or containers upon which were placed labels also with the word "Hygrade" in the center in large type and the words "Hygrade Knitting Company, Sweaters, Quality, Value, Satisfaction, Style" at the ends of such labels; that the labels so used by respondent so closely resemble the labels used by the Hygrade Knitting Mills, as aforesaid, in size, style of type, typographical arrangement of the

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printed matter, and general appearance, as to cause confusion in the trade; that the use by respondent of the labels as aforesaid, was calculated to and does mislead and deceive the purchasing public and purchasers are thereby deceived and induced to purchase goods sold by respondent, under the mistaken belief that they are the goods of the said Hygrade Knitting Mills.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, 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 respondent, the Hygrade Knitting 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 and filed its amended answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the complaint, and on behalf of the respondent before an examiner of the Federal Trade Commission, theretofore duly appointed.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, the Hygrade Knitting Company, Inc., is a corporation organized on May 6, 1919, under the laws of the State of New York with principal place of business at 1 East Twenty-eighth Street, city of New York, State of New York.

PAR. 2. The respondent is engaged in the business of selling in wholesale quantities knitted outerwear, principally sweaters and scarfs for women, and causes goods sold by it to be transported from the State of New York through and into other States of the United States in interstate commerce and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. On or about December 12, 1916, there was organized under the laws of the State of New Jersey the Hygrade Knitting Mills, a

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corporation with an authorized capital of \$125,000, with its principal place of business and mill at 777 South Eighteenth Street, Newark, N. J. This company manufactures knitted outerwear exclusively for women, such as sweaters and scarfs. It sells only the products produced in its own mill and manufactures only a high grade of sweaters and scarfs and by reason of the excellent quality and style of its products, has from the beginning of the year 1917 built up relatively an extensive business which in the year 1920 had reached a volume expressed in sales of \$310,000. The Hygrade Knitting Mills sells its products direct to the retailer without the intervention of jobber or wholesaler and causes the goods manufactured and sold by it to be transported from its mill in Newark, N. J., through and into other States of the United States in interstate commerce and carries on its said business in direct, active competition with other persons, firms and corporations similarly engaged.

PAR. 4. In the course of and for the extension of its business, as described in paragraph 3, the Hygrade Knitting Mills advertised its products in the *Sweater News*, a magazine devoted to the sweater trade with a large circulation among retailers throughout the United States and in said advertisements featured the word "HYGRADE"; referred to its products as "HYGRADE SHETLANDS, write for samples and be convinced that HYGRADE means high grade in every respect"; "A HYGRADE Shetland novelty"; "HYGRADE styles and coloring" (see Com. Ex. 28, 29, 30, 31, 32, 33).¹ And in order to further extend the knowledge of their products the Hygrade Knitting Mills obtained the services of one James H. Moffett as their selling representative. Moffett was well known throughout the United States among the retail purchasers of women's knitted outerwear, represented several mills, had maintained for years an office and showrooms at 303 Fifth Avenue, New York City, and had an established clientele for the purchase of superior lines of knitted products. Moffett continued to advertise the products of the Hygrade Knitting Mills in the *Sweater News*, traveled salesmen and personally called upon retailers in many larger cities, and during the two and one-half years of his connection with the Hygrade Knitting Mills caused their sweaters and scarfs to become extensively known among retailers in all the larger cities from San Francisco to Maine. On January 1, 1921, Moffett's services were discontinued and the Hygrade Knitting Mills opened up a showroom for its own exclusive use at 347 Fifth Avenue, New York City, continued to advertise its products in the *Sweater News* and traveled salesmen so that the

¹ Not printed.

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sweaters and scarfs, the products of Hygrade Knitting Mills, became known and understood, referred to and designated by retailers and even by the ultimate purchasers as "Hygrade"; "Hygrade Sweaters"; "The Hygrade is what I want"; "Give me a Hygrade sweater." A buyer of twelve years' experience testified "there was only one Hygrade to me and I thought there was only one Hygrade—that was the Hygrade Knitting Mills. The affix 'mills' or 'company' was not valuable to me. We always termed them (referring to makes of sweaters) as Mengart or Hygrade or Sterling."

PAR. 5. The respondent, Hygrade Knitting Company, began business in 1919 approximately two and one-half years after the Hygrade Knitting Mills. The respondent operates no mill or machinery, but puts out to contractors the women's outerwear, principally sweaters and scarfs, which it sells. These articles so manufactured are sold by the respondent to retailers and jobbers, 95% of its sales being to retailers and 5% to jobbers. The respondent travels salesmen who call upon retailers throughout a large part of the United States and advertises by circulars mailed direct to retailers and in trade papers. The business of the respondent was approximately for 1919, \$280,000; 1920, \$400,000; half of 1921, \$250,000.

PAR. 6. The respondent puts its sweaters up in boxes upon the end of which boxes is a label, in the center of which appears in capital letters the word "HYGRADE" with the center of the letters cut out and superimposed thereon the words "Knitted Novelties." To the left of this center design, enclosed within a circle, is a shield supported by lambs rampant, the shield bearing the words "Hygrade Knitting Company, Inc., sweaters," and upon the right of said center design a double circle with the words "QUALITY—VALUE—SATISFACTION—STYLE" (Com. Ex. 24).¹ This label later was somewhat changed but the principal feature, the center design and the design on the left, remained the same except for a change in color. (Com. Ex. 25).¹ The center design "HYGRADE" with the words "Knitted Novelties" superimposed was registered June 28, 1921, in the Patent Office of the United States as a trade mark No. 144,320, application for which was filed July 22, 1920 (Resp. Ex. 3).¹

The Hygrade Knitting Mills during the years 1917 and 1918 put its sweaters up in boxes to which was affixed a label having for its center design the word "HYGRADE" in yellow capitals followed by the words "the sweater of quality" in somewhat smaller capitals in blue, the whole enclosed in a yellow border with blue facings and upon the left a parallelogram with the words "Style—No. — Size" and on the right in a similar design the word "Color" with a blank

¹ Not printed.

space thereunder (Com. Ex. 4).¹ This label was discontinued after 1918 and has not since been in use and was followed by a label having for its center design the word "HYGRADE" in white letters upon a brown or chocolate colored field and under said word "HYGRADE" an oblong white parallelogram, the whole being enclosed in a blue border. To the right and left of this center design are irregular shaped designs with blue borders. The left one contains the words "Style—Size" and the right one "The sweater of quality" (Com. Ex. 3).¹ This label is now and has been in use since the year 1919.

The labels of the respondent are quite dissimilar in style of type, design and typographical arrangement from the labels of the Hygrade Knitting Mills, the only point of similarity being the use by each of the word "HYGRADE."

The letter heads, billheads and stationery of the respondent is likewise quite dissimilar in style and size of type, design and typographical arrangement to the stationery of its competitor, the only point of similarity being the use by each of the word "HYGRADE."

PAR. 7. The use of the word "Hygrade" by both respondent and its competitor caused confusion. Salesmen of the respondent were confused by retailers with salesmen of the Hygrade Knitting Mills. Orders were placed with the respondent, the Hygrade Knitting Company, when same were intended to be placed with the Hygrade Knitting Mills. Mail intended for the one was delivered to the other. Orders for sweaters were given by retailers to the respondent, the Hygrade Knitting Company, under the mistaken belief that said orders were being placed with the Hygrade Knitting Mills and upon receipt of the sweaters the retailers, finding they did not come up in style or quality to the goods of the Hygrade Knitting Mills to which they had been accustomed, returned the sweaters to the Hygrade Knitting Mills, Newark, N. J., still under the mistaken belief that the goods had been shipped to them by the said Hygrade Knitting Mills when in truth and in fact the goods had been shipped by the respondent.

On other occasions goods intended for the Hygrade Knitting Mills for delivery at their storerooms in New York City, were addressed "Hygrade Knitting Mills, 1 East Twenty-eighth Street, New York, N. Y.," and were delivered to and accepted by the respondent, the Hygrade Knitting Company, 1 East Twenty-eighth Street, New York City.

PAR. 8. The word "Hygrade" is frequently found as the first word of the corporate or trade name of business organizations. The telephone directory of the cities of Pittsburgh, St. Louis, Chicago, Phila-

¹ Not printed.

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delphia, Newark, Jersey City, Brooklyn, and New York show its use in 83 instances. The field of activities covered by those using the word are varied, ranging from Hygrade Art Company to Hygrade Manure Company, but in only two instances is the word found in association with the word "knitting," these being Hygrade Knitting Company, 1 East Twenty-eighth Street, New York City, and Hygrade Knitting Mills, Newark, N. J.

PAR. 9. The adoption by the respondent of the word "Hygrade" as a part of its corporate name and the use of the said word "Hygrade" as a trade-mark or brand upon the packages containing its goods and the use of said word "Hygrade" upon its letter heads, billheads and stationery, after said word "Hygrade" had acquired a secondary meaning and come to be understood by the public as designating the goods and business of a competitor, is deceptive and tends to confuse and has confused and misled the public and has caused the public to purchase the goods of the respondent under the mistaken belief that they were and are the goods of a competitor and tends to enable and has enabled the respondent to pass off its goods as and for the goods of the Hygrade Knitting Mills, a competitor.

CONCLUSION.

That the practices of the respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and are 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 amended answer of respondent and the testimony 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 Hygrade Knitting Company, Inc., its officers, directors, agents and employees, cease and desist from using the word "Hygrade" in its corporate name or displayed upon its letter heads, stationery, circulars, advertising matter or in its trade-marks, trade names, labels or devices,

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in connection with the sale in interstate commerce of its sweaters or scarfs or upon cartons or containers in which its sweaters or scarfs are packed.

And it is further ordered, That the respondent shall file with the Federal Trade Commission within ninety (90) days from the date 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 circulars, stationery, advertisements, trade names, trade-marks, devices or labels distributed or displayed to the public by respondent in connection with the sale of its products in interstate commerce subsequent to the date of this order.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

PAUL BALME, TRADING UNDER THE NAME AND STYLE
OF B. PAUL.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 764—April 14, 1922.

SYLLABUS.

Where an individual engaged in the importation, manufacture, and sale of a henna hair dye, which had theretofore come to be well and favorably known abroad under its fanciful name of "L'Oreal-Henne" and was the first preparation of its kind to be offered on the domestic market, advertised and sold said preparation as "L'Oreal" in containers bearing the words, "La Plante Merveilleuse"; and thereafter a competitor,

- (a) With the intent of appropriating the reputation and good will of said preparation advertised and sold his product as "Henna D'Oreal," in containers likewise bearing the words, "La Plante Merveilleuse" and resembling the containers of the original preparation in color, shape and size; with the result that confusion was thereby brought about and he or his vendees were enabled to pass off his product as and for the original; and
- (b) With a capacity to deceive and mislead the purchasing public, advertised his product as "Henna D'Oreal—New French Discovery * * *" and "THE ONLY HARMLESS COLORING IN THE WORLD"; notwithstanding the fact that said product was compounded principally from a formula found in technical books and in use in France for many years, and that there were other equally harmless henna hair dyes:

Held, That such simulation of trade or brand names, 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 Paul Balme, trading under the name and style of B. Paul, 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 respondent carries on business in New York, N. Y., under the name and style of B. Paul and since June, 1915, has

been engaged in manufacturing and selling a hair dye which he designates as "Henna D'Oreal", and causes that product 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 such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That in 1913 F. L. LeBeau, Inc., was made the sole distributor in the United States for a hair dye made in France, known as "L'Oreal Henne", which product was purchased in France and resold in the United States by said F. L. LeBeau, Inc., until the year 1918, when on account of difficulties in importing that product due to the then existing war, said F. L. Lebeau, Inc., obtained from the manufacturer the formula for said "L'Oreal Henne", together with the exclusive right to manufacture that product in the United States, which product has, since 1918, been manufactured and sold in the United States by said F. L. LeBeau, Inc., which company had built up an extensive trade in said "L'Oreal Henne" throughout the several States of the United States, and had established an association in the minds of the buying public between said F. L. LeBeau, Inc., as identified by the name of its said product or by the trade insignia, and said product "L'Oreal Henne". That respondent in the course of his business as described in Paragraph 1 hereof, has marketed the product sold by him in packages which so closely resembled in shape, size, color, printed matter thereon and general appearance, the packages in which "L'Oreal Henne" had been marketed, that such similarity was calculated to and did deceive the purchasing public under the ordinary conditions which prevailed in the usual course of retail trade, and purchasers were induced by said similarity of the packages to buy respondent's product upon the mistaken belief that it was "L'Oreal Henne". That the similarity in the name of respondent's product, "Henna D'Oreal", and the name "L'Oreal Henne" was further calculated to and did deceive the purchasing public and the purchasers were thereby induced to purchase respondent's product under the mistaken belief that it was "L'Oreal Henne".

PAR. 3. That respondent further in the course of his said business, has caused advertisements to be published in newspapers of general circulation throughout the United States, and has caused to be printed circulars which were given general circulation by respondent throughout the United States, which advertisements and circulars contained numerous false and deceptive statements of and concerning "Henna D'Oreal", the product manufactured and sold by him; that among such false and deceptive statements were statements to the

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effect that "Henna D'Oreal was a new French discovery and provides the only harmless coloring in the world, whereas that product was not a new discovery and was not manufactured in France and was not superior to and did not differ materially from numerous other Henna hair dyes which had been on sale and in general use for a long period of time; that such false and deceptive statements were calculated to and did mislead and deceive the purchasing public, and by means thereof the purchasing public have been induced to purchase "Henna D'Oreal" in preference to similar competing products, upon the mistaken belief that "Henna D'Oreal" was a new French discovery and was the only harmless hair dye on the market.

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, Paul Balme, trading under the name and style of B. Paul, charging him with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent, Paul Balme, trading under the name and style of B. Paul, having filed his answer, hearings were had and evidence was introduced in support of the complaint and on behalf of the respondent before Edward M. Averill, a Trial Examiner of the Federal Trade Commission theretofore duly appointed, at which hearings the respondent appeared in person and by counsel.

And thereupon this cause came on for a final hearing upon the complaint and the answer thereto, the report of the Trial Examiner and the exceptions thereto, and was argued by counsel, 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, Paul Balme, trading under the name and style of B. Paul, with principal place of business at 34 West Thirty-seventh Street, New York, State of New York, has since June, 1915, engaged in the manufacture and sale of a henna

hair dye designated by him "Henna D'Oreal", which said product is sold and shipped by the respondent from New York through and into other states of the United States in interstate commerce; and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. In the year 1913, one F. L. Lebeaux, trading as F. L. Lebeaux, Inc., with principal place of business in the City of New York, State of New York, entered into a contract with Messrs. Schueller and Sperry, the proprietors of the Societe Francaise de L'Oreal of Paris, France, by the terms of which contract F. L. Lebeaux became the sole distributor in the United States of a henna hair dye made in France under a formula owned by the Societe Francaise de L'Oreal. This hair dye was styled and labeled "L'Oreal-Henne" and was put up in tin boxes of a light blue color with lettering in a darker shade of blue, all the wording upon the containers being in the French language except on the band which seals the box and upon that appear a few words in the English language.

PAR. 3. From 1913 up to 1918 this dye was imported from France to the United States, but in the year 1918, owing to the exigencies of the war, F. L. Lebeaux obtained from the French owners the right to manufacture the dye in the United States under the French formula, and since 1918 Lebeaux has ceased importing, and manufactures the henna hair dye in New York City. The hair dye was first imported and later manufactured in the United States and is sold by F. L. Lebeaux, Inc. to jobbers and wholesalers throughout the various states of the United States. During the years 1913 and 1914, Lebeaux advertised this hair dye in the American Hair Dresser, a magazine devoted to the hair dressers' trade having a circulation during those years of from 2300 to 2500, the magazine being distributed among hair dressers and beauty parlor proprietors throughout the United States. In the June and July issues of 1913, the dye was advertised as "Oreal-Henne," in subsequent issues as "L'Oreal," the word "Henne" not being used in conjunction therewith. In 1914, Lebeaux ceased to advertise in this magazine but in September, 1915, resumed advertising but at no time was there any extensive advertising campaign carried on and very little effort appears to have been made to extend the trade or popularize the product "L'Oreal."

PAR. 4. The henna hair dye "L'Oreal" is sold in New York City, Philadelphia, Washington, Pawtucket, R. I., Summit, N. J., Pittsburgh, Pa., Cleveland, Ohio, Chicago, Ill. and San Francisco, Calif. The extent and growth of the business is shown by the amounts imported, stated in terms of dollars (approximately);

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1913 -----	\$400
1914 -----	600
1915 -----	1,500
1918 -----	2,000
1917 -----	2,500
1918 -----	1,500

but Lebeaux commenced manufacturing in 1918 and the product put on the market was in excess of the figure shown above for 1918, and in 1919 there was manufactured in the United States by Lebeaux approximately \$6,000 worth of the product and in 1920 approximately \$10,000.

PAR. 5. Henna is an oriental plant from the leaves of which for centuries a dye has been obtained. "L'Oreal" is a coined word from which by a rather tortuous process an English equivalent "the beautiful" may be extracted. The Societe Francaise de L'Oreal of Paris had for some seventeen or twenty years prior to 1913 been manufacturing and selling a preparation made from the henna plant which they styled "L'Oreal-Henne," and described the same as a marvelous plant and natural re-coloration for the hair, and the said dye had acquired a reputation in continental Europe and England, but no prepared henna dye for live human hair had been on the markets of the United States prior to 1913 and "L'Oreal-Henne" was the first of such preparations on the American market. Other henna preparations followed among them being "Gloria," afterwards changed to "Henalfa," "L'Aureole-Henne," "Libyan-Henne," "Jeans Oentrale" and "Henna D'Oreal."

PAR. 6. In the year 1915, the respondent, Paul Balme, trading as B. Paul, began to manufacture and sell and has continued to manufacture and sell in interstate commerce throughout the United States a henna hair dye to which he gave the name "Henna D'Oreal," which was put up in boxes similar in color, shape and size to the container in which the preparation "L'Oreal-Henne" was put out (Com. Ex. 8 and 1).¹ The designs and the wording upon the boxes are in some respects similar though in other respects quite dissimilar. The wording upon the respondent's container is almost entirely in the English language, only a few French words being used, and among the French words so retained by the respondent upon his container are the words "La Plante Merveilleuse" which phrase also appears upon the container in which "L'Oreal" is packed. The wording upon the container for "L'Oreal" is in the French language, with only a few English words. The designs or figures upon the respective containers are distinctly different but the word OREAL is identical. It is an arbitrary word designating the product and the

¹ Not printed.

prefixing of "D" does not clearly and distinctly differentiate the respondent's product, "D'Oreal," from the product "L'Oreal." There is also a distinct similarity in sound and on the whole the name "D'Oreal," together with the size, color, and general appearance of the package in which it is offered for sale produces confusion and enables the respondent or his vendees to pass off upon the public the respondent's product, "D'Oreal" for goods of [the] French preparation, "L'Oreal," and the similarity in name, size, color and general appearance of the containers is such as is likely to deceive or mislead ultimate or ordinary purchasers.

PAR. 7. The French preparation, "L'Oreal" was the original. The respondent was aware of such preparation being upon the market both in Europe and in the United States and intentionally adopted the similar name, "D'Oreal," and put his preparation upon the market in containers similar in appearance to that of the French preparation for the purpose and with the intent to appropriate to his own use and advantage the reputation and good will acquired by the said French preparation, "L'Oreal."

PAR. 8. The respondent, B. Paul, has extensively advertised his preparation, "D'Oreal", and from 1915 to 1921, inclusive, expended between \$50,000 and \$60,000 in advertising, and in the course of said advertising the respondent inserted or caused to be inserted in various magazines and newspapers throughout the United States advertisements containing the following expressions:

Henna D'Oreal—New French Discovery—all shades from black to blonde. Composed of pulverized henna and herbs provides the most natural coloring in the world. (Com. Ex. 19.)

Other advertising matter speaks of the preparation as:

Henna D'Oreal—New French Preparation. (Com. Ex. 9, Resp. Ex 6.)¹

There also appears upon the container in which respondent's product is offered for sale the following:

Henna D'Oreal a new non-chemical French preparation composed of pulverized henna and herbs which will color gray, faded or bleached hair to its original or any desired shade. **THE ONLY HARMLESS COLORING IN THE WORLD.** (Com. Ex. 8.)¹

PAR. 9. The statement in the advertisement of the respondent "New French Discovery," is untrue, the hair dye of the respondent not being a new discovery but one compounded principally from a formula found in technical books, which formula had been in use in France for many years, and such statement was calculated to deceive and mislead the purchasing public. The statement used by

¹ Not printed.

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the respondent in his advertisement as applicable to his hair dye "The only harmless coloring in the world" was likewise untrue, the evidence showing that there were other henna hair dyes equally as harmless as that of the respondent and such statement was calculated to deceive and mislead the purchasing public.

CONCLUSION.

That the practice of the respondents as described in the foregoing findings as to the facts are unfair methods of competition in interstate commerce, and are 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 the evidence, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, Paul Balme, trading under the name and style of B. Paul, his agents, servants and employees cease and desist:

1. From using the coined word "Oreal" either standing alone or in connection with any prefix thereto as a trade name or descriptive name for a henna hair dye when sold and distributed in interstate commerce.

2. From placing the coined word "Oreal" either standing alone or otherwise, or at all, upon the containers in which the henna hair dye sold and distributed by the respondent is marketed in interstate commerce.

3. From using the coined word "Oreal" either standing alone or otherwise, or at all, in any circular, newspaper, magazine or other means of advertising henna hair dye sold and distributed by the respondent in interstate commerce.

4. From using on the container in which the henna hair dye is sold or distributed in interstate commerce the French words "La Plante Merveilleuse" or in any labels or in any circular, newspaper,

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magazine or other medium of advertising henna hair dye in such a way as to confuse respondent's product with any competing product.

5. From putting up the henna hair dye sold and distributed in interstate commerce by the respondent in any container so similar in color and general appearance of lettering or device with that of a competitor as to confuse and mislead the public into believing that the henna hair dye of the respondent is one and the same as that of its competitor.

6. From using either on the label of the container in which the henna hair dye is packed, or in advertising in newspapers, circulars, pamphlets, placards or any other advertising medium any false or deceptive words or phrases such as "New French Discovery" or "The only harmless coloring in the world," or any phrase or phrases of similar import when applied to the henna hair dye of said respondent when sold or distributed in interstate commerce.

And it is further ordered, that the respondent shall file with the Federal Trade Commission within ninety (90) days from the date of this order, its report in writing stating the manner and form in which this order has been conformed to, and shall attach to such report two copies of all circulars, stationery, advertisements, trade names, devices or labels distributed and displayed to the public by respondent in connection with the sale of its product in interstate commerce subsequent to the date of this order and the respondent shall also file with the Federal Trade Commission within ninety (90) days from the date of this order, two samples of the containers in which respondent packs the henna hair dye which the said respondent sells or distributes in interstate commerce.

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FEDERAL TRADE COMMISSION

v.

C. H. KORB AND W. M. DWYER, TRADING AND DOING
BUSINESS UNDER THE FIRM NAME AND STYLE OF
KORB & DWYER.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 725—May 8, 1922.

SYLLABUS.

Where a firm and an individual, engaged in the business of buying, overhauling, and selling second-hand adding machines of various makes; for the purpose of misleading and deceiving the public, advertised "SEVERAL HUNDRED THOROUGHLY REBUILT DALTON ADDING AND LISTING MACHINES AVAILABLE AT HALF AMERICA'S LIST PRICES. CABLE OR WRITE FOR PRICES * * * KORB & DWYER, REBUILT TYPEWRITERS AND ADDING MACHINES, 31 Walker St., New York City, U. S. A.," notwithstanding the fact that they were never in possession of any appreciable number of such rebuilt machines in the common acceptation of the term, nor in a position to supply them:

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that C. H. Korb and W. M. Dwyer, a partnership doing business under the firm name and style of Korb & Dwyer, located at 31 Walker Street, New York City, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, C. H. Korb and W. M. Dwyer, are now and were at all times hereinafter mentioned, a partnership organized, existing and doing business in the State of New York under the firm name and style of Korb & Dwyer, having their principal place of business located at 31 Walker Street, New York City.

PAR. 2. That the respondents now and for more than two years last past have been engaged in the business of buying and selling second-hand adding machines, which machines have been overhauled,

but not rebuilt, among the several States of the United States, the Territories thereof and the District of Columbia, in competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 3. That during the year last past the respondents advertised and caused to be inserted in a magazine in general circulation among the trade, called "Office Appliances," an advertisement in and by which they offered for sale several hundred thoroughly rebuilt, first class Dalton Adding and Listing machines. This advertisement appeared in the publication named at least three times.

PAR. 4. That the advertisements so appearing and which the said respondents caused to be published and circulated were untrue in that the respondents did not have in their possession or otherwise for sale any rebuilt Dalton Adding machines and did not have any arrangements made by which they would be able to procure any such machines. Respondents did not have on hand but a small number of machines at the time the advertisements so appeared and did not have and could not procure several hundred such machines as advertised. The only machines which the respondents had on hand at the time the advertisements so appeared were overhauled but not rebuilt Dalton Adding Machines.

PAR. 5. That the machines which respondents had on hand and which they were undertaking to sell by the aid of the advertisement before referred to were not rebuilt Dalton Machines in that they had not been taken down and worn and defective parts replaced by new parts, which is necessary to be done in order that a machine be properly termed as understood by the trade, a rebuilt machine. That respondents knew at the time that they caused said advertisement to be published and circulated that they did not have on hand and could not procure the number or character of machines so advertised and that the advertisement inserted and published was known by them to be false at the time of its publication and circulation.

PAR. 6. That by reason of the facts set out in the foregoing paragraphs of this amended complaint, the respondents have been guilty of unfair methods of competition in commerce as defined and prohibited by Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, C. H. Korb and W. M. Dwyer,

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trading as Korb & Dwyer, charging them with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearance in person and filed their answer herein, and formal hearings having been had before an examiner of the Commission, and testimony having been introduced in support of the allegations of the complaint and no testimony having been offered by the respondents, and the Commission having duly considered the record, and it being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondents, C. H. Korb and W. M. Dwyer are and were at all times hereinafter mentioned, a partnership, organized, existing and doing business under the firm name and style of Korb & Dwyer in the State of New York, and having their office and principal place of business at 28 Walker Street, New York City; that on or about May, 1920, the said firm was dissolved and C. H. Korb succeeded to the said firm business and now conducts the same under his own name.

PAR. 2. That C. H. Korb and W. M. Dwyer, partners aforesaid, and C. H. Korb, individually, now and for more than two years last past have been engaged in the business of buying, overhauling, selling and shipping secondhand adding machines of various makes to purchasers in the various States of the United States and the District of Columbia in competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 3. That the said respondents during the year 1920, advertised and caused to be inserted in a newspaper or magazine called "Office Appliances" issuing monthly and circulating throughout the various States of the United States, in fact "all over the world." the following advertisement:

"SEVERAL HUNDRED THOROUGHLY REBUILT DALTON ADDING AND LISTING MACHINES AVAILABLE AT HALF AMERICA'S LIST PRICES. CABLE OR WRITE FOR PRICES."

[Here follows a picture of adding machine.]

"KORB & DWYER

**REBUILT TYPEWRITERS AND ADDING MACHINES,
31 Walker Street, New York City,
U. S. A."**

PAR. 4. That the respondents had not at the time the said advertisement appeared in said magazine nor had they at any other time

had in their possession, for sale or otherwise, one hundred or two hundred or as many as a dozen rebuilt Dalton Adding Machines and no arrangement had been made or contract entered into whereby the said Korb & Dwyer or either of them individually, could or were to receive for sale rebuilt Dalton Adding Machines as advertised; that while the respondents were equipped with facilities to overhaul Dalton and other adding machines they were not equipped and did not have the facilities to rebuild Dalton Adding Machines; that the respondents could not obtain the new parts necessary to rebuild said machines nor the skilled labor required; that the word "rebuilt" as applied to secondhand adding machines has a well-known meaning, especially to the adding machine and typewriter trade, so that an adding machine may properly be said to be a rebuilt machine when after several years' use it is stripped down to its base and then built up, replacing parts that have been worn by new parts, and building into the machine at the same time any refinement and improvements made since it was manufactured.

PAR. 5. That it is a policy maintained by all of the large manufacturers of adding machines as the Burroughs, Wales, Dalton and Monroe to refuse to sell new parts for machines made by them to anyone and hence the only manufacturer who can rebuild the Dalton machine or Burroughs machine or machines of the other large manufacturers is the manufacturer of the particular adding machine to be rebuilt, and this fact is well known to the adding machine trade and especially to the dealers in secondhand adding machines and the respondents knew this policy when they were advertising for sale several hundred rebuilt Dalton Adding Machines; that the General Exchange Adding Machine Company, from whom the said machines were expected to be purchased by respondents, did not rebuild, and could not have rebuilt, the said Dalton Adding Machines as said Company, while dealing in adding machines, overhauling and selling them, does not rebuild any adding machines except the Burroughs Adding Machine, which it manufactures.

PAR. 6. That respondents, for the purpose of misleading and deceiving the purchasing public concerning the machines advertised by them for sale "at half American list prices," falsely advertised that the said machines were "rebuilt Dalton Adding Machines" and in furtherance of this deception respondents signed said advertisement in such a manner as to mislead the public into the belief that the respondents are dealers in rebuilt Dalton Adding Machines as well as other makes of adding machines.

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CONCLUSION.

That the acts of the respondents as set forth in the foregoing finding as to the facts are unfair methods of competition in commerce and in violation of the Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the 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 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 C. H. Korb and W. M. Dwyer, individually, or under the firm name of Korb & Dwyer, and each of their agents, representatives and employees cease and desist from:

Directly or indirectly, selling, or offering for sale, or advertising for sale in newspapers, magazines, circulars, or otherwise, in interstate commerce, overhauled Dalton Adding Machines, upon the representation that they are rebuilt adding machines.

Directly or indirectly representing through advertisements in magazines, newspapers or otherwise in interstate commerce, that respondents are or either of them is engaged in buying, rebuilding and selling Dalton Adding Machines, or buying, rebuilding and selling adding machines of any other manufacturer of adding machines which exclusively rebuilds machines of its own manufacture, unless and until the facts truthfully warrant such representation.

It is further ordered, That the said respondents, C. H. Korb and W. M. Dwyer, 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 it has complied with the order of the Commission herein set forth.

Complaint.

FEDERAL TRADE COMMISSION

v.

LOUIS K. LIGGETT COMPANY.

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

Docket 844—May 8, 1922.

SYLLABUS.

Where a corporation dealing in drugs and toilet articles, advertised as "Pyralin Ivory", combs composed of nitrated cellulose or "pyralin", and displayed the same in their windows with placards bearing the legend "Special. Good Ivory Combs, 49¢", or "Excellent Pyralin Ivory Combs for 49¢"; with a capacity and tendency thereby to mislead and deceive the purchasing public as to the value or quality thereof, and to induce the purchase thereof in the mistaken belief that they were made of ivory:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Louis K. Liggett Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in the District of Columbia, in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and 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 Massachusetts, with principal place of business at New York, N. Y.

PAR. 2. That respondent is engaged in the business of operating retail stores in the District of Columbia and in cities located in various states of the United States, in which stores respondent sells at retail to the purchasing and consuming public, drugs, medicines, drug sundries, toilet articles and other commodities; that respondent 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 Two hereof, operated eight stores located in the District of Columbia, in which stores it has had on sale within the year prior to the issuance of this complaint, and prior thereto, combs

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and other articles made of nitrated cellulose, a compound known commercially as pyralin, which combs were displayed in windows of one of said stores with placards which contained false and misleading descriptive matter relating to and concerning said combs, in that said placards contained the statement, "Special. Good Ivory combs, 49¢"; that in other stores operated by respondent in the District of Columbia, said combs were displayed in trays inside the stores, with placards containing the statement "Excellent Pyralin Ivory Combs, for 49 cents"; that respondent further in the course of its said business has caused advertisements to be published in newspapers of general circulation, published in the District of Columbia, which advertisements contained further false and misleading statements relating to and concerning combs and other articles made of said compound known commercially as pyralin, sold by respondent in its said stores in the District of Columbia, in which advertisements such articles were referred to and described as "pyralin ivory"; that the combs and other articles so offered for sale and sold by respondent are of a color resembling that of ivory, so that respondent by use of the placards and advertisements as aforesaid, was able to mislead and has misled and deceived the purchasing public, and the public has been induced thereby to purchase such articles upon the mistaken belief that they were made of ivory.

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, Louis K. Liggett 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 herein a stipulation as to facts, in which it is stipulated and agreed by the respondent, that the Federal Trade Commission may take such stipulation as to facts, as the facts of this proceeding and in lieu of testimony, and proceed forthwith to make its report stating its findings as to the facts and such order as it

may deem proper to enter herein, without the introduction of testimony or the presentation of argument, and the Federal Trade Commission 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, Louis K. Liggett Company, is a corporation organized under the laws of the State of Massachusetts and is engaged in the business of operating retail stores in the District of Columbia and in cities in the various States of the United States, in which stores respondent sells and offers for sale to the public, in due course of retail trade, various commodities, among which are drugs and toilet articles; that respondent carries on its said business in direct, active competition with other dealers in like commodities in the District of Columbia.

PAR. 2. That respondent in the course of its business as described in Paragraph One hereof, sold and offered for sale in stores operated by it in the District of Columbia, combs and other articles made of nitrated cellulose, a compound sometimes known commercially as "pyralin," and in one of its said stores, on June 30, 1921, and prior thereto, such combs were displayed in windows with placards which contained the following printed matter:

"Special. Good Ivory Combs, 49¢."

And in other stores so operated by respondent, such articles, on August 10, 1921, and prior thereto, were displayed in trays inside the stores, with placards containing the words and figures as follows:

"Excellent Pyralin Ivory Combs for 49¢;"

that on December 14, 1920, and on other dates prior to the issuance of the complaint herein, as a means of bringing to the attention of the purchasing public the articles so offered for sale and sold by it, respondent caused certain advertisements to be published in newspapers of general circulation in the District of Columbia, and in such advertisements said articles were described as "pyralin ivory;" that the description of such articles in such placards and advertisements as "ivory" or "pyralin ivory" had the capacity and tendency to mislead and deceive the purchasing public by creating in the minds of the public false or erroneous beliefs concerning the value or quality of said articles, and in some instances to induce persons to purchase said articles upon the mistaken belief that such articles were made of ivory.

PAR. 3. That respondent at the time the preliminary investigation was made, which resulted in the issuance of the complaint herein,

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had the attention of its store managers called to the misleading and deceptive character of its advertisements and advertising matter, and immediately thereafter respondent discontinued the use of such descriptive matter or like descriptive matter in the advertisements and advertising matter thereafter published or displayed by it.

PAR. 4. That on May 17, 1920; at a conference of representatives of the manufacturers of, and dealers in, various basic materials sometimes known commercially as "celluloid," "pyralin," etc., and manufacturers of and dealers in various articles made from such basic materials, which conference was called by the Federal Trade Commission to meet at its offices in Washington, D. C., a resolution was passed which condemned the use, as applied to articles made from said basic materials, of the following and similar terms: "French ivory," "pyroxylin ivory," "tortoise shell," "ivory combs," "Florentine shell ivory," "pyralin ivory," "jade necklaces," "coral necklaces," "American ivory," etc.

CONCLUSION.

That the practices of the respondent, under the conditions and circumstances set out in the foregoing findings as to the facts, constituted an unfair method of competition in commerce in the District of Columbia, and were in violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto and a stipulation as to the facts filed herein, and the Commission having made its report in which it stated 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 Louis K. Liggett Company, its agents, representatives, servants and employes, do cease and desist from directly or indirectly:

Causing advertisements to be published in newspapers or making use of placards, display cards or other forms of advertising matter, as a means of bringing to the attention of the purchasing public, commodities offered for sale or sold by it, in stores operated by it in the District of Columbia, which advertisement or advertising

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matter describe as "pyralin ivory" or "ivory," articles so offered for sale or sold by it, which articles are not in fact made or composed of ivory.

It is further ordered, That the said respondent, Louis K. Liggett Company, 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 it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

SOUTHERN HARDWARE JOBBERS' ASSOCIATION ET AL.

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

Docket 603—May 9, 1922.

SYLLABUS.

- Where an unincorporated association of jobbers and wholesale dealers in hardware, including a large majority of the dealers at wholesale in its territory (most of whom also sold at retail), whose membership was restricted to concerns purchasing, selling, and distributing through so-called regular channels of trade, and whose members refused to purchase from manufacturers selling to nonmembers; for the purpose of enjoining upon the trade the methods approved by it and of hindering the competition of others,
- (a) Conducted a system of espionage for the discovery of sales to nonmembers;
 - (b) Informed manufacturers of its disapproval of such sales;
 - (c) Made known its membership policy to hardware manufacturers who were members of the National Association;
 - (d) Published in trade directories of general circulation among manufacturers of hardware its membership as a list of "legitimate" jobbers;
 - (e) Furnished to the National Association of hardware manufacturers, which deferred to it in the matter, lists of those whom it considered entitled and those not entitled, to purchase on regular jobbers' terms and conditions;
 - (f) Declined to admit to membership a corporation organized and designed to act as a wholesale purchasing agency for a cooperative association of a large number of retail dealers in hardware, formed for the purpose of dealing directly with manufacturers and of thereby securing the benefits of direct dealing and enabling them to compete successfully with catalogue and mail-order houses and with such regular jobbers as also sold at retail;
 - (g) Informed a jobber member who was offered the presidency of such purchasing agency that his own business would suffer if he accepted the same, and that he would be expected to resign from the association, with the result that he declined the position;
 - (h) Notified the manufacturers of hardware and their national association that by reason of the distributing policy of said agency and cooperative association, the services of jobbers would be partly eliminated, that neither of them was a member of the jobbers' association, and that sales to either would be regarded as unfriendly acts affording a reason for their refusal to make further purchases; and
 - (i) Sought to secure the publication in trade journals of derogatory matter intended to cause hardware manufacturers to refuse to sell to those whose business methods were not approved, and especially to said concerns;
- With the result that a large number of manufacturers refused to complete orders of said concerns theretofore accepted by them, others either were with difficulty induced to fill them, or refused to have any dealings with said concerns, notwithstanding their offer to purchase in car-load lots and otherwise conform to all their requirements with respect to sales to so-called

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regular jobbers, an attempt to secure supplies by purchasing through a jobber member on a cost and commission basis failed due to the manufacturers' refusal to continue to supply the jobber for that purpose, said concerns and their stockholders were compelled to purchase as retailers from their competitors, the jobber members, upon the same terms and conditions given by said members to their own retail customers, and competition in the distribution and sale of hardware and allied commodities was thereby unduly hindered;

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 Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., King Hardware Co., George E. King and John Donnan, all of whom are hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Southern Hardware Jobbers' Association, is a voluntary association, the members of which, about 350 in number, are persons, partnerships, and corporations engaged in the business of buying and selling hardware in wholesale quantities throughout certain southern States of the United States; that the respondents George E. King and John Donnan are president and secretary, respectively, of said respondent, the Southern Hardware Jobbers' Association; that the respondent, King Hardware Co., a corporation, the Beck & Gregg Hardware Co., Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., partnerships, are members of the respondent, Southern Hardware Jobbers' Association, and are engaged in the business of buying and selling hardware in wholesale quantities in the city of Atlanta, State of Georgia, and purchase hardware in the various States of the United States and cause same to be transported therefrom to the State of Georgia, where the products and commodities are resold by said respondents to purchasers in the State of Georgia and other States adjacent thereto, and said respondents cause said products and commodities to be transported when resold, from the State of Georgia

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through and into other States of the United States. That the members of said Southern Hardware Jobbers' Association are so numerous that all of said members can not, without manifest inconvenience and oppressive delay, be made respondents herein, but the members which are made respondents herein are fairly representative of the entire membership.

PAR. 2. That certain retail dealers in hardware in the State of Georgia and States adjacent thereto, within the year last past, organized under the laws of the State of Delaware two corporations, viz., the Merchants Cooperative Association and the American Purchasing Co., for the purpose of purchasing in wholesale quantities through the instrumentality of said corporations all hardware and supplies dealt in by such retail dealers. The stock of such corporation was to be subscribed by said retail dealers and the profits arising from the business of such corporations were to be distributed to its stockholders as dividends. That at the outset said corporations undertook to purchase supplies for their stockholders from the W. A. Ray Hardware Co., of Pensacola, Fla., upon an arrangement made with that company that it should have for the service thus performed compensation aggregating 5 per cent of the cost price of all supplies so procured.

PAR. 3. That the respondents have conspired and confederated together with themselves and with other persons and particularly with other members of said respondent, the Southern Hardware Jobbers Association, to prevent the said Merchants Cooperative Association and American Purchasing Co. from obtaining from manufacturers and other usual sources from which purchasers of hardware in wholesale quantities must obtain supplies, either directly or through the assistance of the said W. A. Ray Hardware Co. and said respondents have, by boycott and threats of boycott and other unlawful means induced manufacturers and others to refuse to sell their products to said Merchants Cooperative Association and the American Purchasing Co., and such manufacturers and their brokers were informed by respondents that if they sold their products to said Merchants Cooperative Association and the American Purchasing Co. that the members of said Southern Hardware Jobbers' Association would not thereafter purchase any of the products of such manufacturers, and by means thereof manufacturers of hardware generally were intimidated to the extent that they thereafter refused to sell their products to said Merchants Cooperative Association and the American Purchasing Co. That the machinery of said Southern Hardware Jobbers' Association was employed by its

officers and members in bringing about and making effective the boycott as herein set out.

PAR. 4. That the use by each and all of said respondents, severally and in their common interest, of the above-mentioned practices, is an unfair method of competition in commerce within the meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., The Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., King Hardware Co., George E. King, and John Donnan, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

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

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, the Southern Hardware Jobbers' Association, is now, and for more than two years last past continuously has been, a voluntary, unincorporated association, with its principal office and place of business located in the City of Richmond, State of Virginia; that the territory within which its members sell and distribute their merchandise is that portion of the United States bounded by the Potomac River on the north, the Rio Grande on the south, the Atlantic Ocean on the east, and the Western Boundary of Oklahoma on the west; that the members of the Respondent Association have over 1,100 salesmen traveling the hardware trade throughout the said territory; that the number of the Association members is about 150; that the annual business of the

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members of this Association in said territory amounts to between three hundred and five hundred million dollars; that the membership of the said Association comprised, at the time of the issuance and filing of the complaint herein, and now comprises, about 90 per cent of all those doing a jobbing or a wholesale business in hardware in said territory; and that each and all of these members are engaged in distributing and selling, at wholesale, hardware and its allied commodities in interstate commerce in said territory to retail dealers in hardware and said commodities, in direct competition with other persons, firms and corporations similarly engaged in said territory.

PAR. 2. That about 90 per cent of the members of the said Southern Hardware Jobbers' Association were at all times mentioned in the complaint, and now are, engaged in the sale of hardware at retail as well as at wholesale; that these members of the said Association which do a retail business as well as a wholesale business were also, at all of the said times, so far as their retail business was concerned, competitors of all exclusively retail dealers in hardware in said territory, including their own customers.

PAR. 3. That the size and importance of some of the representative members of the Southern Hardware Jobbers' Association are shown by the following facts:

The Beck & Gregg Hardware Co. in their fiscal year of 1918-19 did a \$3,600,000 business; in the fiscal year of 1919 to 1920 it did between \$4,000,000 and \$5,000,000. It also does a large retail business. The Geo. E. King Hardware Co. during its fiscal year 1918 to 1919 did a business of \$2,225,000 and during its fiscal year 1919-20 a business of \$3,000,000. It has six large retail stores. The amount of business done annually by the Odell Hardware Co., another member of said Southern Hardware Jobbers' Association, amounted during its fiscal year of 1918-19 to \$2,250,000, during its fiscal year of 1919-20 to \$2,500,000, and during the first half of the fiscal year of 1920-21 to about \$1,000,000.

PAR. 4. That the members of the said Southern Hardware Jobbers' Association were, at the time of the issuance and filing of the complaint herein, so numerous that all of the said members of said Association could not, at that time, without manifest inconvenience and oppressive delay, be made parties respondent therein, but respondents, the Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., The Crumley-Sharp Hardware Co. and The King Hardware Co., were, at said time, and ever since have been, each and all of them, fairly representative of the entire membership of said Association; that all of these companies are corporations and members of the respondent, The Southern Hardware Jobbers' Associa-

tion, and are now and were, and each and all of the members of the said association are now and were, at all the times mentioned in the complaint and prior to the filing thereof, engaged in buying and selling hardware in interstate commerce in wholesale quantities in the City of Atlanta, State of Georgia, and throughout adjoining States and the said respondents in the course of their business purchase goods, wares, and merchandise in the various States of the United States and transport the same to their respective places of business in the City of Atlanta, State of Georgia, where they are resold at wholesale, and at times at retail and shipped throughout said State and into States adjacent thereto; and that there is continuously, and has been at all times mentioned in the complaint herein, a constant current of trade and commerce in the goods and commodities so purchased by the respondents throughout the States and Territories of the United States.

PAR. 5. That the by-laws of the Southern Hardware Jobbers' Association provide in Article 3 on membership that:

SECTION 1. The members of the Association shall be composed of wholesale hardware firms and doing business in the Southern States.

SEC. 2. Any firm or corporation, located in a recognized jobbing center, whose business is the selling of hardware at wholesale, exclusive of machinery, implements, and mill supplies, and whose sales to merchants shall not be less than 75 per cent of their gross sales of \$250,000 per annum, and who have not less than three salesmen constantly on the road, and whose capital, or capital and surplus, is not less than \$75,000, upon application to the Secretary in writing, and a four-fifths vote of the Executive Committee, may become a member of this Association upon subscribing to the Constitution and By-Laws and payment of \$25 membership fee in advance, and agreeing to pay annual dues of \$75 within 30 days after each annual meeting.

The membership of the said Association is further restricted to those wholesalers whose policy it is to distribute their goods and merchandise through the so-called regular channels of trade, that is, from manufacturer to jobber, from jobber to retailer, and from retailer to consumer.

PAR. 6. That the purpose and intent of the respondent Association and of its members is to dominate the wholesale and jobbing trade in hardware and allied commodities in the Southern States and to enjoin upon such trade the methods which respondent association and its members approve and to hinder the competition in such trade arising from the operations of those who hold divergent views as to business methods; that the members of respondent Association refuse to purchase from manufacturers who sell to customers who are not members of respondent Association and that attitude is made known by them to all manufacturers selling hardware and allied commodi-

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ties into said territory; that for the accomplishment of its purpose in maintaining in said territory the business methods approved by it, respondent Association conducts a system of espionage upon the business of the wholesale and jobbing trade in said territory, both as to its members and nonmembers; that in many instances members of the respondent Association and the respondent Association through its officers have communicated to manufacturers found to be selling to nonmember customers that such transactions were known to the respondent Association and its members and disapproved by them, the imputation being that such manufacturers must choose between sales to members of respondent association and sales to nonmembers.

PAR. 7. The respondent, George E. King, was the President, and John Donnan was the secretary-treasurer of the respondent, the Southern Hardware Jobbers' Association, at all of the times mentioned in the complaint. The powers of the Secretary at all these times were great. In him, as secretary, were largely centered the activities of the Association. In the line of his duties the secretary attended its annual and its executive committee meetings, and many of its district and local gatherings. He kept, however, meager minutes of the business transacted at these meetings, and any record of the same was generally made after the meeting was over and was not submitted to the association for its approval. The Secretary was at all times active in protecting the interests of the members as they are defined in the by-laws of the respondent association.

PAR. 8. It was at all times the duty of the secretary-treasurer of the said association to make up the lists of its members, to pass upon the qualifications of applicants for membership therein, and if any such applicant failed to meet the secretary's approval, to deny membership to it without further consideration by the membership committee of the association, or to add to the list of members those that in his estimation as secretary were so-called regular jobbers. It was also his duty as said secretary to collect the dues of its members and the other items of its income. These all amount to about \$15,000 annually, and out of this he was paid by the association for his work as its secretary and treasurer, a yearly salary. It was his further duty as secretary to keep in close touch with the members and the secretary of the American Hardware Manufacturers' Association and to notify that secretary of any persons, firms, or corporations not considered by him to be legitimate jobbers and ineligible to membership in his said Association, who sought to purchase hardware and hardware supplies from members of the American Hardware Manufacturers' Association on the same terms and conditions as are gen-

erally enjoyed by the members of the Southern Hardware Jobbers' Association.

PAR. 9. That the lists mentioned above of the members of the respondent, the Southern Hardware Jobbers' Association, were at all times, by the respondent, John Donnan, as secretary of and for the respondent, the Southern Hardware Jobbers' Association, distributed to and among hardware producers and manufacturers, including particularly the members of the American Hardware Manufacturers' Association, to give the said manufacturers and producers of hardware the names of those persons, firms, and corporations who in the estimation of the respondent, the Southern Hardware Jobbers' Association, its officers, directors and members, were justly entitled to purchase hardware on the so-called legitimate jobbers' terms and conditions from the said manufacturers and producers of hardware.

PAR. 10. That for the objects and purposes recited above such lists, with the desire and consent of the said respondent, the Southern Hardware Jobbers' Association, its officers, directors, and members, were published in the Hardware Age Directory and also in the Hardware Jobbers' Directory; that these two hardware directories circulate freely among, and are designed to give to manufacturers of hardware and hardware supplies, and particularly to the members of the American Hardware Manufacturers' Association, and are by such manufacturers used to obtain the names of those jobbers who, in the estimation of the Southern Hardware Jobbers' Association, are justly entitled to purchase hardware and hardware supplies on the same terms and conditions as are usually accorded by said manufacturers to the so-called legitimate jobbers.

PAR. 11. That there has been continuously, and for some years immediately prior to the issuance of the complaint herein, and there is existing now in the United States, an association of hardware manufacturers known as the American Hardware Manufacturers' Association. That this association comprises about 530 to 540 members, including the principal manufacturers of hardware in this country. Representative members of this Association were the Kelly Axe Co., which dominated the axe business in the United States; the Continental Co. of Detroit, Mich., which controlled about 90 per cent of the screen door and window trade in America; and the American Fork and Hoe Co., the largest fork and hoe manufacturer in the United States. As a rule the members of this Association in deference to the expressed desires and wishes of the respondents and members of the Southern Hardware Jobbers' Association practiced the distribution of their fabricated articles from manufacturer to jobber, and from jobber to retailer, and from retailer to consumer.

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In some few instances, and in exceptional cases, its members did sell hardware direct to the retail trade, but never on the same terms and conditions that it sold like goods and quantities to the so-called legitimate jobbers, including the members of the Southern Hardware Jobbers' Association. In the case of all such sales direct to the retail trade the members of the American Hardware Manufacturers' Association protected the jobber in his method of distribution by charging the retail buyers price differentials. This practice insured that the manufacturer charged the retailer just as much for the goods as if the retailer bought them from the jobber. The same was true in cases where the manufacturer sold his goods to a so-called irregular or illegitimate jobber. No objection was made by the regular jobber to such occasional sales by manufacturers to the retailer or illegitimate jobber provided the price differential was charged by them. In the territory covered by the Southern Hardware Jobbers' Association there were many consumers and retailers whose requirements were sufficiently large to make it practicable and profitable for manufacturers to sell direct to them, and on the same terms and conditions as they sell to the members of the Southern Hardware Jobbers' Association.

PAR. 12. That the members of this American Hardware Manufacturers' Association maintained at all times very close relations with the members of the Southern Hardware Jobbers' Association. The members of each met together at the annual, district, and local meetings of the Southern Hardware Jobbers' Association: To illustrate, the executive committee of the Southern Hardware Jobbers' Association met in January of each year together with the executive committee of the American Hardware Manufacturers' Association to discuss business conditions and to arrange for the annual conventions of the Southern Hardware Jobbers' Association and the American Hardware Manufacturers' Association at the same time and place. In May of each year, these annual conventions took place jointly in some principal city in the East or South, and the members of the respective associations met together and discussed and considered mutual business interests. Furthermore the territory of the Southern Hardware Jobbers' Association was divided up by the Association into eight so-called districts or zones. Those members of the Association located in these zones were accustomed to hold district meetings therein from time to time. Members of the American Hardware Manufacturers' Association attended these district meetings and took part in them: Thereat prices of hardware commodities were discussed and arranged, especially when the prices of mail order houses, and others not observing the so-

called regular and legitimate channels of distribution, came into competition with the resale prices charged by the members of the said Southern Hardware Jobbers' Association.

PAR. 13. That the open and avowed policy of the Southern Hardware Jobbers' Association of admitting to membership therein, no person, firm, or corporation which did not observe the policy of purchasing, selling and distributing commodities through the so-called regular channels of trade was made known to manufacturers comprising the American Hardware Manufacturers' Association. This Association, as stated above, included in its membership a large majority of the hardware manufacturers of the United States selling and distributing commodities in the territory covered by the Southern Hardware Jobbers' Association.

PAR. 14. That certain retailers of hardware to the number of about 300 in the State of Georgia and in adjoining states organized in July, 1919, under the laws of the State of Delaware, two corporations, one under the name of the American Purchasing Company, and the other under the name of the Merchants Cooperative Association. The object of the Purchasing Company was to act as purchasing agent for the Merchants Cooperative Association and to operate a regular wholesale house for the distribution of such merchandise as could not well be handled by direct shipment from manufacturers. The objects of Merchants' Cooperative Association were to deal directly with the manufacturer and secure the benefits of direct purchase on the same terms as any jobber or wholesaler, and by the saving resulting from this method enable the usual hardware retailer to compete successfully with mail order and catalog houses and with the retailing of hardware by the so-called regular jobbers.

PAR. 15. That one of the said corporations, namely, the American Purchasing Co., was organized and designed to meet the essential requirements for membership in the Southern Hardware Jobbers' Association, including the requirements set out in the Association's by-laws; that after its organization the said American Purchasing Co., through its officers, sought membership in the said Southern Hardware Jobbers' Association by applying in the customary manner to its secretary, John Donnan, to its president, George E. King, president of the King Hardware Co., and to other members of the said Association located in Atlanta, Ga., namely, the Dinkins-Davidson Hardware Co., the Crumley-Sharp Hardware Co.; that the American Purchasing Co. was informed that its selling policy did not meet with the approval of nor the requirements for membership

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in the Southern Hardware Jobbers' Association, and that the company could not become a member thereof.

PAR. 16. That the American Purchasing Co. sometime after its organization and after its first president resigned, offered the office of president to W. A. Ray, of the W. A. Ray Hardware Co., of Pensacola, Fla., a company which was at that time a member in good standing of the Southern Hardware Jobbers' Association; that the said W. A. Ray was fearful that if he accepted this office as president of the said Purchasing Co. he would incur the displeasure of his business associates and members of the Southern Hardware Jobbers' Association and would jeopardize the business of his company, the W. A. Ray Hardware Co., and he thereupon, and before making any acceptance of this office, went to Atlanta, Ga., to George E. King, president of the Southern Hardware Jobbers' Association and of the respondent, the King Hardware Co., and to other members of the said association located in Atlanta, Ga., to secure its assurance that his acceptance of the office would be followed by no business troubles, either to him, the Purchasing Co., nor to the W. A. Ray Hardware Co.; that upon his arrival at Atlanta he stated his mission to George E. King, as president of the Southern Hardware Jobbers' Association, who informed him that he (King) alone could not decide the matter and that he (King) would have to call a district meeting and let the members at that meeting, together with the secretary of the Southern Hardware Jobbers' Association, decide the matter; that thereupon George E. King called a district meeting and invited the secretary of the Southern Hardware Jobbers' Association to be present; that this meeting was accordingly held and W. A. Ray was informed by the said George E. King and the other Atlanta jobbers at this district meeting that in case he assumed the presidency of the said American Purchasing Co., which had been offered to him and the acceptance of which he had under consideration, he would be expected to resign his membership in the Southern Hardware Jobbers' Association. Mr. Ray was further notified that his hardware business in Pensacola, Fla., would suffer pecuniary loss by reason of his activities in behalf of the said American Purchasing Co.; that as a result of this conference at Atlanta, Mr. Ray notified the American Purchasing Co. that he could not accept the presidency of that company.

PAR. 17. That immediately upon the organization of the American Purchasing Co. and the Merchants' Cooperative Association, both of them began to purchase goods from hardware and other manufacturers upon the terms and conditions usually accorded by such manufacturers to the so-called regular jobbers. That soon after the

American Purchasing Co. and the Merchants' Cooperative Association began to purchase hardware and hardware supplies from manufacturers, and especially from those manufacturers who were members of the American Hardware Manufacturers' Association, on the same terms and conditions that were accorded by said manufacturers to the so-called regular jobbers, and especially to the members of the Southern Hardware Jobbers' Association, the president, George E. King, as president, and the secretary, John Donnan, as secretary, and other members of the said Southern Hardware Jobbers' Association, learned of such purchases and began to interfere with and to prevent such purchases. They notified the American Hardware Manufacturers' Association, its officers, and members, and other manufacturers, of the character and purposes of the said American Purchasing Co. and the Merchants' Cooperative Association. They declared to them that the purpose and the effect of the competition of the two last-mentioned corporations would, by reason of their policy of distribution, eliminate in part at least the services of the jobber in hardware. They informed the said American Hardware Manufacturers' Association and its members and other manufacturers of hardware that the said American Purchasing Co. and the Merchants' Cooperative Association were neither of them members of the Southern Hardware Jobbers' Association. They notified the American Hardware Manufacturers' Association, its officers and its members and other manufacturers that if any manufacturers of hardware sold their goods to either the American Purchasing Co. or the Merchants' Cooperative Association on the same basis accorded by manufacturers of hardware to the so-called regular jobber, especially to members of the Southern Hardware Jobbers' Association, that the respondents and those members would look upon such sales as acts unfriendly to the Southern Hardware Jobbers' Association and its members and would afford a reason for such members to refuse to deal any longer with such manufacturers. That the said notification to the American Hardware Manufacturers' Association and to other manufacturers of hardware served as a warning to all manufacturers not to trade or deal with the American Purchasing Co. or with the Merchants' Cooperative Association on pain of losing the trade and patronage of the Southern Hardware Jobbers' Association members.

PAR. 18. That after and as a result of receiving the notification aforesaid from the Southern Hardware Jobbers' Association and members thereof, concerning the said American Purchasing Co. and the Merchants Cooperative Association, a large number of hardware manufacturers, members of the American Hardware Manufacturers'

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Association, refused to complete orders for hardware supplies which many of them had theretofore accepted from these companies and partially filled, and returned the same unfilled. As a further result of said notification and threat of boycott, great difficulty was also experienced by these companies in getting other manufacturers, members of the American Association, to complete their orders. As a further result of said threat to boycott, other manufacturers, members of said Association, refused to deal with said American Purchasing Co. and the Merchants' Cooperative Association outright, notwithstanding said companies offered to purchase their supplies in carload lots and otherwise to conform to all the requirements of the said members of the American Hardware Manufacturers' Association with regard to purchases from them by the so-called regular jobbers, members of said Jobbers' Association.

PAR. 19. That by reason of all these said notices and interferences the American Purchasing Co. and the Merchants' Cooperative Association were no longer able to buy many of the goods they desired and were compelled to resort to the ruse and deceptive device of getting some regular jobber to purchase goods ostensibly for himself but in reality for either the American Purchasing Co. or the Merchants' Cooperative Association or both. That arrangements were then made by the American Purchasing Co. with the said W. A. Ray Hardware Co. by which the hardware company agreed to purchase hardware and supplies for the Merchants' Cooperative Association, and distribute the same to its stockholders, on a basis of 5 per cent commission on the cost price of all hardware and supplies so purchased by the W. A. Ray Hardware Co. That the said W. A. Ray Hardware Co., under the purchasing arrangement made with the American Purchasing Co., contracted for the purchase of large quantities of hardware and other supplies from manufacturers of the same and particularly from members of the American Hardware Manufacturers' Association and distributed the same to the Merchants' Cooperative Association and its stockholders. That all such purchases and sales were made in the various States of the Union and in direct competition with the respondents and members of the Southern Hardware Jobbers' Association and with other persons, firms, and corporations similarly engaged.

PAR. 20. That at first Mr. Ray and his company, the W. A. Ray Hardware Co., were able to purchase and did purchase large quantities of goods for the American Purchasing Co. and the Merchants' Cooperative Association from manufacturers of hardware and especially from members of the American Hardware Manufacturers' Association. But that afterwards and by reason of said activities and

the said notices of the president and secretary as such of the Southern Hardware Jobbers' Association and its members to manufacturers of hardware and especially to the American Hardware Manufacturers' Association and its members, the said manufacturers refused any longer to supply W. A. Ray and the W. A. Ray Hardware Co. with goods for the American Purchasing Co. and the Merchants' Cooperative Association.

PAR. 21. That the respondents, and the members of the Southern Hardware Jobbers' Association, especially through its president, George E. King, and its secretary, John Donnan, as such president and secretary respectively, have endeavored to persuade publishers of hardware trade journals to publish derogatory matters and things which the members of the said association and its president and secretary believe would have, and which they intended to have, the effect of causing manufacturers of hardware to refuse to sell to those intending purchasers whose business methods did not meet with the approval of the respondents, and especially to sell to the American Purchasing Co., and the Merchants' Cooperative Association: That one of these publications was "The Hardware Manufacturer," the official organ of, and a trade journal published by, and in the interest of, the American Hardware Manufacturers' Association and its members; that in answer to repeated requests from the respondent, John Donnan, as secretary of the said Southern Hardware Jobbers' Association, to the said American Hardware Manufacturers' Association, and its secretary as such, to warn its members against selling their fabricated articles to the American Purchasing Co. and the Merchants' Cooperative Association, the said secretary of the American Hardware Manufacturers' Association, as secretary, and with the knowledge and advice of the president of the American Hardware Manufacturers' Association, wrote to John Donnan, as secretary of the said Southern Hardware Jobbers' Association, the following letter of August 4th, 1919:

"I am a little puzzled as to just what it is advisable for me to do in relation to the American Purchasing Co.

"It would never do to give them publicity through the columns of The Hardware Manufacturer, nor by circular letter, besides I might find myself defendant in a suit under the Sherman law as a conspirator with you to injure their trade.

"We would be glad (and I think this the best course at present) to publish in the next issue of The Hardware Manufacturer a reminder to our members that you, as Secretary-Treasurer of the Southern Hardware Jobbers' Association, have accumulated a store of information about the standing and methods of distributors south of the Mason-Dixon line, and that you will gladly supply our manufacturers at any time, on request, with such information as will enable them to establish business connections with the reliable, straight dealing

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Southern Jobbers. Possibly it would be better for you to make this offer in a letter to our manufacturers over your signature and we will give it our approval by printing it in *The Hardware Manufacturer*."

Mr. John Donnan never made such an offer.

PAR. 22. That the respondents, as stated above, conspired and agreed among themselves and with others to induce and coerce members of the American Hardware Manufacturers' Association by means of boycott and threats to boycott, to refuse to deal with, or to sell to, in interstate commerce, the Merchants' Cooperative Association and the American Purchasing Co. upon the same terms and conditions given by the members of the said Manufacturers' Association to the respondents, and thus compelled the American Purchasing Co. and the Merchants' Cooperative Association and their stockholders to purchase as retailers from their competitors, the members of the Southern Hardware Jobbers' Association, and upon the same terms and conditions given by the members of the Association to their retail customers; that the purpose and intent and result of all these activities on the part of the Southern Hardware Jobbers' Association, its officers and members, was unduly to hinder competition in interstate commerce between the members of the respondent Jobbers' Association on the one hand, and the Purchasing Co. and the Cooperative Association on the other, and unduly to hinder the two latter from obtaining hardware and hardware supplies from the said manufacturers thereof, and thereby unduly to hinder competition in the distribution and sale of hardware and allied commodities in interstate commerce.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respective respondents, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondents have violated the provisions of the Act of Congress, approved September 26, 1914, en-

titled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Southern Hardware Jobbers' Association, its officers, committees and members, and Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., King Hardware Co., George E. King, and John Donnan, and each of them, forever cease and desist, from:

1. Combining and conspiring among themselves or with others, directly or indirectly, to induce, persuade or compel and from inducing, persuading or compelling manufactures, importers or producers, their agents or brokers to refuse to sell to the American Purchasing Co. or the Merchants' Cooperative Association because of any plan of organization or method of transacting business adopted by said company.

2. Combining and conspiring among themselves and with others to give and from giving, directly or indirectly, verbal, written or other notices or communications to manufacturers, importers and producers, their agents or brokers, that business concerns not members of the Southern Hardware Jobbers' Association, and not in harmony with the plans and policies of the said Association and not conforming to the tests and standards, set up by the said Association for membership therein are not entitled to purchase and obtain goods, wares and merchandise upon the same terms and conditions usually accorded by said manufacturers, importers and producers to the members of the Southern Hardware Jobbers' Association.

3. Combining or conspiring together among themselves, or with others, and from using any scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct or prevent manufacturers, producers or importers, their brokers or agents, from dealing with the American Purchasing Company or the Merchants' Cooperative Association, or others engaged in similar business, upon as favorable terms and conditions usually accorded by the said manufacturers, producers or importers, to the members of the said Southern Hardware Jobbers' Association.

4. Hindering, obstructing or preventing, directly or indirectly, any manufacturer, producer or importer, or broker or agent thereof, from selling and shipping, either or both, in interstate commerce, to the American Purchasing Co. or to the Merchants' Cooperative Association or to others engaged in similar business.

5. Combining and conspiring together among themselves, or with others, and from using any scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct

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or prevent the American Purchasing Co. or the Merchants' Cooperative Association, or others engaged in similar business, from freely purchasing and obtaining, in interstate commerce, the goods, wares and merchandise, usually handled by the said Company or Association in the course of their business, or from freely competing in interstate commerce with the members of the Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., King Hardware Co., George E. King, or others engaged in similar business.

6. Combining and conspiring, directly or indirectly, among themselves or with others, to establish and to continue maintaining any tests or standards for determining whether said American Purchasing Co. or Merchants' Cooperative Association or others engaged in similar business shall be permitted to purchase goods, wares and merchandise in interstate commerce upon the same terms and conditions as the members of the said Southern Hardware Jobbers' Association.

7. Combining and conspiring, directly or indirectly, among themselves or with others, to publish or to distribute, and from publishing or distributing to manufacturers, importers and producers, their agents or their brokers, engaged in selling goods, wares, and merchandise, especially hardware, among the various states, lists of the members of the Southern Hardware Jobbers' Association for the purpose and with the intent of influencing said manufacturers, importers, producers, their agents and their brokers, to refrain from making sales of such commodities to others than those names in such lists in the territory covered by the said Association.

8. Combining and conspiring among themselves, or with others, to induce, coerce and compel manufacturers, importers and producers, or their agents or their brokers, directly or indirectly, to refuse to sell goods, wares and merchandise to the American Purchasing Co. or to the Merchants' Cooperative Association, either or both, or to others engaged in the same business, upon the same terms and conditions usually offered and given by the said manufacturers, importers and producers, their agents or their brokers, to the members of the Southern Hardware Jobbers' Association.

9. Carrying on between and among themselves, or with others, communications, written or verbal, having the purpose, tendency or the effect of inducing, coercing or compelling manufacturers, importers, or producers, of goods, wares and merchandise, especially hardware, their agents or their brokers, directly or indirectly, to refuse to deal with or to sell to the American Purchasing Co., or the Merchants' Cooperative Association, or others engaged in similar business upon the

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same terms and conditions usually accorded by said manufacturers, importers and producers to the members of the Southern Hardware Jobbers' Association.

10. Combining or conspiring among themselves, or with others, to compel, or to attempt to compel, the American Purchasing Co., or the Merchants' Cooperative Association, or others engaged in a similar business, to purchase the goods, wares, and merchandise required for their business from or through any competitor of said Purchasing Co. or said Cooperative Association, or from others similarly engaged.

11. Combining or conspiring among themselves or with others to boycott or to threaten to boycott, or to threaten with loss of patronage or custom, any manufacturer, importer or producer, or his agent or broker, engaged in interstate commerce, for selling or agreeing to sell to the American Purchasing Co. or the Merchants' Cooperative Association or others engaged in a similar business, on the same terms and conditions accorded by such manufacturer, importer or producer, or his agent or broker, to members of the Southern Hardware Jobbers' Association.

It is further ordered, That the respondents, Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., King Hardware Co., George E. King, and John Donnan, shall within sixty (60) days after the service upon them of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint.

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FEDERAL TRADE COMMISSION

v.

M. G. GIBBS, TRADING UNDER THE NAME AND STYLE OF
PEOPLES DRUG STORES.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 784—May 9, 1922.

SYLLABUS.

Where a corporation dealing in drugs and toilet articles, advertised as "Imperial Pyralin Ivory Toilet Sets" articles composed of nitrated cellulose or "pyralin," and resembling ivory in color and in general appearance, but not otherwise; with a capacity and tendency thereby to mislead and deceive the purchasing public as to the value or quality thereof, and to induce the purchase thereof in the mistaken belief that they were made of ivory:

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 M. G. Gibbs, trading under the name and style of Peoples Drug Stores, 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 the respondent owns and operates a chain of retail drug stores in the city of Washington, D. C., under the name and style of Peoples Drug Stores, and sells drugs, merchandise and commodities 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 course of his business as described in Paragraph 1 hereof and for the purpose of bringing his merchandise and commodities to the attention of the purchasing public, causes advertisements of said merchandise and commodities to be inserted in newspapers and other advertising mediums having a general circulation in the District of Columbia; that many such advertisements contain false and misleading statements concerning the mer-

chandise and commodities offered for sale and sold by him; that among such false and misleading statements are statements to the effect that certain toilet articles offered for sale and sold by him are "Pyralin Ivory"; whereas, in truth and in fact, such toilet articles are not made of ivory, but are made of nitrated cellulose, or some other compound, so manufactured as to more or less closely resemble ivory in appearance; and that such false and misleading statements are intended and calculated to, and actually do, deceive and mislead the public as to the quality of said articles.

PAR. 3. 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.

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, M. G. Gibbs, trading under the name and style of Peoples Drug Stores, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, M. G. Gibbs, trading under the name and style of Peoples Drug Stores, has entered its appearance and filed its answer herein, hearings were had and evidence was introduced in support of the complaint and on behalf of the respondent before Warren R. Choate theretofore duly designated an examiner of the Federal Trade Commission, at which hearings the respondent appeared and was represented by counsel.

And thereupon this cause came on for final hearing before the Commission upon the complaint and the answer thereto, the testimony and evidence and stipulation of facts theretofore entered into by the counsel for the Commission and counsel for the respondent and upon the report of the trial examiner, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That at the time of the issuance and service of the complaint herein, there had been organized under the laws of the State of Delaware, a corporation under the name and style of Peoples

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Drug Stores, Inc., which corporation took over the property and succeeded to the business theretofore owned and controlled by M. G. Gibbs, trading under the name and style of Peoples Drug Stores.

That said M. G. Gibbs was at the time of service of the complaint, the president of said Peoples Drug Stores, Inc., and he was also owner of more than a majority of the capital stock of the Peoples Drug Stores, Inc., and also a director in said corporation and made answer to the complaint of the Federal Trade Commission in the name of Peoples Drug Stores, Inc., by himself as president thereof.

PAR. 2. There has been filed in this cause a stipulation as to facts entered into by and between W. H. Fuller, chief counsel of the Federal Trade Commission and the Peoples Drug Stores, Inc., by M. G. Gibbs, the president thereof, and Fred Beall, its counsel, under which it is stipulated and agreed that the corporation was formed for the purpose of taking over and succeeding to the business and property theretofore owned and operated in the District of Columbia by said respondent under the name and style of the Peoples Drug Stores, Inc., as set forth in the complaint filed in this cause, and further stipulations as to facts as more particularly appear in the said stipulation, as follows:

It is stipulated and agreed that in December, 1920, M. G. Gibbs, the respondent above named, caused to be organized under the laws of the State of Delaware a corporation, under the name of "Peoples Drug Stores, Incorporated," for the purpose of taking over and succeeding to the business and property theretofore owned and operated in the District of Columbia by said respondent under the name and style of Peoples Drug Stores, as set out in the complaint herein, and on January 1, 1921, said Delaware corporation did in fact take over said business and become, and still is, the successor in business to the respondent above named.

It is further stipulated and agreed that the complaint in this case shall stand and be regarded as having been duly issued and served upon said Peoples Drug Stores, Inc., the successor in business to M. G. Gibbs, trading under the name and style of Peoples Drug Stores, as aforesaid, and that throughout the proceedings herein, where the respondent herein is described and referred to as M. G. Gibbs, trading under the name and style of Peoples Drug Stores, the same shall be treated as including the said successor in business, the Peoples Drug Stores, Inc., to the same extent and as though an amended complaint had been issued and duly served herein, in which the said Delaware corporation, Peoples Drug Stores, Inc., had been named as respondent; that the answer herein may be considered as relating to such an amended complaint.

It is further stipulated and agreed that on May 17, 1920, at a conference called by the Federal Trade Commission, of representatives of the Pyroxylyn plastic industry, a resolution was passed by such representatives adopting the report of a committee of such representatives and appointed by them, for the purpose of making such report, which report was thereafter accepted by the Federal Trade Commission and ordered placed on file, as set out in its order of May 20, 1920; that section 3 of said report contained the following:

Use of designating terms.—We are opposed to the use of the words ‘Ivory,’ ‘Shell,’ ‘Amber,’ ‘Jade,’ ‘Jet,’ ‘Coral,’ etc., in any other than an adjective sense, and then only when coupled with the name of the material or some other qualifying term, such as color, finish, etc. Illustrative of the foregoing, the following, and similar terms should be permissible: ‘Ivory Celluloid,’ ‘Ivory Pyralin,’ ‘Ivory Fiberloid,’ ‘Ivory Viscolois,’ ‘Ivory Zynolite,’ ‘Ivory Acwalite,’ etc., ‘Ivory Color Celluloid,’ etc., ‘Ivory Color,’ ‘Ivory Color Dressing Combs,’ ‘Ivory Finish Combs,’ ‘Imitation Ivory,’ ‘Imitation Shell,’ etc. The following, and similar terms, would be objectionable terms: ‘French Ivory,’ ‘Parisian Ivory,’ ‘Tortoise-shell,’ ‘Tortoise-shell Eyeglasses,’ ‘Ivory Combs,’ ‘Florentine Shell,’ ‘Ivory Toilet Sets,’ ‘Pyralin Ivory,’ ‘Jade Necklaces,’ ‘Coral Necklaces,’ ‘American Ivory,’ etc.”

In witness whereof, the chief counsel for the Federal Trade Commission, and the People’s Drug Stores, Inc., have caused this stipulation to be executed, at Washington, D. C., this 31st day of January, 1922, and have caused same to be filed with the examiner heretofore appointed to take testimony and receive evidence concerning the charges stated in the complaint herein, such stipulation to be received by such examiner as supplementary to the evidence heretofore received by him in this proceeding.

(Signed) W. H. FULLER,

Chief Counsel for Federal Trade Commission.

PEOPLES DRUG STORES, INCORPORATED,

By (Signed) M. G. GIBBS, *President.*

(Signed) FRED BEALL, *Counsel for Respondent.*

PAR. 3. That said Peoples Drug Stores, Inc., since January 1, 1921, has been engaged in the business of operating a chain of drug stores in the District of Columbia which stores prior to January 1, 1921, had been owned and operated by M. G. Gibbs, trading under the name and style of Peoples Drug Stores, and in which stores there were sold and offered for sale to the purchasing public in the regular course of retail trade, drugs, drug sundries, toilet articles and other commodities, which said business was carried on by the Peoples Drug Stores, Incorporated, and its predecessor in business as aforesaid in direct, active competition with other persons, partnerships and corporations similarly engaged; that, for the purpose of bringing merchandise and commodities so offered for sale to the attention of the purchasing public, said Peoples Drug Stores, Inc., and its predecessor in business caused advertisements to be published in the newspapers published in the District of Columbia, and of general circulation therein, in one of which advertisements which appeared in the Washington Herald, issue of February 15, 1921, certain toilet articles offered for sale by said Peoples Drug Stores, Inc., were described as “Imperial Pyralin Ivory Toilet Sets,” although such articles were not made of ivory either in whole or in part, but were made of nitrated cellulose or pyroxylin plastic, sometimes known commercially as pyralin. That the description of said toilet sets, in said advertise-

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ments as "Imperial Pyralin Ivory Sets" 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 or quality of said articles and in some instances to induce the public to purchase said articles upon the mistaken belief that such articles were made of ivory.

PAR. 4. That the toilet articles offered for sale and sold by the Peoples Drug Stores, Inc., and its predecessor in business as set out in Paragraph 3 hereof, resemble somewhat in color and in general appearance similar articles made of ivory, although the material from which said articles were made had none of the other characteristics of ivory but was highly inflammable, and as an example of the relative value of ivory and the material of which said articles were made, it appears that the cost of an ivory fine-tooth comb, approximately 1 inch square, would be 75 cents, whereas such an article made of pyroxylin plastic would cost 6 or 7 cents.

PAR. 5. That the said respondent, the Peoples Drug Stores, Inc., immediately after becoming advised that its previous wording of advertisements covering sale of the articles hereinbefore referred to was objectionable, changed the wording of same so that they were descriptively advertised as "Ivory Colored Pyralin," and such advertisements appeared in the Washington Post of February 20, the Evening Star of February 24, and the Washington Herald of the same date, in the year 1922, all of said publications being newspapers having a wide circulation in the city of Washington, D. C.

CONCLUSION.

That the actions and conduct of respondent, prior to February 20, 1921, as set forth in the above findings as to the facts 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 under the pleadings, the stipulation 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 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

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and for other purposes," which said report is hereby referred to and made a part hereof,

Now, therefore, it is ordered, That the respondent, the Peoples Drug Stores, Inc., its officers, directors, agents and employees cease and desist from directly, or indirectly advertising, representing, labeling, or branding as "Ivory," articles offered for sale, or sold by said respondent, its agents or employees if such articles are not in fact made or composed of ivory.

It is further ordered, That the said respondent shall within 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.

Complaint.

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FEDERAL TRADE COMMISSION

v.

NATHAN HORN AND ELI U. HORN, PARTNERS, DOING
BUSINESS UNDER THE FIRM NAME OF N. HORN & SON,
OTHERWISE KNOWN AS HORN, THE TAILOR.

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

Docket 870—May 12, 1922.

SYLLABUS.

Where a firm engaged in conducting a tailoring business advertised that they would make suits to order for \$23.75 each, and that "We use only the finest grade of woolens," and "The finest woolens money can buy," the fact being that the cloths displayed by them pursuant to such advertisements, for their customers and prospective customers to select from, included some containing substantial proportions of cotton, a fact known to them but not made known to their customers; with a capacity and tendency thereby to deceive and mislead the public into believing that the suits so offered would be made from fabrics composed only of wool, and to secure patronage on that assumption:

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 Nathan Horn and Eli U. Horn, partners, doing business under the firm name of N. Horn & Son, otherwise known as Horn, The Tailor, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," 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 respondents are partners doing business under the firm name of N. Horn & Son, otherwise known as Horn, The Tailor. They are engaged in a men's tailoring business in the City of Washington and District of Columbia, with their place of business at the premises known as 611 Seventh Street northwest, in said City and District. They also maintain establishments and are engaged in said business at Lancaster, Lebanon and Norristown, in the

State of Pennsylvania, and at Fredericksburg, in the State of Virginia. Respondents' method of doing business is to display cloth and fabrics in their said places of business from which customers may make selections and from which respondents then make, to the order and measurements of the customers, suits of clothing and other garments. Respondents also send samples of cloth and fabrics and instructions for self-measurement to customers residing in other states than those where respondents have their said places of business, and sell and ship clothing made on orders of such customers in and through such states to such customers. In the course and conduct of their said business respondents are in competition with other persons, firms and corporations engaged in similar tailoring businesses.

PAR. 2. In the months of March and April, 1921, respondents caused certain advertisements to be published in newspapers of general circulation in the District of Columbia, in which advertisements respondents offered to make to order suits of clothing at the price of twenty-three dollars and seventy-five cents. In the course of said advertisements appear statements that "we use only the finest grade of woolens" and "the finest woolens money can buy." Among the various cloths and fabrics displayed by the respondents to customers and prospective customers, from which the latter might make a choice of the suits referred to in said advertisements, were many fabrics which were not composed wholly of wool, or of the finest grade of woolens, or of the finest woolens money could buy, but which, on the contrary, consisted partly of wool and partly of cotton. In three instances such fabrics contained 22 per cent, 30 per cent, and 45 per cent of cotton, respectively. These facts, although well known to the respondents, were not disclosed by respondents to their patrons.

PAR. 3. The aforesaid false and misleading statements appearing in respondents' said advertisements tend to mislead and deceive the public into the belief that the suits offered by respondents in said advertisements would be made from fabrics composed only of wool and containing no cotton, and induce the public to give its patronage to the respondents in the mistaken belief that for the sum of twenty-three dollars and seventy-five cents, respondents would make and sell to their customers a suit of clothing composed wholly of wool and containing no cotton; all to the prejudice of the respondents' said competitors and the purchasing public.

PAR. 4. Ever since the publication of the aforesaid advertisements, respondents have followed the practice of inserting similar advertisements in the public press from time to time and of thereafter similarly offering to customers a number of fabrics from which to choose suits, among which are a number of fabrics containing sub-

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stantially like percentages of cotton. The tendency of this practice has continuously been and is now to mislead and deceive the public as hereinbefore set out.

PAR. 5. The above-alleged acts and things done by respondents 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 respondents, Nathan Horn and Eli U. Horn, partners, doing business under the firm name of N. Horn & Son, otherwise known as Horn The Tailor, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents having entered their appearance by their attorney, L. A. Spiess, and filed their answer herein, and having stipulated and agreed that a statement of facts signed and executed by said counsel for the respondents and by W. H. Fuller, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts of this proceeding before the Federal Trade Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed further upon said statement, to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding,

Thereupon this proceeding came on for final hearing, and counsel for both parties having waived the filing of briefs and oral argument, 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, Nathan Horn and Elihu Horn, inadvertently named in the complaint, Eli U. Horn, are partners engaged in a men's tailoring business under the firm name of N. Horn & Son, otherwise known as Horn The Tailor, in the City of Washington, District of Columbia, with their principal place of business at 611 Seventh Street, Northwest, in said City and District. They

also maintain establishments and are engaged in said business at Lancaster, Lebanon and Norristown in the State of Pennsylvania and in Fredericksburg, in the State of Virginia. The respondents' method of doing business is to display cloth and fabrics in their said place of business from which customers may make selections and from which respondents then make, to the order and measurements of the customers, suits of clothing and other garments. The respondents also send samples of cloth and fabrics and instructions for self-measurement to customers residing in other places and in other States than those where the respondents have their said places of business, and sell and ship clothing made on orders of such customers in and through such States to such customers. The respondents carry on such business in direct, active competition with other persons, firms and corporations similarly engaged.

PAR. 2. In the months of March and April, 1921, the respondents caused certain advertisements to be published under the name of Horn The Tailor in The Washington Post, a newspaper of general circulation in the District of Columbia, in which advertisements respondents offered to make to order suits of clothing at the price of twenty-three dollars and seventy-five cents. In the course of said advertisements, appear statements that "We use only the finest grade of woolens," and "The finest woolens money can buy"; whereas, it appears from an analysis made by the United States Bureau of Standards that among the various cloths and fabrics displayed by the respondents to customers and prospective customers, from which they might make a choice of the suits referred to in said advertisements, were many fabrics which were not composed wholly of wool, or of the finest grade of woolens, or of the finest woolens money could buy, but which, on the contrary, consisted partly of wool and partly of cotton. In three instances it was found by said analysis that such fabrics contained 22 per cent, 30 per cent and 45 per cent of cotton, respectively. That these facts, although well known to the respondents, were not disclosed by the respondents to their patrons.

PAR. 3. That the aforesaid statements appearing in respondents' advertisements were false and misleading and were calculated to and tended to mislead and deceive the public into the belief that the suits offered by the respondents in said advertisements would be made from fabrics composed only of wool and containing no cotton, and to induce the public to give its patronage to the respondents in the mistaken belief that for the sum of twenty-three dollars and seventy-five cents the respondents would make and sell to their customers a suit of clothing composed wholly of wool and containing no cotton.

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CONCLUSION.

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

It is now ordered, That the respondents, Nathan Horn and Elihu Horn, partners doing business under the firm name of N. Horn & Son, otherwise known as Horn, the Tailor, their representatives, agents, servants and employees, cease and desist from:

Representing in any manner to the purchasing public that cloth or clothing offered for sale or sold by them is the finest grade of woolens or the finest woolens money can buy or otherwise suggesting that such cloth or clothing is wholly composed of wool when in fact the cloth or clothing is partly composed of cotton.

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

Complaint.

FEDERAL TRADE COMMISSION

v.

ARMOUR & COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7
OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 351—May 15, 1922.

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 a competing packing plant; caused its own employees, as officers of said competitor, to convey to it the business and property thereof; caused the only experienced packing-house member of the competitor's organization to enter into an agreement not to engage in the business for a long term of years; and proceeded to serve substantially all the trade theretofore served by said competitor: with the result that existing competition between the two concerns in the sale of meat and meat products, and prospective competition in the purchase and slaughter of live stock was suppressed and destroyed, and that commerce in the purchase and sale of meat and meat products in the territory covered by the competitor was restrained, and with a tendency to create a monopoly in said corporation in a line of commerce:

Held, That such acquisition of stock, together with such agreement, conveyance of the business and property of the acquired corporation, and subsequent operation thereof, under the circumstances set forth, constituted a violation of Section 7.

COMPLAINT.

The Federal Trade Commission, having reason to believe that Armour & Company, hereinafter referred to as the respondent, has violated 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. That the respondent, Armour & Company, is now, and was at all times hereinafter mentioned, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at Chicago, in said State, and engaged in the business of purchasing live stock and cattle in the various States and Territories of the United States, transporting the same to its various packing plants located in various cities of the United States, and slaughtering such live stock and cattle and thence shipping meat and meat products therefrom to purchasers thereof in the various States and Territories of the United States and the District of Columbia in direct

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competition with other persons, firms, copartnerships and corporations similarly engaged; and there has been at all times hereinafter mentioned a constant current of trade and commerce in such live stock and cattle and meat and meat products to and through the various States and Territories of the United States, the District of Columbia and foreign countries.

PAR. 2. That E. H. Stanton Company is now, and for more than three years last past has been, a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at Spokane, in said State; that said corporation is now, and was at all times hereinafter mentioned, engaged in the business of purchasing live stock and cattle in the various States of the United States, transporting such live stock and cattle to its various packing plants located in various cities of the United States, and slaughtering such live stock and cattle and thence selling the meat and meat products therefrom to purchasers thereof in the various States and Territories of the United States in direct competition with other persons, firms, copartnerships and corporations similarly engaged; and there is now, and has been at all times hereinafter mentioned, a constant current of trade and commerce in such live stock and cattle and meat and meat products to and through the various States and Territories of the United States, the District of Columbia and foreign countries.

PAR. 3. That during the year 1917, and for several years prior thereto, the E. H. Stanton Company in the conduct of its business was in direct competition with Armour & Company, the respondent herein, in the purchase of livestock and cattle and in the shipping of such livestock and cattle to their respective packing plants and in the sale of meat and meat products to purchasers thereof in the various States and Territories of the United States.

PAR. 4. That the respondent, Armour & Company, a corporation engaged in commerce, as aforesaid, did, during the year 1917, in violation of the provisions of Section 7 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," acquire the whole or a large part of the capital stock of the said E. H. Stanton Company, another corporation engaged in commerce, as aforesaid; and that the said respondent, Armour & Company, ever since the time of its acquisition of the said capital stock of said E. H. Stanton Company, has owned and still does own the whole or a large part thereof of the capital stock of said E. H. Stanton Company; and that the effect of such acquisition may be to substantially lessen competition between the E. H. Stanton Company

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and Armour & Company, respondent, or to restrain such commerce in certain sections or communities of the United States, or tend to create a monopoly in the purchase of cattle and livestock and in the sale of meat and meat products aforesaid.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Armour & Company, charging it with a violation of Section 7 of said Act. The respondent having entered its appearance by its attorneys, Messrs. Charles J. Faulkner, Jr., R. F. Feagans and H. K. Crafts, and having filed its answer herein, hearings were had before Mr. D. N. Dougherty, an examiner of the Federal Trade Commission, theretofore duly appointed, at Spokane, Washington, on May 13, 14, 15, 19 and 20, 1920, and before Mr. Gerald V. Weikert, an examiner of the Federal Trade Commission, theretofore duly appointed, at Chicago, Illinois, on October 13, 1920, at which hearings evidence was introduced in support of the allegations of said complaint and on behalf of respondent.

This proceeding coming 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, Armour & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at the City of Chicago, in said State, now, and at all times herein mentioned, engaged in the business of purchasing live cattle, calves, hogs, sheep and lambs, in the various states and territories of the United States, and transporting same and causing same to be transported from such states to respondent's various packing plants situated in the states of Illinois, Nebraska, Missouri and Iowa and other states, and after the slaughtering of said cattle, calves, hogs, sheep and lambs in said plants, have shipped the meat and meat products resulting therefrom, from such packing plants to and through various distributing branches situated in other states of the United States, to the purchasers of said products in the various states and territories of the United States, including the States of Washington, Idaho, Montana and Oregon.

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PAR. 2. That the E. H. Stanton Co. was a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with an authorized capitalization of \$600,000 divided into 6,000 shares of a par value of \$100 each, of which there was issued and outstanding on May 24, 1917, 5,669-2/3 shares.

PAR. 3. That the E. H. Stanton Co., described in Paragraph Two hereof, with its principal office and place of business at Spokane, Washington, was continually engaged, from 1907 up to about May 24, 1917, in the operation of a packing plant in the City of Spokane, Washington, and in buying and transporting to said plant from points in that state and other states, live cattle, calves, hogs, sheep and lambs, and in slaughtering said animals at its plant in Spokane, and in selling and shipping a full line of meat and meat products resulting therefrom, including dressed beef, hogs, sheep, calves, fresh pork cuts, beef cuts, and beef products, from its said plant at Spokane, Washington, to its various customers located in certain portions of the States of Washington, Montana, Idaho, and Oregon, the bulk of such shipments being to customers in what is known as the "Inland Empire," being the territory of which the City of Spokane is the distributing center, and which includes portions of Eastern Washington, Northwestern Idaho and Western Montana. The E. H. Stanton Co. also owned and conducted certain wholesale and retail markets in the States of Idaho and Washington, through which it marketed its products.

PAR. 4. That on or about May 24, 1917, the respondent, Armour & Co., acquired 5,386-2/3 shares of the outstanding capital stock of the E. H. Stanton Co., and later acquired the balance of such outstanding stock at approximately \$220 per share. An appraisal of the value of the stock of the E. H. Stanton Co. made by Armour & Co. showed a valuation of \$244 per share.

PAR. 5. That the respondent, Armour & Co., for several years prior to 1917 owned and conducted, among others, branch houses at the cities of Spokane, Washington; Portland, Oregon; and Butte, Montana, through which branch houses and others, Armour & Co., sold meat and meat products to its various customers in the States of Washington, Oregon, Montana and Idaho. The total sales of products sold through said branch houses for the year October 28, 1916, were in pounds and dollars as follows:

	Pounds.	Dollars.
Spokane, Washington.....	5,152,889	723,146.41
Portland, Oregon.....	4,590,468	651,101.32
Butte, Montana.....	3,858,119	655,830.16

The total sales of the Armour Co. branch house at Spokane, Washington, for the year ending October 28, 1915, were 4,151,380 pounds of products, valued at \$519,824.97. The sales for the year ending October 28, 1917, 4,438,495 pounds, valued at \$785,000.45. The principal products sold through said branch houses were such items as dressed beef, hogs, sheep, calves, fresh pork cuts, beef cuts and beef products.

PAR. 6. That at the date of acquisition of the capital stock of the E. H. Stanton Co. by Armour & Co., competition existed between said E. H. Stanton Co. and Armour & Co., particularly in the City of Spokane, and other cities, in what is known as the "Inland Empire" including the cities Coeur d'Alene, Idaho, Lewiston, Idaho, Spirit Lake, Idaho, St. Marie's, Idaho and Butte, Montana; that salesmen of both Armour & Co. and E. H. Stanton Co. solicited orders for meat and meat products from the same trade in that territory in those states in competition with each other, and that during the year 1916, and until May, 1917, the E. H. Stanton Co. sold about 75 per cent of the meat and meat products sold in the City of Spokane, Washington, and the territory around that city within a radius of 50 miles therefrom, which includes a portion of Northern Idaho commonly known as the "Coeur d'Alene country."

PAR. 7. That prior to the acquisition of the capital stock of the E. H. Stanton Co., the respondent had decided to engage in the business of purchasing and slaughtering livestock and selling the products therefrom in the Northwest territory, and either to acquire or build a packing plant in that territory for this purpose, and it caused an investigation to be made in that territory, and as a result of this investigation, the plant of the E. H. Stanton Packing Company had been reported by the respondent's agents as being in the best physical condition as well as in the best location for a prospective packing plant.

PAR. 8. That E. H. Stanton was the only practical and experienced packing-house man in the E. H. Stanton Company, and that in the contract between E. H. Stanton and Armour & Co. for the purchase of E. H. Stanton Company's stock, it was agreed that for the period of ten years E. H. Stanton "will not engage, in Montana, Idaho, Washington or Oregon, either as owner, manager or employee or stockholder, in a like or similar business to that now carried on by E. H. Stanton Company, a corporation."

PAR. 9. That from May 25, 1917, to the date of the taking of testimony in this case, in May, 1920, the respondent Armour & Co. has operated the packing plant of the E. H. Stanton Co., and, connected with the business of such operation, continuously purchased and

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shipped to said plant from various points in the State of Washington and adjacent states, live cattle, hogs, sheep, and lambs, and after slaughtering same, sold and shipped the meat and meat products resulting therefrom to various purchasers throughout the states of Washington, Idaho, Montana and Oregon, and elsewhere, and still continues so to do, and as a part of its said business, respondent serves substantially all the trade that was served by said Stanton Co. while in business in competition with respondent, as hereinbefore set out.

PAR. 10. That on or about October 27, 1917, J. M. Van Kleeck, who was the general manager for respondent of the Stanton plant, acting as vice president of the E. H. Stanton Co., and Don Keizer, acting as secretary of the E. H. Stanton Co., both employees of respondent, in order to further carry out the intention and purpose of the respondent, executed a deed from E. H. Stanton Co. corporation, to respondent Armour & Co., conveying the nominal title to real estate which included the Stanton packing plant to respondent, for no other consideration than the nominal consideration of \$1.00; and that said deed was filed for record in the office of the Auditor of Spokane County, Washington, on November 7, 1917, and recorded in volume 354, Record of Deeds of said county, on page 538, as number 516,128; that a beneficial interest in, and the ownership of, the plant and property described in said deed still remain and are in E. H. Stanton Packing Co., which was and still is at the close of the taking of testimony in this case, May, 1920, in existence as a corporate entity, capable of holding and owning such property and the title thereto.

PAR. 11. That the effect of the acquisition by respondent of such capital stock of the E. H. Stanton Co., and the control and operation of the Stanton Packing Plant and business by respondent which followed the acquisition and still exists, was the entire elimination and suppression of the competition which had theretofore existed between respondent, Armour & Company and the said E. H. Stanton Company in the sale of meats and meat products, including fresh beef, pork, mutton, lamb and other meat products, throughout the said territory, including particularly the portions of the States of Washington, Montana and Idaho adjacent to the city of Spokane, Washington, known as the "Inland Empire," and also the entire suppression of the prospective competition between respondent and said E. H. Stanton Company, in the purchase and slaughtering of live stock.

CONCLUSIONS.

The effect of the acquisition, from May to September, 1917, by respondent Armour & Company, a corporation, of the entire capital stock of the E. H. Stanton Company, a corporation, under the con-

ditions and circumstances in these findings set out (1) was and is to totally suppress and destroy the existing and prospective competition in the meat-packing industry and trade between the E. H. Stanton Company, the corporation whose stock was acquired, and respondent, Armour & Company, the corporation making said acquisition, and (2) was and is to restrain commerce in that section of the United States known as the Pacific Northwest, including the States of Washington, Oregon, Idaho and Montana, in the purchase and sale of meat and meat products, commonly known as the meat-packing industry and trade, and (3) was and is to tend to create a monopoly in respondent, Armour & Company, in the meat-packing industry and trade in that section of the United States commonly known as the Pacific Northwest, including the States of Washington, Oregon, Idaho and Montana, and such acquisition, with each of said effects, constituted and is a violation of 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."

The following provision of a certain contract made and entered into May 21, 1917, by and between respondent and E. H. Stanton—

"In consideration of the purchase price paid him by second party, first party agrees that for a period of ten years from date hereof, said first party will not engage, in Montana, Oregon, Idaho or Washington, either as owner, manager, employee or stockholder, in a like or similar business to that now carried on by the E. H. Stanton Company, a corporation"—

is unlawful, and in connection with the aforesaid acquisition of the capital stock of E. H. Stanton Co. by respondent, the effect thereof (1) was and is, totally to destroy the prior and prospective competition between the E. H. Stanton Co. and respondent, Armour & Company, and (2) was and is to restrain commerce in the purchase of live stock and in the sale of meat and meat products in that section of the United States known as the Pacific Northwest, including the States of Washington, Oregon, Idaho and Montana; and (3) was and is to tend to create a monopoly in said line of commerce in said section of the United States, and constitutes and is a violation of 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."

The certain deed, dated October 27, 1917, from E. H. Stanton Company to Armour & Company, respondent herein, which was filed

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for record in the office of the Auditor of Spokane County, Washington, on November 7, 1917, and recorded in volume 354, Record of Deeds, on page 538, and purporting to convey certain real estate, which included the Stanton packing plant, was made and executed by representatives of respondent, acting at the same time as the officers of the said E. H. Stanton Company, corporation, was without consideration (other than nominal), was made subsequently to and as a result of the illegal acquisition of the capital stock of E. H. Stanton Company by respondent, and was a mere paper transfer of the property covered, done in furtherance of the unlawful purposes, for which respondent acquired the said capital stock, and in connection with the acquisition of said capital stock, the effect thereof (1) was and is totally to suppress the prior and prospective competition between E. H. Stanton Company and respondent, and (2) was and is to tend to create a monopoly therein, in that section of the United States known as the Pacific Northwest including the States of Washington, Oregon, Idaho and Montana, and as a result flowing from the acquisition by the respondent of the capital stock of the E. H. Stanton Company, the said transfer constitutes, and is, a violation of 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated Section 7 of the provisions of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes";

It is now ordered, That the respondent, Armour & Company, shall forthwith cease and desist from violating 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 E. H. Stanton Company as to include in such divestment the Stanton packing plant and all property necessary to the conduct and operation thereof as a complete, going packing plant and organization, and so as to either directly or indirectly retain none of the fruits of the acquisition of

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any of the capital stock of said E. H. Stanton Co., corporation, and to this end respondent shall first restore to the E. H. Stanton Co. by proper conveyance, all the property which was transferred to the respondent by the deed of October 27, 1917, filed for record in the office of the Auditor of Spokane County, Washington, on November 7, 1917, and recorded in volume 354 Record of Deeds of said County, on page 538, as number 516,128, or has otherwise been transferred from E. H. Stanton Company to respondent since respondent's acquisition of any of the capital stock of said E. H. Stanton Company.

It is further ordered, That in such divestment, no stock or property above mentioned to be divested shall be sold 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 subsidiaries; *provided,* that nothing herein contained shall prohibit respondent from selling said stock and property, or any part thereof, to E. H. Stanton, J. E. Hample, J. L. Hamilton, or anyone who was a stockholder of said E. H. Stanton Company prior to the date of acquisition of the capital stock of said E. H. Stanton Company by Armour & Company.

It is further ordered, That respondent shall forthwith cease and desist from further enforcing the following provision of a certain contract between E. H. Stanton and respondent, dated May 21, 1917:

In consideration of the purchase price paid him by second party, first party agrees that for a period of ten years from date hereof, said first party will not engage, in Montana, Oregon, Idaho or Washington, either as owner, manager, employee or stockholder, in a like or similar business to that now carried on by the E. H. Stanton Company, a corporation.

It is further ordered, That the respondent, Armour & 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.

THE ATLANTA WHOLESALE GROCERS ET AL.

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

Docket 579—May 16, 1922.

SYLLABUS.

Where an unincorporated association of manufacturers', brokers' and wholesalers' salesmen of a certain city and the wholesale grocery dealers serving the great majority of retailers therein, inspired by the operations of a competitor which (1) sold to retailers only, (2) had retail grocers for its stockholders, (3) pursued business methods not favored by said salesmen and dealers, and (4) with very few exceptions was given, by manufacturers and producers of food products, the same prices and terms as were given the dealers,

(a) Sent to the manufacturers and producers of food products circular letters inviting, and calculated to invite, attention to direct sales made by them to said competitor, and to convey the impression that, should they fail to confine their sales to the so-called regular channels of distribution and continue selling directly to said competitor, they would lose the patronage of said dealers; and

Where one of said dealers—

(b) Sent "follow up" circular letters pertaining to the same matter and of the same general tenor to the manufacturers and producers; and

(c) For the purpose of informing the manufacturers and producers that the Atlanta wholesale grocers were organized for mutual cooperation and protection against practices which they might deem to be detrimental to their interests, included in one of such letters a newspaper clipping announcing the formation of an organization of practically all the wholesale grocers of said city, which organization said dealer's secretary was largely instrumental in creating, for the purpose of using said body as a means of influencing the manufacturers or producers to follow policies in harmony with those of the wholesale dealers, and to membership in which said competitor was not eligible; and

Where some of said dealers—

(d) Inquired of Atlanta brokers and representatives of manufacturers whether direct sales were being made to said competitor and advised them that, should they continue so to sell, they could not expect to retain the patronage and support of the dealers;

All with the common intent, through concerted action, of inducing the manufacturers and producers through fear of their united pressure, to interfere with the freedom of said competitor to obtain groceries and other food products, and with the effect of so doing:

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 Atlanta Wholesale Grocers, City Salesmen's Association, J. J. Barnes-Fain Co., Kelley Brothers Co., McCord-Stewart Co., Maret-Streeter Co., Oglesby Grocery Co., H. L. Singer Co., Walker Brothers Co., A. McD. Wilson Co., Conley & Ennis, Johnson-Fluker & Co., McDaniel & Co., Paradies & Rich, R. W. Davis & Co., Charles I. Branan, J. N. Hirsch, O. T. Camp, and R. O. Estes, all of whom are hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, The Atlanta Wholesale Grocers, is a membership corporation organized under the laws of the State of Georgia, without capital stock, and is in effect a trade association, the members of which are all engaged in the business of dealing in groceries and food products in the City of Atlanta, State of Georgia; that the respondent, The City Salesmen's Association, is an unincorporated, voluntary association composed of salesmen employed by certain persons, partnerships, and corporations engaged in the business of dealing in groceries and food products in the city of Atlanta, State of Georgia; that the J. J. Barnes-Fain Co., Kelley Bros. Co., McCord Stewart Co., Maret-Streeter Co., Oglesby Grocery Co., H. L. Singer Co., Walker Bros. Co., and A. McD. Wilson Co., are all corporations engaged in the business of dealing in groceries and food products in the City of Atlanta, State of Georgia; that Conley & Ennis, Johnson-Fluker & Co., McDaniel & Co., and Paradies & Rich are partnerships also engaged in the business of dealing in groceries and food products in the city of Atlanta, State of Georgia; that respondents R. W. Davis, trading under the name and style of R. W. Davis & Co., Charles I. Branan, and J. N. Hirsch are individuals engaged in the business of dealing in groceries and food products in the city of Atlanta; that respondents O. T. Camp and R. O. Estes are president and secretary, respectively, of the respondent, City Salesmen's Association. That each of said respondents, engaged in the business of dealing in groceries and food products as aforesaid, purchases commodities in the various States of the United States and in foreign countries and causes same to be transported therefrom to

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the State of Georgia, where same are resold by said respondents in wholesale quantities to purchasers in the State of Georgia and in other States adjacent thereto, and said respondents cause said commodities to be transported when sold from the State of Georgia through and into other States of the United States.

PAR. 2. That the Unity Grocery Co. and the Merchants Wholesale Grocery Co. are corporations, each organized and existing under the laws of the State of Georgia, with principal place of business at Atlanta, in said State, and each is engaged in the business of buying and selling in wholesale quantities, and in the usual course of wholesale trade, groceries and food products such as are bought and sold generally by persons, firms, and corporations engaged in the business generally known as that of a wholesale grocer; that in the course of its said business the Unity Grocery Co. and the Merchants Wholesale Grocery Co. each purchases commodities dealt in by it in the various States and Territories of the United States and transports same from and through other States, to the city of Atlanta, in the State of Georgia, where such commodities are resold in the usual course of wholesale trade; and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in commodities so dealt in by said Unity Grocery Co. and the Merchants Wholesale Grocery Co. between and among the various States and Territories of the United States.

PAR. 3. That the respondents, with the purpose, intent, and effect of stifling and suppressing competition in the sale of grocery products at wholesale, have conspired and confederated together to prevent the Unity Grocery Co. and the Merchants Wholesale Grocery Co. from obtaining commodities dealt in by them, from manufacturers and other usual sources from which a wholesale dealer in groceries must obtain supplies, and have by boycott and threats of boycott and by other unlawful means induced manufacturers of grocery products and brokers representing such manufacturers to refuse to sell their products to said Unity Grocery Co. and the Merchants Wholesale Grocery Co., and such manufacturers and brokers were informed by respondents that if they sold their products to said Unity Grocery Co. and Merchants Wholesale Grocery Co. that said respondents would not thereafter purchase any of the products of said manufacturers and brokers.

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 Atlanta Wholesale Grocers,

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City Salesmen's Association, J. J. Barnes-Fain Co., Kelly Brothers Co., McCord-Stewart Co., Marett-Streater Co., Oglesby Grocery Co., H. L. Singer Co., Walker Brothers Co., A. McD. Wilson & Co., Conley & Ennis, Johnson-Fluker & Co., McDaniel & Co., Paradies & Rich, R. W. Davis, doing business under the firm name and style of R. W. Davis & Co., Charles I. Branan, J. N. Hirsch, O. T. Camp and R. O. Estes, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, The Atlanta Wholesale Grocers, is, and at all times since June 19, 1919, has been a membership corporation organized and existing under the laws of the State of Georgia. It is without capital stock and does not engage in business for profit. Its membership is composed of the wholesale grocers named in Paragraphs 2, 3, and 4 of these findings.

PAR. 2. Each of the respondents, J. J. Barnes-Fain Co., Kelly Brothers Co., McCord-Stewart Co., H. L. Singer Co., A. McD. Wilson Co., Walker Brothers Co., Oglesby Grocery Co., and Marett-Streater Co., is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business in Atlanta, in said State, and is engaged in the business of purchasing in the various States of the United States groceries and other food products, and causing same to be transported therefrom to its place of business in the said city of Atlanta, where the same are sold in wholesale quantities to the retail grocery trade in the State of Georgia and adjoining States.

PAR. 3. Each of the respondents, Conley & Ennis, Johnson-Fluker & Co., McDaniel & Co., and Paradies & Rich, is a partnership, and as such is engaged in the business of purchasing in the various States of the United States groceries and other food products, causing same to be transported therefrom to their place of business in the city of Atlanta, Ga., where the same are sold in wholesale

quantities to the retail grocery trade in the State of Georgia and adjoining States.

PAR. 4. Each of the respondents, R. W. Davis, doing business under the name and style R. W. Davis & Co., Charles I. Branan and J. N. Hirsch, as an individual, is engaged in the business of purchasing in the various States of the United States groceries and other food products and causing the same to be transported to his place of business in the city of Atlanta, Ga., where the same are sold in wholesale quantities to the retail grocery trade in the State of Georgia and adjoining States.

PAR. 5. The respondent, City Salesmen's Association of Atlanta, Ga., for many years last past has been and was at the time of the issuance of the complaint herein an unincorporated association, having a membership of about 75, composed of salesmen representing manufacturers, brokers, and wholesalers of various products. Its membership is composed principally of grocery salesmen, and about 75 per cent of the salesmen employed by the Atlanta wholesale grocers named in paragraphs 2, 3, and 4 of these findings are members. It is formed for the mutual benefit of its members and does not engage in business for profit. Meetings are held every Saturday, and minutes are kept.

Respondents R. O. Estes and O. T. Camp are salesmen in the city of Atlanta and members of the City Salesmen's Association, and at the time of the filing of the complaint in this proceeding were secretary and president, respectively, of said association. R. O. Estes is a salesman for the respondent Oglesby Grocery Co., and O. T. Camp at the time of the occurrences set out in these findings was the Atlanta salesman of a specialty manufacturer, the Reilly-Taylor Co., of New Orleans, La.

All of the members of said City Salesmen's Association are not made parties respondent in this proceeding because to do so would have delayed the proceeding, and R. O. Estes and O. T. Camp are named respondents as the association's representatives, for the purpose of bringing the members of the association before the Commission.

PAR. 6. The Unity Grocery Company is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business in Atlanta, in said State, and is engaged in the business of purchasing in the various States of the United States groceries and other food products and causing same to be transported therefrom to its place of business in the city of Atlanta, where the same are sold in wholesale quantities to the retail grocery trade.

PAR. 7. The Unity Grocery Company and respondent wholesale grocers named in paragraphs 2, 3, and 4 of these findings are competitors in the business of buying and selling in wholesale quantities groceries and other food products such as are bought and sold generally by persons, firms, and corporations engaged in the business commonly known as the wholesale grocery business.

PAR. 8. The Unity Grocery Company was organized and incorporated under the laws of the State of Georgia on April 8, 1918, by a number of retailers for the purpose of purchasing in wholesale quantities groceries and other food products, and selling same to retail grocers. It is given this authority by its charter. Since the date of its organization it has been and still is engaged in the business of purchasing from manufacturers and producers groceries and other food products such as are generally carried by those engaged in the business of a wholesale grocery, and selling and distributing same to retail grocers located principally in the city of Atlanta.

The authorized maximum capital stock of said Company is \$50,000, of which amount \$10,000 was paid in when business began. Since that time its capital stock has been gradually increased. September 30, 1920, it had a paid-in capital stock of \$25,000. The yearly sales of the Company since its organization have been as follows: \$194,437.44 from April 8 to December 31, 1918; \$398,819.84 in 1919; \$334,008 from January 1 to August 31, 1920. This Company has shown a steady growth from the date of its organization. The Unity Grocery Company sells to retail grocers only. Its sale or list prices are the same approximately as the sale or list prices charged by respondent wholesalers, except that said Unity Grocery Company allows a larger cash discount to stockholder customers than is allowed by respondent wholesalers, and a larger cash discount than is allowed by said Unity Grocery Company to its nonstockholder customers. In addition to the above-mentioned discount given stockholders on purchases, the Unity Grocery Company pays a quarterly dividend of 2½ per cent. Its sales are not limited to stockholders, but 90 per cent of its customers are stockholders. They number approximately 120. Goods are generally sold by the Unity Grocery Company f. o. b. warehouse, and when delivery is made said Company makes a charge for such service. Whenever a customer does not pay for goods within one week after date of purchase, he is cut off until he has paid his bills. Prior to the issuance of the complaint in this proceeding the Unity Grocery Company employed no soliciting salesmen, but used the telephone instead. Since a short time after the organization of the company, it has been able to secure in this way about all the business it could conveniently handle.

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PAR. 9. The Merchants Wholesale Grocery Company was a corporation engaged in a wholesale grocery business similar to that of the Unity Grocery Company. The Merchants Wholesale Grocery Company was unsuccessful financially and went into bankruptcy in 1919.

PAR. 10. Respondents named in paragraphs 2, 3, and 4 of these findings, were, at all times, mentioned in the complaint and ever since have been engaged in the business of purchasing in wholesale quantities groceries and kindred products, and selling and distributing same to retail grocers in the usual course of the wholesale grocery trade. They employed salesmen who called on the retail trade and solicited orders, and said respondents extended credit to their customers and delivered goods in Atlanta and its suburbs without making any additional charge for the service of delivering. The total sales of respondents above referred to for the year 1919 amounted to \$14,279,044. There are approximately 1,800 retail grocers in Atlanta, most of whom are supplied by said respondents. About 100 are supplied by chain stores, and approximately 120 purchase more or less of their supplies from the Unity Grocery Company.

PAR. 11. The business carried on by the Unity Grocery Company originated in an effort upon the part of retail dealers in Atlanta, Ga., to purchase groceries and other food products at reduced costs. Costs were reduced in part by (1) soliciting sales over the telephone, (2) doing business upon short credit terms, (3) having few salaried officers, and (4) not giving free delivery service to customers. With very few exceptions, manufacturers and producers engaged in marketing groceries and other food products sell to the Unity Grocery Company at the same price and upon the same terms and conditions as to respondent wholesalers. The business carried on by the Unity Grocery Company, as hereinbefore found, was not in harmony with the plan and policy of respondent wholesalers named in paragraphs 2, 3, and 4, of these findings, respecting the distribution of grocery and other food products from manufacturer to wholesaler, to retailer, to consumer. The respondent wholesalers referred to in this paragraph were opposed to sales direct by manufacturers and producers to the Unity Grocery Company.

PAR. 12. Shortly prior to March 24, 1919, a committee comprising a number of the members of the respondent City Salesmen's Association—about seven in number—the names of whom are not all known but among whom were J. C. Harrison and A. S. Edwards, salesmen of respondent Walker Brothers Co., R. O. Estes, salesman of

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Oglesby Grocery Co., and E. S. Morris, salesman of respondent Kelly Brothers Co., met on different occasions in the City of Atlanta and discussed the question of sales direct by manufacturers and producers to the Unity Grocery Company. This committee of salesmen reflecting the views of their employers, and in their own interest as salesmen of such employers, was opposed to sales direct by manufacturers and producers to the Unity Grocery Company. At these meetings the above-mentioned committee of salesmen for the purpose and object of causing manufacturers and producers not to sell to the Unity Grocery Company, drafted two form letters intended to be sent to all important manufacturers and producers selling grocery products in the Atlanta market, one to be sent out by the respondent City Salesmen's Association and the other over the name of each of the respondent wholesalers named in paragraphs 2, 3, and 4 of these findings as set out above.

PAR. 13. The letter drafted by the committee of salesmen and intended to be sent out by the respondent City Salesmen's Association with the purpose and object as found in the foregoing paragraph was presented to the respondent City Salesmen's Association in open meeting. This letter was discussed by the Association members, and after certain changes had been made, the respondent City Salesmen's Association's authorized officers on March 24, 1919, sent a copy of the same to all important manufacturers and producers selling grocery and other food products in the Atlanta market. The letter sent pursuant to such authorization reads as follows:

GENTLEMEN:

Do you need the jobber as a distributor?

Upon the *success* of the jobber depends the salary of the Atlanta City salesman.

If you sell "the cream" of the Atlanta retail trade direct, how can you ask the co-operation of the salesman and the jobber in distributing your goods to the remainder of the retail trade?

We invite you to carefully investigate the distribution of your goods in Atlanta, and if they are not going through the legitimate jobbing channels we would be glad to have your cooperation in directing their sale.

We ask you to look into the distribution of your goods in Atlanta, and if they are not going through the legitimate jobbing channels, don't you think it would be to your interest to direct the sale where it properly belongs?

You need our assistance, we need your help. May we expect it?

Respectfully yours,

CITY SALESMEN'S ASSOCIATION.

PAR. 14. The other letter drafted by the committee of salesmen and intended to be sent out by the different respondent wholesalers, as stated in paragraph 12, was authorized and sanctioned by the sec-

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retary of the respondent City Salesmen's Association, and a large number of its members. This letter was submitted to certain respondent wholesalers sometime between the 15th and 24th of March, 1919. The exact number and the names of all the salesmen who presented this letter to respondent wholesalers is not known, but they apparently represented a group larger in number than the committee which drafted the same, and consisted of some twelve salesmen, most of whom were employed by the different respondent wholesalers. This letter was submitted to respondents Walker Brothers Co., H. L. Singer Co., Oglesby Grocery Co., Charles I. Branan, Kelly Brothers Co., R. W. Davis & Co., J. J. Barnes-Fain Co., Johnson-Fluker & Co., Paradies & Rich, McCord-Stewart Co., and Conley & Ennis. The first eight named respondents on their own stationery under date of March 24, 1919, and over their own names sent this letter to all important manufacturers and producers selling grocery products in the Atlanta market. Paradies & Rich sent this letter out under date of March 26, 1919. Respondents McCord-Stewart Co. and Conley & Ennis did not send out the letter. Respondents Kelly Brothers Co., Walker Brothers Co., Oglesby Grocery Co., H. L. Singer Co., R. W. Davis & Co., Johnson-Fluker & Co., Paradies & Rich and Charles I. Branan knew that other respondent wholesalers were sending out this letter, and that the respondent City Salesmen's Association was sending out the respondent City Salesmen's Association letter as found in paragraph 13. Members of the respondent City Salesmen's Association who submitted the letter to respondent wholesalers discussed with the last named eight respondent wholesalers the matter of the respondent City Salesmen's Association and the said respondent wholesalers sending out the letters to manufacturers and producers, and it is found that the last eight above named respondents knew that the respondent City Salesmen's Association letter and the respondent wholesalers' letter of March 24th were being sent out, and that they intended them as a united protest on the part of the respondent City Salesmen's Association and said respondent wholesalers against sales by manufacturers and producers to the Unity Grocery Company. This letter read as follows:

"GENTLEMEN:

The manufacturer—the jobber—the retailer. The generally recognized channel for distributing goods to the consumer.

Do you need the services and good will of the Atlanta jobber in distributing your goods? If you do, how can you hope for the jobber to continue in business and feature your goods when you go direct, over his head and sell through buying agencies, a good part of his retail customers?

We ask you to look into the distribution of your goods in Atlanta, and if they are not going through the legitimate jobbing channels, do you not think it would be to your interest to direct the sale where it properly belongs?

If you do not need the services of the jobber and his *many salesmen*, this letter will not interest you."

PAR. 15. J. C. Harrison, a member of the respondent City Salesmen's Association and a salesman of respondent Walker Brothers Company, was largely instrumental in the composition of the two letters set out in the foregoing paragraphs, and in cooperation with R. O. Estes, secretary of the respondent City Salesmen's Association and salesman of Oglesby Grocery Company, was influential in causing the respondent City Salesmen's Association and respondent wholesalers to send out the letters with the object and purpose as found in the foregoing paragraphs.

PAR. 16. On April 11, 1919, the respondents named in Paragraphs 2, 3, and 4 of these findings, as set out above, met in the City of Atlanta, Georgia, for the purpose of forming an organization for their mutual benefit. These respondent wholesalers met again on April 17, 1919, at which meeting officers were elected. A. W. Walker, of respondent Walker Brothers Co., was influential in perfecting the organization and was elected secretary. Subsequently on June 19, 1919, as hereinbefore found, this organization was incorporated under the name of The Atlanta Wholesale Grocers. This organization was not, as such, a party to the conspiracy alleged in the complaint and found in these findings, as set out above. The membership of this organization comprise practically all of the wholesale grocers in the City of Atlanta. The Unity Grocery Co. was not eligible to membership under the rules of this organization. Weekly meetings were held, and at such meetings matters of mutual business and social interest were discussed. The discussions at various times pertained, among other things, to such matters as taxation, telephone service, road problems, sidewalk deliveries, credits, continuation of suburban express lines, cooperation between wholesalers and retailers, relief of public from sugar shortage, inadequate facilities of the freight-receiving depots, and exchange of bulletins with the St. Louis Wholesale Grocers. Minutes were kept and many matters discussed by the Association are recorded in the minutes. The minutes contain no discussion of matters relating to manufacturers selling the Unity Grocery Co. Paragraph 2 of the certificate of incorporation of The Atlanta Wholesale Grocers, contains the following statement as to the purposes of the organization:

The object and purpose of said corporation is to foster and promote a feeling of good fellowship and good will among its members, and, on broad and

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equitable lines, to advance the welfare of THE WHOLESALE GROCERY TRADE OF ATLANTA.

To establish harmonious relations between manufacturers, wholesalers, and retailers for the advancement of their several interests and businesses in the distribution of food products, to the end that same will reach the consumers at the lowest possible cost.

To obtaining just and fair laws relating to all matters in which its members are interested, establishing bureaus for the exchange of such information among its members as may seem proper, and to do any and all things necessary for the conduct of such incorporation and the bringing together of its members in closer association.

It is found that A. W. Walker, of respondent Walker Brothers Co., had the further purpose and object of using the said organization as a means of influencing manufacturers and producers to refuse to sell to the Unity Grocery Company, by informing said manufacturers and producers that the members, constituting in their combined form The Atlanta Wholesale Grocers, objected to manufacturers and producers selling the Unity Grocery Company.

PAR. 17. Certain of the manufacturers and producers to whom respondent Walker Brothers Co. sent the wholesalers' letter of March 24, 1919, as hereinbefore set out, replied to said letter, and such replies indicated to Walker Brothers Co. that said manufacturers and producers had not fully understood the said letter of March 24, 1919, and on April 18, 1919, respondent Walker Brothers Co. sent out to the important manufacturers and producers selling grocery and other food products in the Atlanta market, another letter to explain and make clear the aforesaid letter of March 24, 1919. Walker Brothers Co. enclosed in this letter of April 18, 1919, a newspaper clipping which recited the fact that the wholesale grocers of Atlanta had organized for their mutual benefit. It is found that Walker Brothers Co. enclosed said newspaper clipping in said letter with the purpose of informing said manufacturers and producers that The Atlanta Wholesale Grocers were organized for their mutual cooperation and protection against any practices which they might deem to be unfair or detrimental to their interests. Walker Brothers Co.'s letter of April 18 reads as follows:

MR. MANUFACTURER

In re: Justice and Your Jobber.

The Manufacturer and the Jobber can not *both* sell the same Retail customer successfully.

Do you need the Jobber? If so, do you think there is any justice in the Manufacturer selling the Jobber's retail trade direct through a Buying Agency, such as the Unity Grocery Company and others, who neither employ traveling salesmen, or otherwise assist the Manufacturer in distributing his goods.

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The Wholesale Grocerman pays taxes, rents a warehouse, carries heavy stocks of goods, borrows large sums of money, extends *good credits* and *risky credits*, operates delivery trucks, and employs the best high class salesmen to be had.

All of this for what purpose?

To give the Manufacturer and the Retail Merchant the best known means of distribution.

The firm of Walker Brothers Company desires to continue in business and distribute your products, but if you "tie" our hands by selling direct some of our trade, what can we do?

We ask you, Mr. Manufacturer, most seriously, what you would do under similar circumstances?

We earnestly solicit your cooperation and support, and beg that we may all "pull" together as heretofore. The Manufacturer, The Jobber, The Retailer.

Most sincerely yours,

WALKER BROTHERS COMPANY.

FOOD FOR THOUGHT.

Possibly you do not know that the Unity Grocery Company of Atlanta, stock owned exclusively by Retail Merchants, *employs no Salesmen*, buys goods at Jobbers' cost, bills them out to its Stockholders, and collects for them the following week at Jobbers' cost plus 3%.

Do you think this is price cutting?

Can you expect your jobber to meet this kind of competition and discount his bills?

Do you think this plan of Unity Grocery Company distribution will increase your sales?

The newspaper clipping enclosed in the foregoing letter of April 18th, reads as follows:

HUDSON PRESIDENT OF ATLANTA WHOLESALE GROCERS ASSOCIATION.

The Atlanta Wholesale Grocers Association at a meeting Thursday afternoon in the Chamber of Commerce elected E. M. Hudson, of the McCord-Stewart Company, as president; J. N. Hirsch was named vice-president; A. W. Walker, secretary; and H. L. Singer, treasurer.

The wholesale grocers have organized for their mutual benefit and have filed an application for charter. It is expected that virtually every wholesale grocery firm in Atlanta will become indented with the Association.

The following firms already belong to the association: J. J. Barnes-Fain Company, Charles I. Branan, R. W. Davis & Co., Sam Saltzman, A. McD. Wilson Co., J. N. Hirsch, Paradies & Rich, Kelly Bros. Co., H. L. Singer Co., Conley & Ennis, Rogers-Prater Company, Johnson-Fluker & Co., Marett-Streater Company, Oglesby Grocery Company, McDaniel & Co., McCord-Stewart Company, Walker Brothers Company.

PAR. 18. On May 1, 1919, respondent Walker Brothers Co. sent out another letter to most of the manufacturers and producers from whom it buys goods. In this letter were enclosed copies of the letters

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sent out by Walker Brothers Co., under date of April 18th, as hereinafore set out. Its letter of May 1st, reads as follows:

GENTLEMEN :

Re: Unity Grocery Company.

For your information we beg to state we have received very favorable replies, both direct and in person, from the majority of our manufacturing friends, whom we told our troubles to in the form of a circular letter addressed to "Mr. Manufacturer" on April 18th, a copy of this letter enclosed for ready reference.

The Atlanta situation, as we view it, is far more serious than, we believe, the Manufacturers realize, and, unless the Jobber is given immediate protection by the Manufacturer from this unjust method of competition, his usefulness as a distributor for the Manufacturer is going to be greatly reduced.

We have good reason to fear, and believe other Buying Agencies, similar to the Unity Grocery, will soon be organized in this city. Should this occur, you can readily see where your jobber will be, either out of business or in bankruptcy.

We firmly believe the jobber is the Manufacturer's best and most economical method of getting goods to the Retailer, and we earnestly solicit your cooperation.

Yours very truly,

WALKER BROTHERS COMPANY.

PAR. 19. During the period late spring and early summer following the sending out of the letters of March 24, 1919, by the respondent City Salesmen's Association and respondent wholesalers, as hereinbefore found, some of the respondent wholesalers, to wit, Walker Brothers Co., H. L. Singer Co., Oglesby Grocery Co., and Paradies & Rich, inquired of certain Atlanta brokers and employees representing manufacturers in the Atlanta market whether direct sales were being made to the Unity Grocery Company, and whether it was their intention selling direct to the Unity Grocery Company, and the above-named respondents referred to in this paragraph notified the said brokers and manufacturers' employees that they could not expect to retain the patronage, cooperation, and support of the respondent wholesalers referred to in paragraphs 2, 3, and 4 of these findings, if they continued to sell to the Unity Grocery Company.

PAR. 20. During the period of late spring and early summer following the sending out of the letters of March 24, 1919, by the respondent City Salesmen's Association and respondent wholesalers, as hereinbefore found, a number of brokers, agents, and salesmen representing grocery and other food product manufacturers and producers in the Atlanta market wrote the principals, whose lines of products said brokers, agents, and salesmen represented, that said respondent City Salesmen's Association and respondent wholesalers' letters of March 24, as aforesaid, were connected in one campaign and sent to all grocery and food product manufacturers and producers for the purpose of securing general action against sales direct to the Unity Grocery Company.

PAR. 21. On or about April 18, 1919, a number of Atlanta brokers, representing manufacturers of grocery and other food products, met in the city of Atlanta, Georgia, and organized. The purpose and object of this brokers' organization was to classify concerns to whom said brokers would sell and those to whom said brokers would not sell. At this organization meeting the question whether said brokers would sell to the Unity Grocery Company was discussed. These brokers decided to continue selling to the Unity Grocery Company for the time being.

PAR. 22. During the period of late spring and early summer following the sending out of the letters of March 24, 1919, by the respondent City Salesmen's Association and respondent wholesalers, as hereinbefore found, the Unity Grocery Company had fewer calls from brokers representing in the Atlanta market manufacturers of groceries and other food products. This conduct on the part of said brokers is attributable to the acts and conduct on the part of the respondent wholesalers and respondent City Salesmen's Association, as set forth in the foregoing paragraphs of these findings.

PAR. 23. That by reason of all of the acts, practices, and conduct on the part of respondent City Salesmen's Association and respondent wholesalers, as set forth in the foregoing paragraphs of these findings, the Unity Grocery Company's freedom to purchase and secure supplies, usually handled by it in the course of its business in interstate commerce, was unduly obstructed and interfered with. The Unity Grocery Company for a short period of time during the late spring and summer of 1919 was unable to purchase and secure supplies from the Southern Cotton Oil Company, of Savannah, Georgia; the Carnation Milk Company, of Chicago, Illinois; and Stokeley Brothers Company, of Newport, Tennessee.

PAR. 24. It is found that it was the common purpose of the respondent City Salesmen's Association, and respondents Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., R. W. Davis & Co., Paradies & Rich, Charles I. Branan, and Johnson-Fluker & Co., to induce manufacturers and producers through fear of united pressure exerted by them to interfere with the freedom of the Unity Grocery Company to obtain in interstate commerce groceries and other food products, and as a means to the attainment of such purpose pursued in common and in cooperation with each other the acts and conduct as found in the foregoing paragraphs of these findings. That the purpose and intent of all of the activities, as set out in these findings, on the part of the respondent City Salesmen's Association and respondent wholesalers, referred to

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in this paragraph, was unduly to hinder competition in interstate commerce between respondents Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., R. W. Davis & Co., Paradies & Rich, Charles I. Branan, and Johnson-Fluker & Co., and the Unity Grocery Company, and thereby unduly to hinder competition in the distribution and sale of groceries and other food products in interstate commerce.

PAR. 25. There is not sufficient evidence in the record to support a finding that respondents, J. J. Barnes-Fain Co., Marett-Streater Co., A. McD. Wilson Co., Conley & Ennis, McCord Stewart Co., McDaniel & Co., and J. N. Hirsch, were parties to the conspiracy alleged in the complaint and found in these findings.

CONCLUSION.

That the acts, agreements, understandings, policies, and practices of the respondents, City Salesmen's Association, Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., R. W. Davis & Co., Paradies & Rich, Charles I. Branan, and Johnson-Fluker & Co., and each and all of them are unfair methods of competition in interstate commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard upon the complaint of the Commission, the answers of the respective respondents, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that respondent City Salesmen's Association, its officers, committees, and members, and respondents Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., Johnson-Fluker & Co., R. W. Davis, doing business under the name and style of R. W. Davis & Co., Paradies & Rich, and Charles I. Branan, 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 respondent City Salesmen's Association, its officers, committees, and members, Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., Johnson-Fluker & Co., R. W. Davis, doing business under the name and style of R. W. Davis & Co., Paradies & Rich, and Charles I. Branan, and each of them, forever cease and desist from—

1. Combining and conspiring together among themselves, or with others, and from using any scheme or device or means whatsoever, directly or indirectly, to accomplish that result, to hinder, obstruct, or prevent the Unity Grocery Company, or others engaged in similar business, from freely purchasing and obtaining, in interstate commerce, the commodities or products handled by said company in the course of its business, or from freely competing in interstate commerce with respondents Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., Johnson-Fluker & Co., R. W. Davis & Co., Paradies & Rich, and Charles I. Branan, or others engaged in similar business.

2. Combining and conspiring among themselves and with others to give, and from giving, directly or indirectly, verbal, written, or other notices or communications, to manufacturers and producers, their agents or brokers, having the purpose, tendency, or the effect of inducing, coercing, or compelling manufacturers and producers, their agents or brokers, to refuse to deal with or sell to the Unity Grocery Company, or others engaged in similar business, upon the same terms and conditions usually accorded by said manufacturers and producers to respondents Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., Johnson-Fluker & Co., R. W. Davis & Co., Paradies & Rich, and Charles I. Branan.

3. Combining or conspiring together among themselves, or with others, and from using any scheme or device or means whatsoever, to accomplish that result, directly or indirectly, to hinder, obstruct, or prevent manufacturers or producers, their agents or brokers, from dealing with the Unity Grocery Company, or others engaged in similar business, upon as favorable terms and conditions as those usually accorded by the said manufacturers or producers to respondents, Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., Johnson-Fluker & Co., R. W. Davis & Co., Paradies & Rich, and Charles I. Branan, or others engaged in similar business.

4. Combining and conspiring among themselves, or with others, to induce, coerce, or compel manufacturers or producers, or their agents or their brokers, directly or indirectly, to refuse to sell goods, wares, and merchandise to the Unity Grocery Company, or to others engaged in the same business, upon the same terms and conditions usually offered and given by the said manufacturers and producers, their agents or their brokers, to respondents Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., Johnson-Fluker & Co., R. W. Davis & Co., Paradies & Rich, and Charles I. Branan, or others engaged in the same business.

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5. Combining and conspiring among themselves, or with others, to boycott or threaten to boycott, or to threaten with loss of patronage or custom or support, any manufacturer or producer, or his agent or broker, engaged in interstate commerce, who sells or agrees to sell to the Unity Grocery Company, or others engaged in similar business, on the same terms and conditions accorded by such manufacturer or producer, or his agent or broker, to respondents Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., Johnson-Fluker & Co., R. W. Davis & Co., Paradies & Rich, and Charles I. Branan, or others engaged in the same business.

It is further ordered, That the respondents, City Salesmen's Association, its officers, committees, and members, Walker Brothers Co., Kelly Brothers Co., Oglesby Grocery Co., H. L. Singer Co., Johnson-Fluker & Co., R. W. Davis & Co., Paradies & Rich, and Charles I. Branan, and each of them, shall within (60) days after the service upon them of a copy of this order file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist, hereinbefore set forth.

CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED.

Date of order.	Docket No.	Respondents.	Commodity.	Charges.	Answer, stipulation, or trial.	Reason for discontinuance or dismissal.
1921. July 12	779	J. H. Dodson and F. M. Davis, partners, styling themselves The National Manufacturing Co.	Razors.....	False and misleading advertising and misbranding.	Answer.....	Discontinuance by respondents of the practices complained of and subsequent sale by them of their business.
15	609	Philadelphia Wholesale Drug Co., Frank R. Rohrman, Russell T. Blackwood, A. T. Pollard, Harry Z. Krupp, H. C. Clapham, G. W. Fohr, A. R. Hesseke, J. N. G. Long, O. W. Osterlund, H. J. Seigfreid, F. P. Streep.	Drugs and druggists' sundries.	Combination or conspiracy to punish a concern for its business course in certain matters and to coerce it by boycott into a more acceptable course.	Answer and trial...	No reasons assigned. Commissioner Gaskill dissents. ¹
20	620	White Sewing Machine Co.	Sewing machines, equipment and supplies.	Operating secret subsidiary or bogus independent.	Answer, stipulation, and respondent's motion to dismiss.	No reasons assigned; dismissed without prejudice.
26	568	Darling & Co.....	Animal fats (rendering and refining).	Espionage and cutting off competitors' supplies through paying prohibitive and unwarranted prices therefor.	Answer and trial...	Failure of proof.
29	461	E. I. Dupont de Nemours & Co.	Blasting powder.....	Tying and exclusive contracts and commercial bribery, the former being charged as in violation of section 3 of the Clayton Act as well as of section 5 of the Federal Trade Commission act.	Answer.....	No reasons assigned.
Aug. 3	608	Amico Oil Co. of Kansas.	Capital stock (oil)....	False and misleading advertising.....	.....do.....	Failure of proof.
3	619	Fawn Creek Oil & Gas Co.	.....do.....	.....do.....	Answer and trial...	Do.
19	731	The Excelsior Shoe Co.	Shoes.....	False and misleading advertising and mislabeling.	Answer.....	No reasons assigned; dismissed without prejudice.
Sept. 2	730	Frank Dalby and Walter Hardwick, doing business as a partnership under the firm name and style of Dalby & Hardwick.	Lumber, millwork, and building materials.	Harassing competitor.....	.....do.....	Do.

¹ The complaint in this case, and Commissioner Gaskill's written dissent from the action of the commission in dismissing the same, will be found set forth at p. 491 et seq.

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CASES DISMISSED.

CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED—Continued.

Date of order.	Docket No.	Respondents.	Commodity.	Charges.	Answer, stipulation, or trial.	Reason for discontinuance or dismissal.
1921. Sept. 16	768	Keen & Collins, Inc....	Ladies' wearing apparel.	False and misleading advertising.....	.....	No reasons assigned; dismissed without prejudice.
Oct. 8	399	American Dental Trade Assn., The Dental Manufacturers' Club, American Retail Dental Dealers' Assn., I. H. Hettinger, R. C. Shumway, G. Layton Grier, A. R. Keltie, J. R. Sheppard, C. O. Rother, H. A. Slaight, F. J. Crandell, Park Billings, A. R. Weber, Royal Partridge, and George J. Holden.	Dental goods.....	Resale price maintenance and combination and conspiracy to secure monopoly.	Answer and trial...	Do.
8	750	Benjamin H. Cappe, trading under the name and style of Asbestos Roofing Company.	Roof coating preparation.	False and misleading advertising.....	do.....	Failure of proof.
8	782	D. J. Carpenter, trading under the name and style of U. S. Salvage Co.	Men's clothing, shoes, tents, blankets, cots, mattresses, paints, oils, etc.	False and misleading advertising and assuming misleading firm or trade name.	.....	Respondent has gone out of business and its affairs are in the hands of a trustee in bankruptcy.
Nov. 8	205	Tobacco Products Corporation; The Melachrino Tobacco Trading Co.; Schinasi Bros., Inc.; Prudential Tobacco Co., Inc.; Falk Tobacco Co.; Geo. L. Storm; Reuben M. Ellis; Albert Falk; Jacob L. Hoffman; James M. Dixon; Gray Miller; L. B. McKittrick; and Leon Schinasi.	Tobacco products.....	Bogus independents; discriminating commissions calculated to stifle competition; and tying and exclusive contracts; in violation of sec. 5 of the Federal Trade Commission act, and price discrimination, acquisition of stock to eliminate competition, and interlocking directorates in violation of secs. 2, 7, and 8, respectively, of the Clayton Act.	Answer.....	No reasons assigned; dismissed without prejudice.

10	576	P. A. Starck Piano Co.	Pianos and player pianos.	False and misleading advertising and misrepresenting prices to be charged.	Answer and trial...	Do.
12	580	Crocker Brothers; Frank Samuel and C. W. Leavitt & Co.	Ferromanganese	"Dumping" (respondents, importers, are charged with systematically importing and selling ferromanganese in this country "at prices substantially less than the actual market value or wholesale price of ferromanganese at the time of exporting such ferromanganese to the United States, in the principal markets of England, after adding to such value or wholesale price the freight and other expenses necessarily incident to the importation and sale thereof in the United States," with the intent in so doing "of injuring the industry of manufacturing ferromanganese in the United States?").	.....do.....	Failure of proof.
12	604	David Kahn & Benjamin Shatkun, doing business under the firm name and style of Shatkun & Kahn.	Fountain pens.....	Misbranding.....	Answer and stipulation.	No reasons assigned; dismissed without prejudice.
Dec. 8	586	Southern Macaroni Mfg. Co.	Macaroni and spaghetti.	Subsidizing jobbers and their salesmen.....	Answer.....	Do.
12	754	H. Skourup and D. E. Toplon, partners, styling themselves National Products Co.	Groceries.....	Misrepresenting prices charged (through use of combination sales plan).	Answer and trial...	Failure of proof. Commissioner Murdock dissents.
13	541	Story & Clark Piano Co.	Pianos and player pianos.	False and misleading advertising and misrepresenting prices charged (instruments offered and sold have stenciled thereon false and fictitious prices greatly in excess of the prices intended to be and exacted).	Answer.....	Dismissed without prejudice; no reasons assigned.
1922. Jan. 14	751	Crystal Ice & Storage Co.	Ice cream.....	Acquisition of stock of competing corporations, with the effect of substantially lessening competition and of tending to create a monopoly in the line of commerce involved; in violation of secs. 5 and 7 of the Federal Trade Commission and Clayton Acts, respectively.	Answer and trial...	Failure of proof.
20	404	Buffalo Steam Roller Co.	Road machinery, steam rollers, and kindred products.	Commercial bribery. (Money, gratuities, and entertainment, and payment of expenses of public officials and their representatives to respondent's place of business to inspect respondent's products.)	.....do.....	No reasons assigned; dismissed without prejudice.
20	431	The Barber Asphalt Paving Co.	Road-building machinery and similar products.	Commercial bribery. (Gratuities and entertainment and payment of expenses of inspection trips of public officials and their representatives to respondent's place of business to inspect respondent's products.)	.....do.....	Do.

CASES DISMISSED.

CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED—Continued.

Date of order.	Docket No.	Respondents.	Commodity.	Charges.	Answer, stipulation, or trial.	Reason for discontinuance or dismissal.
1922. Jan. 20	432	Dyar Supply Co.....	Road machinery and kindred products.	Commercial bribery. (Money, gratuities, and entertainment.)	Answer and trial..	Failure of proof.
20	433	Chas. Hvass & Co., Inc.	Road - building and street-cleaning machinery and kindred products.	Commercial bribery. (Money, gratuities, and entertainment and payment of expenses of public officials and their representatives to respondent's place of business to inspect respondent's products.)	.....do.....	Do.
20	440	Chamberlain Road Machine Co.	Road machinery and similar products.	Commercial bribery. (Gratuities and entertainment and payment of expenses of public officials and their representatives to respondent's place of business to inspect respondent's products.)	.....do.....	Do.
20	496	Universal Road Machinery Co.	Road - building and street-cleaning machinery and similar products.	.....do.....	.....do.....	No reasons assigned; dismissed without prejudice.
20	497	New England Road Machinery Co.	Road - building machinery and kindred products.	Commercial bribery. (Money, gratuities, and payment of expenses of public officials and their representatives to respondent's place of business to inspect respondent's products.)	.....do.....	Do.
20	707	Buffalo-Springfield Roller Co.	Road rollers and other road machinery.	Commercial bribery. (Gratuities and entertainment and payment of expenses of public officials and their representatives to respondent's place of business to inspect respondent's products.)	.....do.....	Do.
21	516	The Mountain City Mill Co., a corporation styling itself The Chattanooga Bakery.	Bakery products.....	Subsidizing salesmen.....	Answer.....	Do.
21	563	Rueckheim Bros. & Eckstein.	Candy and kindred products.	.....do.....	Answer and stipulation.	Do.
21	585	Larabee Flour Mills Corp.	Flour.....	Subsidizing merchants and their salesmen.....	Answer.....	Do.
21	589	Ex-Zact Food Products Co.	Fruit nectars, fruit sirup, flavoring extracts, baking powders, pudding powders, and similar products.	Subsidizing salesmen.....	.....do.....	Do.
21	617	Southern Mfg. Co.....	Baking powder.....	.....do.....	.....do.....	Do.
21	805	Newcorn & Green.....	Men's tailoring establishment.	False and misleading advertising.....	Answer and trial..	Failure of proof.

Feb. 8	810	Abraham Belofsky and Benjamin Cutler, partners, styling themselves Keystone Specialty Co.	Razors.....	Misrepresenting prices expected to be and normally charged.	.....do.....	Business in question carried on by one of the partners trading alone, and not in partnership as alleged in the complaint, said partnership having been dissolved some time prior thereto, and neither the partnership nor the individual carrying on the business engaged in interstate commerce.
10	815	Stella Wagner, trading under the name and style of Wagner Art Co., and W. L. M. Clark.	Embroidery needles.....	.....do.....	.....do.....	Failure of proof.
24	438	The Barr Sales Co.....	Road machinery, culvert pipe, and similar products.	Commercial bribery (money, gratuities, and entertainment, and payment of expenses of public officials and their representatives to respondent's place of business to inspect respondent's products).	.....do.....	No reason assigned.
24	566	F. J. O'Neil Medicine Co.	Proprietary medicine..	Simulation of trade-mark, advertising matter, form of contract for special agencies, containers, and preparation of competitor, and falsely claiming trade-mark registration of alleged trade-mark.	.....do.....	Do.
24	830	David Halpern.....	Manufacture and sale of clothing for men and boys.	Misleading adoption and use of trade names or brands (respondent, a New York manufacturer, tags his clothes "Rochester Fashion Clothes," "Rochester High Grade Clothes," and "Rochester H. G. Clothes," without proper distinguishing marks to show place of origin.	.....do.....	Respondent not engaged in interstate commerce "for five years last past."
25	355	The Adder Machine Co.	Typewriting, calculating, and adding machines.	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products; ² quantity discounts based on aggregate number of machines used by prospective purchaser irrespective of their make, with the effect of preventing the small user or purchaser from obtaining the same discounts, and giving an undue advantage to the large purchaser or user.	Answer and trial...	Evidence not sufficient to support an order; dismissed without prejudice.
25	361	Accounting Machine Co., Inc.	.....do.....	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products. ²	.....do.....	Do.

² The language of the complaint with respect to this charge reads: "That the respondent maintains in its business a system of giving cumulative discounts or rebates in the sale of its products whereby purchasers of its products obtain at the end of each calendar year, or at the end of a definite period, certain rebates or discounts based and estimated upon the aggregate of the separate purchases made by such dealers during the calendar year or such fixed period; that the said system was and is designed and calculated to cause such purchasers to confine their purchases, either largely or exclusively, to the products of the respondent and to hinder or prevent respondent's competitors from making sales of similar products to such purchasers except at so low a price as will not only meet the price of the respondent on its separate sales, but will also offset the loss in rebates or discounts resulting to such purchasers in the event that they divide their purchases during the year between respondent and one or more of its competitors instead of purchasing exclusively from the respondent."

CASES DISMISSED.

CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED—Continued.

Date of order.	Docket No.	Respondents.	Commodity.	Charges.	Answer, stipulation, or trial.	Reason for discontinuance or dismissal.
1922. Feb. 25	362	Burroughs Adding Machine Co.	Typewriting, calculating and adding machines.	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products.	Answer and trial..	Evidence not sufficient to support an order.
25	364	The Dalton Adding Machine Co.	.....do.....	.....do.....	.....do.....	Do.
25	365	Ellis Adding Typewriter Co.	.....do.....	.....do.....	.....do.....	Do.
25	366	International Money Machine Co.	.....do.....	.....do.....	.....do.....	Do.
25	367	Marchant Calculating Machine Co.	.....do.....	.....do.....	.....do.....	Do.
25	369	Rockford Milling Machine Co.	.....do.....	.....do.....	.....do.....	Do.
25	370	Tector Adding Machine Co.	.....do.....	.....do.....	.....do.....	Do.
Mar. 8	437	J. D. Adams & Co....	Road machinery and kindred products.	Commercial bribery (money, gratuities, and entertainment, and payment of expenses of public officials and their representatives to respondent's place of business to inspect respondent's products).	.....do.....	Failure of proof.
8	808	Adolphe W. Harper, trading under the name and style of A. W. Harper Ship Chandlery.	Ship chandlery supplies.	Commercial bribery (cash commissions and gratuities).	.....do.....	No reason assigned.
9	702	Western Electric Co., Inc.	Telephonic appliances, equipment, and supplies.	Tying and exclusive contracts in violation of secs. 5 and 3 of the Federal Trade Commission and Clayton Acts; misrepresentations concerning and affecting the use of competitors' appliances, using influence of banks to induce purchase of respondent's supplies, procuring or attempting to procure cancellation of contracts for purchase of equipment from competitors, and misrepresenting competitors' plans, all in violation of sec. 5 of the Federal Trade Commission Act.	Answer.....	Do.
15	259	Oldbury-Electro-Chemical Co., J. L. & D. S. Ricker, Inc., and Central Railway Signal Co.	Perchlorate of potash..	Combining or conspiring to cut off competitors' supplies.	Answer and trial...	No reasons assigned; dismissed without prejudice.

15	762	Dixie Manufacturing Co., Inc.	Razors.....	Misrepresenting prices expected to be and usually charged; false and misleading advertising and misrepresenting respondent's business status and dealings.	.....do.....	Respondent corporation by operation of law has ceased to exist.
18	846	A. S. Fox, trading under the name and style of Franklin Tire & Rubber Co., and L. Goodman.	Automobile tires.....	Appropriation of corporate name of competitor as a trade name.	.....do.....	No reasons assigned; dismissed without prejudice.
20	674	Davidson, Seay, Adams Co.	Poultry, eggs, and other produce.	Cutting off competitors' supplies.....	Answer and trial...	No reasons assigned.
Apr. 3	757	Burk-Rex Oil Co. and James A. Buie.	Capital stock.....	False and misleading advertising and misleading course of conduct.	.....do.....	Failure of proof.
4	718	Wood & Co.....	Coffee, teas, and spices.	Tying or exclusive contracts or dealings in violation of secs. 5 and 3 of the Federal Trade Commission and Clayton Acts, respectively.*	.....do.....	No reasons assigned.
4	719	Commercial Importing Co., Inc.	.....do.....	.....do.....	.....do.....	Do.
4	720	Richardson & Holland, Inc.	.....do.....	.....do.....	.....do.....	Do.
4	721	D. Davies & Co.....	.....do.....	.....do.....	.....do.....	Do.
4	722	Matthews & Kerr, Inc.	.....do.....	.....do.....	.....do.....	Do.
4	723	Defiance Tea & Coffee Co., Inc.	.....do.....	.....do.....	.....do.....	Do.
4	724	Martin Marks Coffee Co.	.....do.....	.....do.....	.....do.....	Do.
6	595	Dove Oil Co.....	Capital stock.....	False and misleading advertising.	.....do.....	Do.
10	732	Winthrop Chemical Co., Inc.	Veronal.....	False and misleading advertising. (Respondent, claiming under a patent and trade-mark purchased of the Alien Property Custodian during the war, advertised that it alone made genuine veronal, the fact being that prior thereto the Federal Trade Commission licensed three concerns, not including respondent, under the "Trading with the enemy act," to make and sell the preparation theretofore known as veronal.)	.....do.....	"The patent in question expired Feb. 14, 1922, and the commission's license under such patent automatically expired with the patent, and therefore the commission has no jurisdiction in the premises."
May 4	607	Iowa-Nebraska-Minnesota Wholesale Grocers Assn., its officers and members.	Groceries and food products.	Combining and conspiring to cut off supplies of nonmember competitors through "boycott, threats of boycott, withdrawal of patronage, and threats of the same, and by various other means" of coercion directed at the manufacturers from whom they purchased.	.....do.....	No reasons assigned. Dismissed without prejudice.

* The complaint, omitting the routine and formal allegations, charges that respondent "Loans to proprietors of hotels, restaurants, and other places where meals are served to the public, sets of coffee urns * * *, which urns are loaned as aforesaid without consideration other than that the customers receiving same, at the instance and request of respondent, enter into agreements or understandings with respondent that they will thereafter purchase from respondent all coffee, teas, and spices consumed by them in carrying on their respective business; that the practice * * * has a dangerous tendency unduly to hinder competition * * *", and that the effect thereof "May be to substantially lessen competition in, and create a monopoly in, the line of commerce herein" involved.

CASES DISMISSED.

CASES IN WHICH ORDERS OF DISCONTINUANCE OR. DISMISSAL HAVE BEEN ENTERED—Continued.

Date of order.	Docket No.	Respondents.	Commodity.	Charges.	Answer, stipulation, or trial.	Reason for discontinuance or dismissal.
1922. May 5	616	Quaker Oil Products Corp.	Oils (for leather, textile, and metal industries).	Commercial bribery (money and gratuities).....	Answer and trial...	No reasons assigned.
6	733	E. F. Houghton & Co..	Textile soaps and greases.	Commercial bribery (cash commissions).....	.....do.....	Do.
8	756	Muckleston Oil Co. and N. Muckleston.	Capital stock.....	False and misleading advertising in connection with the sale of oil stock.	.....do.....	Do.

COMPLAINT IN THE MATTER OF THE PHILADELPHIA WHOLESALE DRUG CO. ET AL., AND OPINION BY COMMISSIONER GASKILL DISSENTING FROM THE ACTION OF THE COMMISSION IN DISMISSING THE SAME.¹

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Philadelphia Wholesale Drug Company, Frank R. Rohrman, Russell T. Blackwood, A. T. Pollard, Harry Z. Krupp, H. C. Clapham, G. W. Fohr, A. R. Hesske, J. N. G. Long, O. W. Osterlund, H. J. Seigfreid, and F. P. Streeper, all of whom are hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Philadelphia Wholesale Drug Company, is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Philadelphia, in said State. That the respondents Frank R. Rohrman, Russell T. Blackwood, A. T. Pollard, and Harry Z. Krupp are stockholders and chief executive officers of said Philadelphia Wholesale Drug Company. That the respondents H. C. Clapham, G. W. Fohr, A. R. Hesske, J. N. G. Long, O. W. Osterlund, H. J. Seigfreid, and F. P. Streeper are stockholders and members of the Board of Directors of said Philadelphia Wholesale Drug Company.

PAR. 2. That there are in excess of five hundred stockholders of said Philadelphia Wholesale Drug Company, nearly all of whom are engaged in the business of conducting retail drug stores in the State of Pennsylvania and States adjoining thereto, including New Jersey, Delaware, Maryland and Virginia; that in addition to said stockholders there are approximately two hundred and seventy other proprietors of retail drug stores in said States to whom said Philadelphia Wholesale Drug Company has given certain purchasing privileges substantially equal to those enjoyed by the stockholders of said Philadelphia Wholesale Drug Company. That said stockholders and those to whom said purchasing privileges have been given, aggregate approximately eight hundred in number and constitute a

¹ Docket 609. See table preceding, p. 483.

class so numerous as to make it impracticable to make them all parties-respondent herein, but those designated herein as respondents are fairly representative of the whole.

PAR. 3. That said respondent Philadelphia Wholesale Drug Company is engaged in the business of buying in wholesale quantities drugs and druggists sundries in the various markets of the world, causing said commodities to be transported from and through various States of the United States other than the State of Pennsylvania, to Philadelphia in the State of Pennsylvania, where such drugs and druggists' sundries are stored in its warehouses and resold and transported to those of its stockholders who conduct retail drug stores and to other proprietors of retail drug stores to whom have been given purchasing privileges substantially similar to those enjoyed by said stockholders, and the sales of said Philadelphia Wholesale Drug Company are limited to its stockholders and to those to whom it has given said purchasing privileges.

PAR. 4. That said respondent Philadelphia Wholesale Drug Company publishes each month and circulates among its stockholders and customers a pamphlet called "Druco News," which it denominates the official organ of said respondent, and which is devoted to the interests of its stockholders and customers and consists of paid advertisements, news and editorial matter. That in the October, 1919, issue of said publication, and in subsequent issues, complaint was made concerning the refusal of the Mennen Company to allow to said Philadelphia Wholesale Drug Company the same quantity trade discount allowed by said Mennen Company upon purchases of like quantities by other customers, and the statement was made by respondent that if its stockholders and customers should resent this action by said Mennen Company that company would have only itself to blame; that in the December, 1919, issue of said publication, the announcement was made that said respondent had returned certain orders given it by its stockholders and customers for commodities sold by said Mennen Company, and the further statement was made that said respondent would not cooperate with said Mennen Company nor ask its stockholders and customers to do so, so long as said Mennen Company continued to give others a larger discount than that given to said respondent on like purchases. That said action and announcements by said respondent were calculated and intended to inspire resentment against the Mennen Company and to result in the withholding of purchases from and sales of the products of said Mennen Company to and by the stockholders and customers of the Philadelphia Wholesale Drug Company.

PAR. 5. That the use by each and all of said respondents severally and in their common interest, of the above mentioned practices, is

an unfair method of competition in commerce within the meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

II.

And the Federal Trade Commission, further having reason to believe from a preliminary investigation made by it that the Philadelphia Wholesale Drug Company, Frank R. Rohrman, Russell T. Blackwood, A. T. Pollard, Harry Z. Krupp, H. C. Clapham, G. W. Fohr, A. R. Hesske, J. N. G. Long, O. W. Osterlund, H. J. Seigfreid, and F. P. Streeper, herein referred to as respondents, have been and are violating the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the several recitals in Paragraphs one to four, inclusive, of Count 1 are hereby charged as fully and completely as though the several paragraphs were herein repeated verbatim.

PAR. 2. That the Philadelphia Wholesale Drug Company, its officers, stockholders and customers holding a purchasing privilege, have conspired, confederated and agreed together to discriminate against and restrict the purchase of the products of the Mennen Company by themselves and the resale by them to customers of their retail stores; that in pursuance of said conspiracy, the said respondents or some of them, caused to be published in the "Druco News," a monthly publication issued by the Philadelphia Wholesale Drug Company as its official organ devoted to the interests of its stockholders and customers, and circulated among the members and customers of the Philadelphia Wholesale Drug Company and the public, a statement to the effect that the Mennen Company had refused to allow the Philadelphia Wholesale Drug Company the same discount on quantity purchases as were allowed to other purchasers of like quantities, with other matter implying an invitation to the members and customers of the company to resent such action by the Mennen Company and to act in unison to accomplish a common object, viz, to compel the Mennen Company to allow a satisfactory quantity discount to the Philadelphia Wholesale Drug Company by a boycott on the purchase and sale of the Mennen Company's products.

PAR. 3. That the use by each and all of said respondents severally and in their common interest, of the above mentioned practices, is an unfair method of competition in commerce within the meaning

of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

DISSENTING OPINION BY COMMISSIONER GASKILL.

I am unable to concur with the majority of the Federal Trade Commission in the dismissal of this complaint. The issues involved seem to be of sufficient importance to warrant the formal statement of my views.

Respondent is an organization of approximately eight hundred retail drug dealers, about one-half of whom are located in the city of Philadelphia. The remainder are distributed throughout the states of Pennsylvania, New Jersey, Delaware, Maryland, Virginia, and Kentucky.

It is engaged in selling drugs and other merchandise to members at cost plus the expenses of doing business, and an additional profit sufficient to pay dividends on the preferred stock. Its net sales in 1919 were \$3,504,431.28.

There are approximately twelve hundred retail druggists in the city of Philadelphia, a large proportion of whom are members of the respondent company.

Mennen Company adopted a sales policy for the distribution and sale of its products, involving a discount of ten per cent and five per cent from list prices to retailers purchasing goods in lots of eighteen dozen or over, and a discount of ten per cent, five per cent and three per cent from list prices to wholesale dealers on goods purchased in lots of ten gross or over. Mennen Company classified respondent as a retail dealer and declined to allow to it the same discounts which it allowed to those of its customers whom it classified as wholesale dealers, on like quantities of the same commodity.

Respondent protested to Mennen Company and claimed the discount allowed to wholesalers, which was refused. Whereupon the respondent published in its house organ and circulated among all its members, the following statement:

The Gerhard Mennen Chemical Company of Newark, New Jersey, have a discount for wholesale druggists, which is in excess of that which they have been giving us. We have gone to the expense of money and time of calling upon them at their home office in an endeavor to obtain that extra discount, to which we feel we are entitled, but so far our pleas have been in vain. We have always cooperated with them in promoting the sale of Mennen's Talcum Powder, but in view of their persistent attitude of discrimination we feel that our stockholders should be apprised of the fact, and if our customers elect to resent their act of discrimination the fault will rest entirely upon the Gerhard Mennen Chemical Company. Should a change of attitude be adopted by Mennen we will notify our friends who favor us with their business.

It is not now necessary to consider whether the sales policy of Mennen Company involved an unlawful discrimination against the respondent. That will be determined by the Commission in a proceeding directed against the Mennen Company, which is now pending. Even though the action of the Mennen Company had been determined to be illegal, that fact would be no justification for an illegal action by the respondent.

The existence of the respondent and similar organizations marks a departure from the manufacturer-wholesaler-retailer-consumer scheme of distribution. It is a growing characteristic of a period which is concerning itself with the methods of distribution more seriously than ever before. In a number of cases the Commission has asserted the right of such organizations as the respondent to exercise and perform the functions for which they were organized, and has enforced the provisions of law which are intended to guard and protect the development of new methods of competitive distribution.

But it does not follow that the respondent and similar organizations are themselves free to secure their objects by the use of weapons which the law strikes from the hands of their competitors.

The right of the members of the respondent to organize is certain. The right of the organization to apply for recognition as a wholesaler, or to seek the same discounts which any manufacturer may allow to any other purchaser of a like commodity in like quantities, cannot be denied. And the association has the right on behalf of all its members collectively, to protest against an action which it deems to be injurious and to present all just, reasonable and proper arguments in support of its contentions.

Upon the exercise of this right, however, there are very decided limitations. The association as such, may discontinue business relations with a manufacturer who declines to accept the association's ideas. The association may not directly or indirectly, threaten a manufacturer with concerted action of its membership, nor suggest to its membership by any device capable by reasonable interpretation of conveying the suggestion, that cessation of business relations by the members with the manufacturer in question is timely or desirable. The management of the association must not attempt to influence, direct, or control the judgment and actions of its individual members in their relations with a manufacturer or his commodities. To do so is to present at once the appearance of conspiracy to accomplish an unlawful purpose, namely, a hindrance and a restraint upon the operations of the manufacturer in competition with others similarly engaged in the distribution of his product.

Thus an organization which published in its official journal under captions "Unfair" and "We do not patronize," names of manu-

facturers employing nonunion labor, with the purpose and effect of inciting its members to boycott the products of such manufacturers and restraining interstate commerce, was restrained by injunction. *Gompers v. Bucks Stove and Range Company*, 221 U. S. 418.

An association which circulated among its members a report giving names of wholesale dealers who sold direct to consumers, tending to induce its members not to deal with such wholesalers, was likewise enjoined. *Eastern States Retail Lumber Dealers Association v. United States*, 234 U. S. 600.

An association was enjoined by a decree from publishing lists of wholesale grocers as a means of compelling manufacturers to deal only with them. For violation of this decree the association was held guilty of criminal contempt. *United States v. Southern Wholesale Grocers Association*, 207 Fed. 434.

A retail lumber dealers' association published a list of manufacturers and wholesalers who sold consumers, cooperative societies, or mail order houses. The system operated to prevent such sales to a great extent. This was held to be a restraint of trade in violation of the Sherman Act. *United States v. Hollis*, 246 Fed. 611.

The respondent was justified in communicating to its members the fact that it was unable to conclude to its satisfaction its negotiations with the Mennen Company. Had it done nothing more than that and upon the receipt of this information, had any individual member or members acting upon their own initiative, and as a result of their own judgment without suggestion from the association, concluded to discontinue business relations with the Mennen Company or to refrain from handling its product, the Mennen Company would have had no just complaint and free and fair competition would not have been disturbed.

Here then is the line of demarcation. An association like the respondent may protest, argue its position and determine its subsequent conduct, advising its members thereof. But it may not in any degree by communication with its members, set in motion those currents of action which emanating from the central source, reasonably and naturally tend to result in a concerted pressure upon the unwilling manufacturer. Nor may the association seek to add to the logic of its arguments, the element of intimidation or threat of concerted action on the part of its membership. The manufacturer may choose his own customers not in restraint of trade, and must be free to exercise his own uncontrolled judgment. The association is free to continue or discontinue purchasing from a manufacturer. And each individual member of such an association as the respondent, must

likewise be left free to determine his individual conduct according to his own free will.

It has been suggested that the publication in the present case lacks the element of common understanding between the association and its members, that it could not operate as a signal for concerted retributive action because no prearranged common purpose had been shown. This is not necessary. It is sufficient that the central authority seeks to play upon a common interest by language which in its usual and accepted meaning is capable of carrying to the interested membership, the suggestion of action in an indicated direction. When the management of the respondent company passed beyond the announcement of the fact that it had been unable to adjust its differences with Mennen Company, and stated:

If our customers elect to resent their act of discrimination the fault will rest entirely upon the Gerhard Mennen Chemical Company. Should a change of attitude be adopted by Mennen we will notify our friends who favor us with their business.

they made an appeal to a common interest which was all that was necessary to a common understanding, and clearly indicated the action which the management must have expected to follow.

In considering the cases cited by counsel for the respondent and as well those cited in support of the complaint, it is to be noted that whereas under the Sherman law proof is required that the conspiracy has reasonably effected its purpose, and has resulted in a restraint of trade, such appearance is not requisite to the application of the Federal Trade Commission Act. Consideration of the debates in Congress and the report of the Conference Committee at the time of the adoption of the act, as well as the language of the act itself, clearly indicates the intention of the framers of this act to deal with possible violations of the Sherman law in their inception, and before they had reached that stage of actual injurious operation requisite to their restraint under that act.

Recognizing this intention in the language of the act, the United States Circuit Court of Appeals for the Seventh Circuit stated:

On the face of this statute the legislative intent is apparent. The Commissioners are not required to aver and prove that any competitor has been damaged or that any purchaser has been deceived. The Commissioners, representing the Government as *parens patriæ*, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to injure competitors directly or through deception of purchasers quite irrespective of whether the specific practices in question have yet been denounced in common law cases. *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307.

To the same effect is the decision of the United States Supreme Court holding that an unfair method of competition arises when

there appears a "dangerous tendency unduly to hinder competition or create monopoly." *Federal Trade Commission v. Warren, Jones and Gratz*, 253 U. S. 421.

The testimony shows that the respondent and its members did not concertedly cease handling the Mennen products. Their supplies were obtained not from Mennen & Co. but from undisclosed jobbers or wholesalers. But there is also evidence in the case sufficient reasonably to support a finding of fact that subsequent to the publication in question and as a result thereof, a number of the respondent's members did in fact express a resentment against the Mennen Company and depreciated their purchases and sales of that company's products. Such evidence is, however, merely indicative of the tendency of the publication to a hindrance of competition. It is not a controlling factor.

To await consequences and make the application of the act depend upon the proof of accomplished injurious results, is to make the Federal Trade Commission Act a duplication of the Sherman Act, and to deprive it of the special field which it was intended to occupy, that is, of dealing with practices in their inception which if continued to success would fall within the condemnation of the Sherman Act, but which are not within that law because of their incomplete development.

In my opinion upon a proper finding of fact for which there is all necessary support in the testimony, an order to cease and desist should issue.

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 the preceding volume of the Commission's Reports. Reported decisions of the courts for the period covered by this volume (July 1, 1921, to May 22, 1922) and arising under this act are printed in full in Appendix II hereof (see *infra*, p. 539 et seq.). Previously reported decisions will be found set forth in Appendix II of Volumes II and III 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.

each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Term, seven years.

Chairman to be chosen by commission.

Pursuit of other business prohibited.

Removal by President.

Vacancy not to impair exercise of powers by remaining commissioners.

Seal judicially noticed.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES.

Commissioner's salary, \$10,000.

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The

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), 12865-12817 (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

May prosecute any inquiry anywhere in United States.

or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sec. 4. DEFINITIONS.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

“Commerce.”

“Commerce” means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any

such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

“Corporation” means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Corporation.”

“Documentary evidence” means all documents, papers, and correspondence in existence at and after the passage of this Act.

“Documentary evidence.”

“Acts to regulate commerce” means the Act entitled “An Act to regulate commerce,” approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

“Acts to regulate commerce.”

“Antitrust acts” means the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety;² also the sections seventy-three to seventy-seven, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen.

“Antitrust acts.”

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.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. 513-515.

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. 499.

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.

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.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its applica-

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.

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.

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.

Sec. 5. UNFAIR COMPETITION, COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION, APPEALS. SERVICE—Continued.

Jurisdiction of Court exclusive. The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Proceedings to have precedence over other cases. Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.^{3a}

Liability under antitrust acts not affected.

Service of Commission's complaints, orders, and other processes. Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Personal; or

At office or place of business; or

By registered mail.

Verified return by person serving, and return post-office receipt, proof of service.

Sec. 6. FURTHER POWERS.⁴

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.

³ For text of Sherman Act, see footnote on pp. 513-515. As enumerated in last paragraph of sec. 4 of this act, see p. 503.

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 Acts⁵ 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 Acts⁵ 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. 513-515. As enumerated in last paragraph of sec. 4 of this act, see p. 503.

Sec. 6. FURTHER POWERS—Continued.

To make reports 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 test of Serman Act, see footnote on pp. 513-515. As enumerated in last paragraph of sec. 4 of this act, see p. 503.

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.*

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any members of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Commission to have access to documentary evidence and right to copy same.

May require attendance of witnesses and production of evidence.

Subpoenas, 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 subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpoena. 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 subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

In case of contumacy or disobedience of subpoena, 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.

* 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. 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. 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.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission. Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Witness fees, same as paid for like services in United States courts. No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Incriminating testimony or evidence no excuse for failure to testify or produce.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

Sec. 10. PENALTIES.*

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both. SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

* 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.

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.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc., or

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Failure of corporation to file required report.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business.

Various district attorneys to prosecute for recovery.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000,

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

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 Acts⁹ 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

⁹ For text of Sherman Act, see footnote on pp. 513-515. As enumerated in last paragraph of sec. 4 of this Act, see p. 503.

¹ This act has been annotated up to July 1, 1921, and may be found, so annotated, in the preceding volume of the Commission's Reports. Subsequent reported decisions for the period covered by this volume (July 1, 1921, to May 22, 1922) 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 this volume at p. 542 et seq.); *Sinclair Refining Co. v. Federal Trade Commission*, 276 Fed. 686 (see opinion set forth in Appendix II of this volume 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. —, 42 Sup. Ct. 360, and *United Shoe Machinery Corporation v. United States*, 258 U. S. —, 42 Sup. Ct. 363.

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, 1900, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto * * *";

That the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act, providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have

July second, eighteen hundred and ninety²; 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,

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. 468 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:)

* 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. 285, 41 Stat. 922, Sundry Civil Appropriation Act, Mar. 4, 1921, ch. 161, 41 Stat. 1411, and State, Justice, and Judiciary Appropriation Act, June 1, 1922, ch. 204, sess. II, 42 Stat. 613, 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

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.*

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 subpoenas to that end may be served in any district by the marshal thereof.

FORFEITURE OF PROPERTY.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SUITS—RECOVERY.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"PERSON" OR "PERSONS" DEFINED.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State or the laws of any foreign country.

* 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. 512-513.

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

Vendor may select own customers if not in restraint of trade.

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.

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 laws⁵ 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. 512-513.

⁵ For text of Sherman Act, see footnote on pp. 513-515. As enumerated in Clayton Act, see first paragraph thereof on pp. 512-513.

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.

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 antitrust⁶ 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.

Prima facie evidence against same defendant in private litigation.

Consent judgments or decrees excepted.

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.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws⁶ 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

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.

⁶ For text of Sherman Act, see footnote on pp. 513-515. As enumerated in Clayton Act, see first paragraph thereof on pp. 512-514.

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.

¹On 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. 512-513.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 536, sec. 3.)

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws,⁸ nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Existing rights heretofore lawfully acquired not affected.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.*

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

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over \$5,000,000.

* For text of Sherman Act, see footnote on pp. 513-515. As enumerated in Clayton Act, see first paragraph thereof on pp. 512-514.

⁸ 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.

How eligibility determined.

or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

Not to serve more than one bank, banking association, or trust company 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

Savings banks without capital (share) stock excepted.

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

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

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

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. 612-513.

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. 513-515. As enumerated in Clayton Act, see first paragraph thereof on pp. 512-514.

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.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Dealings in securities, etc., and contracts for construction or maintenance, aggregating more than \$50,000 a year to be by bid in case director, etc., of common carrier, also director, etc., of other party or has a substantial interest therein.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

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. 512-513.

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.

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-

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.

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.

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

Commission or board may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

To be served on commission or board which thereupon to certify and file transcript of record in the court.

Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.

Jurisdiction of Court of Appeals exclusive.

sion or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

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 any one 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 laws¹⁴ 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. SUBPENAS 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 subpoenas 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 footnotes on pp. 513-515. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on pp. 512-514.

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 laws¹⁵ 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.

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.

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

¹⁵ For text of Sherman Act, see footnote on pp. 513-515. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on pp. 512-514.

of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

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,¹⁰ 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:

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.

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.

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.

¹⁰ For text of Sherman Act, see footnote on pp. 513-515. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on pp. 512-514.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS—Continued.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

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.

Opposite party may move dissolution or modification on two days' notice.

Sec. 263 of Judicial Code repealed.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Sec. 266 not affected.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY.

Except as provided in sec. 16 of this act.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS.

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific, and describe acts to be restrained.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT.

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute,

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT—Contd.

any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dis-

Acts specified in this paragraph not to be considered violations of any law of the United States.

pute 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.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT.

Sec. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL. PENALTIES.

Sec. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,*

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial may be by court or, upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed \$1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

Sec. 23. EVIDENCE. APPEALS.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Evidence may be preserved by bill of exceptions. Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SEC. 21 NOT AFFECTED.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States,

And other cases not in sec. 21.

Punished in conformity with prevailing usages at law and in equity.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

But to be confined to clause, sentence, etc., directly involved.

Approved, October 15, 1914.

WEBB ACT.¹

[Approved Apr. 10, 1913.]

[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, 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. 513-515.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW—Continued.

Nor agreement nor act, if not in restraint of trade within the United States, or of the export trade of any domestic competitor, and such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further,* That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices of, or substantially lessens competition, or restrains trade in commodities of class exported, 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.

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. 512, et seq.

⁴ See *ante*, p. 499, 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.

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.

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

Sec. 5. 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.

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.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

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.

⁵ See ante, p. 499, et seq.

APPENDIX II.

DECISIONS OF THE COURTS ON PETITIONS TO REVIEW THE ORDERS OF THE COMMISSION.¹

NATIONAL HARNESS MFRS.' ASSN. v. FEDERAL TRADE COMMISSION ET AL.

(Circuit Court of Appeals, Sixth Circuit. Nov. 15, 1919.)

No. 3289.

TRADE-MARKS AND TRADE NAMES KEY NO. 804, NEW, VOL. 8A
KEY NO. SERIES—PRINTING OF RECORD ON PETITION FOR RE-
VIEW OF ORDER OF FEDERAL TRADE COMMISSION.

On petition for review of an order of the Federal Trade Commission, made under act September 26, 1914, paragraph 5 (Comp. St., par. 8836e), rule 19 for the Circuit Courts of Appeals (202 Fed. xiii, 118 C. C. A. xiii), relating to the printing of the record in ordinary appellate cases, is not applicable, but the general equity rule 75 furnishes an analogy for the proper practice; and as the Commission is required to file a transcript of the record in case its order is not obeyed, or defendant feels aggrieved by the same, it is sufficient if the petitioner prepare and serve upon the Commission a statement of those portions of the record which it deems should be printed, whereupon the Commission may propose amendments, and, in case of disagreement, the matter shall be settled by the court.

¹ With the exception of the National Harness case, which immediately follows, not heretofore printed in the Commission's Reports, the period covered coincides with that of this volume, namely, July 1, 1921, to May 22, 1922. During this period, in addition to the opinions and decisions herewith reprinted, the courts handed down decisions without opinions in two cases to which the Commission was a party, namely, *Claire Furnace Co. et al v. Federal Trade Commission*, in which the Supreme Court of the District of Columbia on March 10 enjoined the Commission from enforcing compliance with requests for certain information sought by questionnaires sent petitioners by the Commission acting under the powers conferred by the Federal Trade Commission Act (the case was appealed by the Commission to the Court of Appeals for the District of Columbia, where it has been argued and is now pending awaiting decision), and *Douglas Fir Exploitation and Export Co. v. Federal Trade Commission*, in which the same court on April 3 granted the motion of the Commission to dismiss petitioner's bill seeking to enjoin the Commission from issuing a complaint against petitioner under section 5 of the Federal Trade Commission Act and averring, among other things, that petitioner was a duly qualified export trade association under the Webb Act, entitled to all the benefits thereof; that the Commission had no jurisdiction over it under section 5, since it was not engaged in interstate commerce, and that such a complaint would do it irreparable injury; the Commission's motion being based on the ground that petitioner had not made or stated such a case as to entitle it to injunctive relief.

(The syllabus is taken from 261 Fed. 170.)

Petition to Review Order of Federal Trade Commission.

Petition by the National Harness Manufacturers' Association to review an order of the Federal Trade Commission of the United States and others. In the matter of the printing of the record of the commission. Practice stated.

Lorbach & Garver, of Cincinnati, Ohio, for National Harness Manufacturers' Association.

Claude R. Porter, of Washington, D. C., for Federal Trade Commission.

Before Knappen, Denison, and Donahue, Circuit Judges.

PER CURIAM:

The Federal Trade Commission, proceeding under section 5 of the act of Congress approved September 26, 1914 (38 Stat. 719, c. 311 (Comp. St., par. 8836e)), conducted an investigation and thereupon made an order requiring the Harness Manufacturers' Association to desist from using certain methods of competition therein specified. Thereupon the association filed its petition, asking this court to review and set aside such order. At a previous session we denied the motion of the association to dispense with printing the record; and, the record not having been printed, the Commission now moves to dismiss the petition for review.

We think our previous order, which assumed that printing was necessary and thereupon declined to dispense with it entirely, did not sufficiently take into account the character of this proceeding. Our rule 19 (202 Fed. xiii, 118 C. C. A. xiii) provides for the printing of all records, but contemplates only records in those proceedings to which the body of the rules is applicable, viz, records on writs of error or appeals or on some specified petitions. In all these cases the record has been prepared under some supervision which insures printing only the essential parts.

This rule 19 should not be interpreted so as to require printing at large such a record as this. By the provisions of this act the Commission conducts a general investigation and takes proofs; there is no judicial regulation of the reception of evidence. Thereupon the Commission makes a finding of facts and an order. If the order is not observed, the Commission may apply to this court for a mandatory order of enforcement, and files in this court a copy of the entire record and of its finding of facts. In case of such application, there is a provision for taking further testimony, to be ordered by this court, at the

request of either party. In case the defendant feels aggrieved by the order of the Commission, he may file a petition in this court for review, and the Commission is required to file the transcript of the record. The court then has the same duty of review as if the Commission had brought the matter here.

The provision regarding further proofs indicates that the transcript first filed is not of the permanent character of ordinary transcripts, and that the printing of parts of the original might be rendered inadvisable by later proofs; and though this provision for further proofs does not in terms apply to a defendant's application for review, we should hesitate to construe our printing rule as applicable to one and not to the other method of review.

The statute further provides that the finding of facts by the Commission shall be conclusive, if supported by any evidence. It follows that there will be no occasion to resort to the record on which the findings were based, unless it is alleged that there was no evidence to support a particular finding, and then it would be necessary to examine only so much of the evidence as pertained to that subject. The statute further provides that the proceedings shall be in every way expedited and shall be given precedence over all other cases pending.

All these considerations persuade us that there should be a revision and condensation of the transcript before it is printed. We think a satisfactory practice will be obtained by following the analogy of general equity rule 75 (198 Fed. xl, 115 C. C. A. xl). The order, therefore, will be that the former order refusing to dispense with printing be vacated; that the petitioner, within 30 days, prepare and serve upon the Commission a statement of such parts of the record as the petitioner thinks should be printed, including a condensed narrative of so much of the testimony as is material to the points to be raised; that within 30 days thereafter the Commission propose such amendments to such statement and narrative as it thinks proper; and that, if the parties do not thereupon promptly reach an agreement as to the record necessary to be printed, the matter be brought to the further attention of the court.

CANFIELD OIL CO. v. FEDERAL TRADE COMMISSION.¹

AND FIVE OTHER CASES.

(Circuit Court of Appeals, Sixth Circuit. July 1, 1921.)

Nos. 3476, 3477, 3479, 3483, 3489, 3526.

MONOPOLIES KEY No. 17 (2).—LEASING OF GASOLINE TANKS EXCLUSIVELY FOR PURPOSE OF STORING GASOLINE PURCHASED FROM LESSOR NOT OBJECTIONABLE.

The practice of leasing at a nominal rental tanks and automatic measuring pumps for storing and distributing of gasoline, on condition that they be used exclusively for the purpose of storing and marketing gasoline purchased from the lessor, does not violate Federal Trade Commission Act, paragraph 5 (Comp. St. par. 8836e), nor Clayton Act, paragraph 3 (Comp. St. 8835c), such system being competitive, advantageous to the public, and economical, and will not be prohibited, because tending to monopoly.

COMMERCE KEY No. 33.—EVIDENCE AND STIPULATIONS HELD INSUFFICIENT TO SHOW USE OF GASOLINE TANKS IN INTERSTATE COMMERCE.

An order of the Federal Trade Commission to desist from the practice of leasing gasoline tanks and measuring pumps to be used exclusively for gasoline purchased from the lessor, based on the theory that the parties were engaged in interstate commerce, *Held* contrary to evidence and stipulations, showing that the equipment was shipped into Ohio, in the name of the lessor, and that interstate transportation had been fully accomplished and ended before the equipment was used.

COMMERCE KEY No. 33.—ORDER TO DESIST FROM LEASING OF GASOLINE TANKS HELD NOT WARRANTED, ON THEORY OF INTERFERENCE WITH INTERSTATE COMMERCE.

An order of the Federal Trade Commission to desist from the practice of leasing gasoline tanks to be used exclusively for gasoline purchased from the lessor, engaged in intrastate com-

¹ For group of cases before the Commission, reviewed in this opinion and decision, see 3 F. T. C. 78 et seq.

The case constitutes one of a number of opinions and decisions dealing with the so-called oil tank and pump cases, namely, *Standard Oil Co. of N. Y. et al. v. Federal Trade Commission*, 273 Fed. 478, reprinted in volume 3 of the Commission's decisions at pp. 622 et seq.; the instant case; *Sinclair Refining Co. v. Federal Trade Commission*, 276 Fed. 686, reprinted *intra* at p. 552 et seq.; and *Standard Oil Co. of N. J. et al. v. Federal Trade Commission*, 282 Fed. 81 (decided on July 14 last). Petitions for certiorari have been granted the Commission by the Supreme Court in the *Sinclair* and *Standard Oil of N. J.* cases.

merce only, *Held* not justified, on the ground that competitors were engaged in interstate commerce, and that the interstate and intrastate transactions were closely related, and that hence such practice cast a burden upon interstate commerce.

(The syllabus is taken from 274 Fed. 571.)

Petitions to Review Orders of the Federal Trade Commission.

Petitions to review orders of the Federal Trade Commission, by the Canfield Oil Co., by Thomas K. Brushart, by the White Star Oil Co., by the Paragon Refining Co., by the Columbus Oil Co., and by the Standard Oil Co., an Ohio corporation. Orders reversed.

C. D. Chamberlin and Hubert B. Fuller, both of Cleveland, Ohio (Chamberlin & Fuller, of Cleveland, Ohio, on the brief), for petitioners Canfield Oil Co., Brushart, and White Star Oil Co.

Ira C. Taber, of Toledo, Ohio, for petitioner Paragon Refining Oil Co.

Franklin Rubrecht, of Columbus, Ohio, for petitioner Columbus Oil Co.

W. T. Holliday, of Cleveland, Ohio (Niman, Grossman, Buss & Holliday, of Cleveland, Ohio, on the brief), for petitioner Standard Oil Co.

Eugene W. Burr, of Washington, D. C. (Adrien F. Busick, of Washington, D. C., on the brief), for respondent.

Before Knappen, Denison, and Donahue, Circuit Judges.

DONAHUE, Circuit Judge:

The above-entitled cases involve the same questions and were heard and submitted together. They are part of a group of cases recently before the Federal Trade Commission, which Commission declared in its findings that the practice of leasing at a nominal rental tanks and automatic measuring pumps, for the storing and distributing of gasoline, upon condition that the tanks and pumps so leased be used by the lessee, the retailer, exclusively for the purpose of storing and marketing gasoline purchased from the lessor is a violation of section 5 of the Act of Congress approved September 26, 1914, known as the Federal Trade Commission Act, and section 3 of the Act of Congress approved October 15, 1914, known as the Clayton Act.

Pursuant to this finding the Federal Trade Commission entered an order directing the petitioners to cease and desist from this practice. In view of the very able

opinion recently announced by the Circuit Court of Appeals of the Second Circuit, in *Texas Co. v. Federal Trade Commission*, and *Standard Oil Co. of New York v. Federal Trade Commission* (273 Fed. 478), two of the same group of cases, and involving an identical state of facts it is wholly unnecessary for this court to enter into any extended discussion of the question whether this practice of leasing tanks and pumps at a nominal rental and upon the conditions above stated constitute "Unfair methods of competition in commerce." We are in full accord with the conclusion reached by that court in the above-named cases that—

A thing exists from its beginning, and it is not a conclusion of law from any facts here found that a system which at present is keenly competitive, extremely advantageous to the public and, in the opinion of a majority of the competent witnesses, economical, is at present unfair to anyone or unfair because tending to monopoly.

It necessarily follows that for this reason the acts complained of do not violate either the Trade Commission Act or section 3 of the Clayton Act.

There is, however, in each of these cases the further question whether the business in which these petitioners are engaged is, or is not, interstate commerce. The finding by the commission that this practice constitutes unfair methods of competition in commerce, necessarily means commerce as defined by section 4 of the Federal Trade Commission Act in this language:

Commerce as used herein means trade or commerce among the several States and the foreign nations, etc.

It appears that the Federal Trade Commission made one general form of findings of fact to be filed in each of the cases of this group of cases then pending before that commission. These findings may all be sustained by some evidence as to some of the cases in this group, but in so far as these particular cases are concerned, some of these findings are not only not supported by any evidence whatever, but are also in direct conflict with the only evidence on that particular issue, and they are also directly contrary to the stipulations and agreement of counsel in these cases in reference thereto.

The second finding of fact is as follows:

That the respondent, in the conduct of its business as aforesaid, buys said "equipments" in various States of the United States and sells and leases and delivers the same to various persons, firms, corporations, and copartnerships in various States other than those in which the said equipments are purchased by the respondent, and from which they are delivered to the said users.

The stipulation in each of these cases, except *Brushart No. 3477*, is as follows:

That the respondent company does no business of the sort described in the complaint herein in any other State of the United States or the District of Columbia other than in the State of Ohio.

It also appears from the Brushart case that a similar stipulation was filed, but it is not copied into the record in that case. However, the uncontradicted evidence shows that Brushart does business in only about five counties, in the southern part of Ohio. It does appear from the evidence and the stipulations of the parties that the larger part of this equipment, tanks and pumps are purchased in other States and shipped into Ohio, generally to the warehouse of the different companies in different cities of the State, where they are uncrated and stored until a customer is found who desires to enter into these leases. Then the equipment is shipped directly to him from the warehouses. In one or two instances, perhaps, shipments have been made directly from the manufacturer to the city or locality where they are to be installed, but such shipment is in the name of the lessor company. In all cases, however, the transportation of these pumps and tanks in interstate commerce has been fully accomplished and ended before they are applied to the purposes of the petitioners' business. *Covington Stock Yards v. Keith*, 139 U. S. 128-136; *Railroad Co. v. Texas*, 204 U. S. 403.

The Federal Trade Commission, however, did not predicate its order to cease and desist upon any question of interstate commerce, in so far as the furnishing of pumps and tanks are concerned. If it had done so, it would necessarily have limited that order to cease and desist from furnishing tanks and pumps transported in interstate commerce from other States into the State in which this business is conducted. On the contrary the order specifically commands the respondents to cease and desist from directly or indirectly leasing any pumps and tanks whatever regardless of where manufactured or where the same may be purchased by them.

It would therefore appear that this order of the Federal Trade Commission to cease and desist is based upon the theory that the petitioners in the marketing of gasoline and other oil products are engaged in interstate commerce. In view of the uncontradicted evidence and the stipulations and agreements of the parties hereinbefore referred to this theory is not tenable. On the contrary, this evidence and the agreements of the parties in reference to the facts affirmatively show that the sales business of the petitioners is purely and wholly intrastate. *Bowman, Atty. Gen'l, v. The Continental Oil Co.*, decided by the United States Supreme Court June 6, 1921, 256 U. S. 642, 41 Sup. Ct. 606.

It is insisted, however, by counsel for the Commission that there are a number of corporations, competitors of the petitioners, doing business within the State of Ohio, who are engaged in interstate commerce, and that therefore the Federal Trade Commission has jurisdiction to make these findings and order under the doctrine announced by the United States Supreme Court in the Min-

nesota Rate Cases, 230 U. S. 352, and *Railroad Co. v. U. S.*, 234 U. S. 342; which latter case is commonly known as the Shreveport rate case.

To this proposition there are two answers: (1) The findings and orders of the Commission purport to regulate the business of the petitioners as interstate commerce, and not because the methods employed by petitioners in the conduct of intrastate business is discriminatory against, or a burden upon interstate commerce. (2) The evidence in these cases and the findings of fact made by the Commission do not bring them within the purview of the cases above cited. The judgment in the Minnesota rate cases was based upon the proposition that—

When the situation becomes such that adequate regulation of interstate rates can not be maintained without imposing requirements with respect to such intrastate rates of interstate carriers as substantially affect interstate rates, it is for Congress to determine, within the limits of its constitutional authority over interstate commerce and its instruments, the measure of the regulation it should supply.

In the Shreveport rate case the Supreme Court held that—

Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule; otherwise the nation would not be supreme within the national field.

The findings made by the Commission in these cases do not show such an extraordinary condition of affairs, or any such direct burden, hindrance, or discrimination against interstate traffic as would call for the exercise of Federal control over purely intrastate business. Nor is there any evidence in this record that would authorize such a finding. Especially is this true in view of the conclusion we have reached in this case that the practice complained of is at present not only conducive to competition, but extremely advantageous to the public. *Federal Trade Commission v. Gratz et al*, 258 Fed. 314; *Same v. Same*, 253 U. S. 421.

For the reasons above stated the orders complained of, entered by the Federal Trade Commission in each of these cases, are reversed.

KINNEY-ROME CO. v. FEDERAL TRADE COMMISSION.¹

(Circuit Court of Appeals, Seventh Circuit. September 8, 1921.)

No. 2874.

TRADE MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—GIVING BY MANUFACTURER OF PREMIUMS TO SALESMEN OF RETAILERS NOT "UNLAWFUL OR UNFAIR COMPETITION."

¹ Reviewing order of the Commission in 2 F. T. C. 442.

Giving of premiums by manufacturer to salesmen of retailers, with the knowledge and consent of such retailers, to induce the salesmen to push the sale of the manufacturer's goods, was not "unlawful or unfair competition" within the meaning of Federal Trade Commission Act (Comp. St. 8836a-8836k), making unlawful unfair methods of competition in commerce; such conduct of the manufacturer not constituting fraud nor unfairness to the public.

(The syllabus is taken from 275 Fed. 665.)

Petition to review an order of the Federal Trade Commission.

Petition by the Kinney-Rome Co. to review an order made by the Federal Trade Commission. Order annulled.

Colin C. H. Fyffe, of Chicago, Ill., for petitioner.

Marshall B. Clarke, of Washington, D. C., for respondent.

Before Evans and Page, Circuit Judges, and Carpenter, District Judge.

PAGE, *Circuit Judge*:

This is an original petition filed by petitioner to review an order made by the Federal Trade Commission, respondent, in a proceeding wherein respondent had filed its complaint, charging that petitioner was engaged in manufacturing and selling bed springs in interstate commerce in direct competition with other corporations similarly engaged, and that—

Respondent [petitioner] for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of bed springs and kindred products, in interstate commerce, has given and offered to give premiums, consisting of necktie sets, * * * to the salesmen of merchants handling the products of the respondent [petitioner] and those of its competitors, as an inducement to influence them to push the sales of respondent's [petitioner's] products, to the exclusion of the products of its competitors.

The matter was submitted to the respondent upon an agreed state of facts, in substance as follows:

That the respondent, The Kinney-Rome Co., in the course of its business of manufacturing and selling "De Luxe" bed springs has * * * given and offered to give premiums, such as necktie sets, etc., * * * to the salesmen of merchants handling the products of the respondent and those of its competitors when such salesmen have been instrumental in making a sale of respondent's "De Luxe" bed springs, these premiums being given with the knowledge and consent and through arrangements with the merchants who are the employers of said salesmen. * * * Salesmen of respondent's said customers do not explain the above-described system of premiums to persons to whom they sell the said "De Luxe" bed springs, so far as is known to respondent.

The findings of fact followed the stipulation of facts, and stated this conclusion:

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

methods of competition in interstate commerce in violation of the provisions of Section 5 of the Federal Trade Commission Act of September 26, 1914. 38 Stats. L. 717.

Thereupon respondent entered the order here complained of, which is in part:

It is ordered that the respondent * * * cease and desist from directly or indirectly giving * * * premiums, such as necktie sets, * * * to salesmen or employees of merchants handling the products of the respondent and those of one or more of its competitors where such salesmen or employees have been instrumental in making a sale of the respondent's products.

Section 5 provides that—

Unfair methods of competition in commerce are hereby declared unlawful. [And] 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.

(1) In *Federal Trade Commission v. Gratz*, 253 U. S. 421, it is said:

The words "unfair methods 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.

While the exact words "unfair methods of competition" have not been frequently, if at all, used in the decisions, yet "unfair competition" and "unfair trade" have been repeatedly the subject of consideration and discussion by the Federal and State courts, and several times in this circuit.

In *Pillsbury v. Pillsbury-Washburn, etc., Co.*, 64 Fed. 841, 845, this court said:

The right of appellees to relief is * * * rested upon principles applied by courts of equity in cases analogous to cases of trade-marks, where the relief is afforded upon the ground of fraud.

In *Cole Co. v. Am. Cement & Oil Co.*, 130 Fed. 703, it was stated by this court:

The doctrine of unfair competition is possibly lodged upon the theory of the protection of the public whose rights are infringed or jeopardized by the confusion of goods produced by unfair methods of trade, as well as upon the right of a complainant to enjoy the good will of a trade built up by his efforts and sought to be taken from him by unfair methods.

In *Goodyear, etc., Co. v. Goodyear Rubber Co.*, 128 U. S. 598, it was said at p. 604:

The case at bar can not be sustained as one to restrain unfair trade. Relief in such cases is granted only where the defendant, by his marks, signs, labels, or in other ways, represents to the public that the goods sold by him are those manufactured or produced by the plaintiff.

In *Howe Scale Co. v. Wyckoff, etc.*, 198 U. S. 118, the court stated:

The essence of the wrong in unfair competition consists in the sale of the goods of one manufacturer or vendor for those of another, and, if defendant so conducts its business as not to palm off its goods as those of complainant, the action fails.

In *International News Service v. Asso. Press*, 248 U. S. 215, 2 A. L. R. 293, it was said, at page 241:

It is said that the elements of unfair competition are lacking because there is no attempt by defendant to palm off its goods as those of complainant, characteristic of the most familiar, if not the most typical, cases of unfair competition [citing *Howe* case, *supra*]. But we can not concede that the right to equitable relief is confined to that class of cases. In the present case the fraud upon complainant's rights is more direct and obvious. Regarding news matter as the mere material from which these two competing parties are endeavoring to make money, and treating it, therefore, as quasi property for the purposes of their business, because they are both selling it as such, defendant's conduct differs from the ordinary case of unfair competition in trade principally in this, that, instead of selling its own goods as those of complainant, it substitutes misappropriation in the place of misrepresentation and sells complainant's goods as its own.

See also *Keystone Type Foundry v. Portland Pub. Co.*, 186 Fed. 690; *Sterling Remedy Co. v. Eureka Chem. & Mfg. Co.*, 80 Fed. 105; *Rathbone, Sard & Co. v. Champion Steel Range Co.*, 189 Fed. 26, 30; *Bates Mfg. Co. v. Bates, etc., Co.*, 172 Fed. 892; *West Pub. Co. v. Ed. Thompson Co.*, 169 Fed. 833; *Manitowoc Malting Co. v. Milwaukee Malting Co. (Wis.)*, 97 N. W. 389; *Sartor v. Schaden (Iowa)*, 101 N. W. 511; *Regent Shoe Mfg. Co. v. Haaker (Neb.)*, 106 N. W. 595; *Rocky Mountain Bell Tel. Co. v. Utah Independent Tel. Co. (Utah)*, 88 Pac. 26; *Bissell Chilled Plow Wks. v. T. M. Bissell Plow Co.*, 121 Fed. 357; *Am. Brewing Co. v. Bienville Brewery*, 153 Fed. 615.

There are many other cases in the Federal courts which cite the *Howe* and *Goodyear* cases.

(2) It is not conceived that Congress, which laid down no definition whatever, intended to either limit or extend the matters which constituted unfair methods of competition prior to the passage of the Clayton Act (*Curtis Publishing Co. v. Federal Trade Com.*, 270 Fed. 881, 908), but that its object was the creation of a board of commissioners, who, as stated in the *Sears, Roebuck* case, 258 Fed. 307, 311, 6 A. L. R. 358—

are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to injure competitors directly or through deception of purchasers, quite irrespective of whether the specific practices in question have yet been denounced in common-law cases.

We conclude, from the discussion of the term "unfair competition" by the courts, and we are of opinion, that there must be some fraud in trade that injures a competitor, or lessens competition, before it can be said that there has been used an "unfair method of competition."

(3) Without perhaps admitting petitioner's conclusions, even if its premises are true, respondent vigorously assails those premises, saying:

Petitioner's whole brief is based on this false assumption—that the manufacturer is justified in doing whatever the dealer may do.

We are of the opinion that the assumption is not false, but is fully justified. The stipulated facts show—

These premiums being given with the knowledge and consent and through arrangements with the merchants who are employers of said salesmen.

It can not be that a merchant may personally do a thing touching his business that is legal, but that it becomes illegal when done by another through his procurement. When petitioner did the things complained of through arrangement with the merchants, the merchants became parties to the act. As it effected sales of their property, presumably they profited by the arrangement. If it was lawful as to one, it was lawful as to the other.

(4) In determining whether there was used "an unfair method of competition" it must always be kept in mind that the thing complained of was done in the merchant's business through an arrangement with him. What, then, may the merchant do? In *United States v. Freight Assn.*, 166 U. S. 290, the Supreme Court said, at page 320:

The trader or manufacturer * * * carries on an entirely private business, and can sell to whom he pleases; he may charge different prices for the same article to different individuals; he may charge as much as he can get for the article in which he deals, whether the price be reasonable or unreasonable; he may make such discrimination in his business as he chooses and he may cease to do any business whenever his choice lies in that direction.

That case has been repeatedly approved, and a portion of that language was used in *United States v. Colgate*, 250 U. S., at page 307.

In respondent's brief is asserted a self-evident truth, viz:

The manufacturer has no such relation to the goods after he has sold them as entitles him to control their resale by the dealer.

This means that not only petitioner but every manufacturer is excluded from all right to control the merchant in his resale of his goods. No one, then, having any right to interfere in his business or to control in any way the resale of his goods, the merchants may do and permit to be done anything in connection with his business that he may see fit, and those he permits to participate in his business may do anything in that business permitted by him, and no one has any right to complain unless that which is done amounts to a fraud upon his rights. If such right did not belong to the merchant, then he would not have the ordinary rights of contract

that belong to every man, and he would be compelled to carry the burdens, risks, and hazards of a business subject, without his consent, to the control of every manufacturer who might have sold him a bill of goods.

(5) The rights which it is urged have been affected are the rights of other manufacturers and also the rights of the public. Unless that which petitioner did fraudulently affected some competition in which either or both were interested, then the order to cease and desist was improvidently entered. It is conceded that no manufacturer had any right to interfere in the merchant's business. It is equally true that when any manufacturer sold to the merchant he met, overcame, and ended any competition in which he had any interest. His interest in those goods was terminated, and when they again entered the channels of trade they entered as the goods of a new owner, along with the other goods owned by him. The new owner's problems were with other retail dealers, handling oftentimes goods identical in make and kind with his own, and competing for the favor of the buying public. It needs no discussion to show that that was wholly his competition, to be met in his own way, by his own methods, and in it the manufacturer had no part. Any plan or scheme to advance one kind of goods and to keep back another is a matter wholly and absolutely under the control of the merchant in meeting his problems in his competition, and does not constitute a fraud, nor is it unfair to any one who does not own the goods.

Likewise the public, if it has an interest in competition, has such interest only in the competition between different merchants. It has no right to demand for itself that a merchant shall set up a competition in his own house and between his own goods. The channels of trade that must be kept open for the manufacturer are those that run between him and other manufacturers and necessarily end when he has sold. The channels of trade that must be kept open for the buying public do not run through the retailer's store, but do run between the different stores seeking the favor of the buying public.

(6) We are of opinion that there can be nothing in the contention that some special interest in a clerk which is undisclosed to the buying public represents an unfair method of competition because of an incentive and opportunity of the clerk to deceive the public. Undoubtedly the clerk, with the master's consent, may discriminate between the master's goods. All of the buying public, with at least ordinary knowledge and intelligence, knows that a salesman is representing the merchant's interest, and that every merchant may and very frequently does have reason for pushing the sale of one kind of goods more than another; but if that were not true, it would be little less than an absurdity to say that a salesman, who often is the merchant himself, in order to escape the

charge of unfairness, must disclose to every would-be buyer his interest in the transaction in hand. That is just what the contention, if allowed, would lead to.

Nor is it conceived that there is any danger from falsehood or misrepresentation. A salesman, with the master's consent, may discriminate all he pleases between the goods he has to sell. Neither a salesman having a special interest in one article, where he has many to sell, nor a salesman with a single article to sell, has any right to indulge in falsehood and misrepresentation; but there is here no evidence of falsehood or misrepresentation.

The order to cease and desist is annulled and set aside.

SINCLAIR REFINING CO. v. FEDERAL TRADE COMMISSION.¹

(Circuit Court of Appeals, Seventh Circuit. September 8, 1921.)

No. 2838.

MONOPOLIES KEY No. 17 (1).—TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—LEASING CONTAINERS FOR GASOLINE PURCHASED FROM LESSOR FOR NOMINAL RENTAL HELD NOT "UNFAIR METHOD OF COMPETITION."

The leasing by a dealer in gasoline for a nominal rental to retail dealers of pumps and tanks to be used solely for the storage and handling of gasoline purchased from the lessor does not constitute an unfair method of competition within Clayton Act, October 15, 1914, paragraph 3 (Comp. St. par. 8835c), or within Federal Trade Commission Act, September 26, 1914, paragraph 5 (Comp. St. par. 8836e), and, where there is no attempt by the contract to limit the right of lessees to buy or handle the product of competitors, the Federal Trade Commission has no authority to prohibit such practice.

(The syllabus is taken from 276 Fed. 686.)

Petition to Review Order of Federal Trade Commission.

Petition by the Sinclair Refining Co. to review order of Federal Trade Commission. Order set aside.

Ray T. Osborn, of Chicago, Ill., for petitioner.

¹ Reviewing order of the Commission in 2 F. T. C. 127. Petition for certiorari granted January 3, 1922.

The case constitutes one of a number of opinions and decisions dealing with the so-called oil tank and pump cases, namely, Standard Oil Co. of N. Y. et al. v. Federal Trade Commission, 273 Fed. 478—reprinted in volume 3 of the Commission's decisions at pp. 622 et seq.; Canfield Oil Co. et al. v. Federal Trade Commission, 274 Fed. 572—reprinted *supra*, at pp. 542 et seq.; the instant case; and Standard Oil Co. of N. J. et al. v. Federal Trade Commission, 282 Fed. 81 (decided on July 14, 1922). Petitions for certiorari have been granted the Commission by the Supreme Court in the Sinclair and Standard Oil of N. J. cases.

Eugene W. Burr, of Washington, D. C., for respondent.
Before Baker, Evan A. Evans, and Page, Circuit
Judges.

PAGE, *Circuit Judge*:

This is an original petition against Federal Trade Commission, hereinafter called respondent, to review an order made in a proceeding wherein it had filed its complaint against Sinclair Refining Co., hereinafter called the petitioner, the substance of which complaint was that petitioner, being engaged in the business of purchasing and selling oil and gasoline and the leasing and loaning of oil pumps, storage tanks or containers and their equipment, leased, for a nominal consideration, said oil pumps, storage tanks or containers and their equipment to persons who purchased oil from petitioner, with the understanding that the same should not be used by the lessees of the pumps and other equipment to hold or pump the oil of any competitor. It was also charged that the leases were made on consideration that lessees should not purchase or deal in the products of a competitor.

In answer to that complaint, petitioner set out the contract, which was found by the Federal Trade Commission to be the uniform contract by which such equipment was leased, the portions of which, material here, are:

1. The above-described equipment shall be used by party of the second part [purchaser of gasoline] for the sole purpose of storing and handling the gasoline supplied by party of the first part.
* * *

6. This agreement shall terminate forthwith upon the sale or other disposition of said premises by party of the second part, and in any event upon the expiration of ----- months from the date hereof; * * * *Provided, however,* That the party of the second part shall have the right and option at such time to purchase said equipment by paying therefor the sum of \$-----.

After the findings of fact were made, the order to cease and desist, here complained of, was entered.

The question, plainly stated, is: Does the leasing, under the terms of the contract in evidence, at a nominal charge, of containers and pumps by petitioner to purchasers of its gasoline constitute an "unfair method of competition," as those words are used in section 5 of the Federal Trade Commission Act of September 26, 1914, or may the effect of such leasing be to substantially lessen competition and tend to create for the respondent a monopoly in the business of selling petroleum products in violation of section 3 of the Clayton Act?

This identical matter was recently decided by the Court of Appeals in the Second Circuit in *The Texas Company v. Federal Trade Commission*, and *Standard Oil Company of New York v. Federal Trade Commission*, 273 Fed. 478, adversely to the respondent's contention here.

(1) "Unfair methods of competition" have been discussed by this court in the opinion in *Kinney-Rome Company v. Federal Trade Commission*, 275 Fed. 665, just filed.

Neither section relied upon gives the Federal Trade Commission power to regulate trade generally. The jurisdiction under section 5 exists only where there are practices that amount to a fraud in regard to some public or private right; otherwise, they do not, in our opinion, as we said in the *Kinney-Rome* case, *supra*, amount to an unfair method of competition.

In addition to the reasons upon which the decision was based in the *Texas Company* case, *supra*, we are of opinion that petitioner had the undoubted right to furnish any and every purchaser such containers and conveniences to aid him in delivering the gasoline into the possession of the consumer as it might see fit, and at such cost as it might see fit. The right to fix prices is not given to the Federal Trade Commission. The only cases where the question of price has come into consideration have been those wherein the making of a price—in some cases high, in others low—have been used as an element in some fraudulent scheme of oppression. The price which one may put upon that which he has to sell or lease is a matter wholly his own. *United States v. Freight Assn.*, 166 U. S. 290, 320; *Sears, Roebuck & Co. v. Federal Trade Com.*, 258 Fed. 307, 312, 6 A. L. R. 358.

Competition is not an unmixed good. It is a battle for something that only one can get; one competitor must necessarily lose. The weapons in competition are various—superior energy, more extensive advertising, better articles, better terms as to time of delivery, place of delivery, time of credit, interest or no interest, freights, methods of packing, lower prices, more attractive and more convenient packages, superior service, and many others, are and always have been considered proper weapons. Expense attending the use of any weapon, the foolishness of it, the fact that a method is uneconomical, or that the competitor can not meet any method or scheme of competition because it will be ruinous to him to do so, have not, nor has either of them, ever been held unfair. Such things are a part of the strife inherent in competition. Some merchants sell and deliver goods at the counter and you must take them away; others deliver them at your house, or in any town, State, or country—that is merely a part of the bargain. Some people deliver a hat in a bag at the store, others deliver it at your house in a fancy box that is used by many purchasers as a container. Petitioner said:

Here is a container and a pump; you may take and use them for the storage and pumping of gasoline bought from us; if you wish to use them otherwise you may and must buy them.

In kind, that is nothing more than loaning a barrel with a faucet in it. The fact that the tank and pump are much more expensive does not make the transaction different, nor unfair. If that is not true, then the law must mean that the Trade Commission is set as a watch on competitors, with the duty and the power to judge what is too fast a pace for some and to compel others to slow up; in other words, to destroy all competition except that which is easy. We are of opinion that Congress did not intend to bestow any such power, and that it did not intend to do more than eliminate the almost infinite variety of fraudulent practices from business in interstate commerce.

(2) We are of opinion that there was no violation of section 3 of the Clayton Act. The complaint under that section is that petitioner made leases for the container and pump and fixed the price therefor—

On the condition, understanding, and agreement that the lessees thereof shall not purchase or deal in the products of a competitor or competitors of respondent [petitioner].

There is nothing in the evidence nor in the findings of fact by the Federal Trade Commission that supports any such charge. The findings is that there was a uniform contract. There is no word there about purchasing from competitors. The only limitation is that—

The above-described equipment shall be used by party of the second part for the sole purpose of storing and handling the gasoline supplied by party of the first part.

But there are other findings that, taken in connection with the order to cease and desist, very clearly indicate what the Commission deemed the real trouble which it desired to reach was, viz:

That the monetary considerations received by respondent [petitioner] do not represent reasonable returns upon the investment in such devices and equipment; and also that such leases and loans of said devices and equipment are made for monetary considerations below the cost of purchasing and vending the same.

And, again—

That only a small proportion of such lessees as handle similar products of respondent's competitors require or use more than a single pump outfit in the conduct of their said business; that the practice of leasing such devices requires a large capital investment; that many competitors of respondent do not possess sufficient capital and are not able to purchase and lease devices as respondent does, as aforesaid, partly by reason of which such competitors have lost numerous customers to respondent; that the effect of the practice of leasing by contract such equipments, where such contracts contain the said provision restricting the use of the same to the storage and handling of respondent's products as aforesaid, may be to substantially lessen competition, etc.

There are two paragraphs of the order to cease and desist, and they are substantially as follows: The substance of the first is that petitioner shall not lease the equipment in question at a rental which will not yield to it a reasonable profit, and the substance of the second is that petitioner shall not enter into or continue to operate under contracts whereby dealers agree that, in consideration for the leasing to them of such equipment, the same shall be used only for storage or handling the product of petitioner.

The necessary conclusion from the above findings and the orders entered is: First, that the Commission deemed it lawful and proper for it to condemn certain rentals and also to fix and regulate the rentals on the equipment because the furnishing of such equipment required a large capital investment and because many competitors of respondents were financially unable to do that same sort of thing. As we have hereinbefore said, Congress did not bestow upon respondent any power to regulate or fix prices (*Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 312); nor do we find anything in the law which indicates that it is illegal for one competitor to do that which is beyond the financial ability of another competitor; nor do we find anything that authorizes respondent to regulate competition for that reason. Section 3 does not make it unlawful to make sales or leases, but does make it unlawful to make sales or leases on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in goods, etc., of a competitor where the effect of such lease, condition, agreement, or understanding may be to substantially lessen competition, etc. The above provisions of section 3 were the substance of the unproven charge in respondent's complaint against petitioner, referred to above. It is perfectly clear that that which the Commission found was "the uniform contract used by respondent for leasing such devices" contained no provision comparable with or equivalent to the thing prohibited in section 3. We are of opinion that there is nothing in the section that could be constructed as preventing petitioner, under the circumstances shown in this case, from putting a limitation upon the use of the thing leased. It has long been a practice in real-estate leases to include limitations upon the use of the property, and the reasons for doing so are obvious. Such has likewise been the practice in the leasing or hiring of personal property. The reasons for such limitations are even more obvious than those for the placing of them in real-estate leases. Some of the reasons are pointed out in the opinion in the *Texas Company* case, *supra*.

(3) In this case, as in the *Fruit Growers' Express* case, 274 Fed. 205, decided by this court, opinion filed June 16, 1921, if an order to cease and desist is to stand,

the effect of the action of the Federal Trade Commission seems to have been to terminate and destroy the contractual rights of persons not parties to the proceeding.

The order to cease and desist is annulled and set aside.

WESTERN SUGAR REFINERY CO. ET AL. v.
FEDERAL TRADE COMMISSION.¹

(Circuit Court of Appeals, Ninth Circuit. October 10,
1921.)

Nos. 3446, 3447, 3452-3455, 3458, 3463, 3464, 3486.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—EVIDENCE TO SUSTAIN FEDERAL TRADE COMMISSION'S ORDER MUST BE SUFFICIENT TO SUSTAIN FINDING AS TO EACH RESPONDENT.

Order of Federal Trade Commission against food manufacturers, jobbers, and brokers, charged to have conspired and confederated together to deal with a wholesale grocery company on terms and conditions constituting unfair methods of competition in interstate commerce, in violation of Federal Trade Commission Act, paragraph 5 (Comp. St., par. 8836e), to be sustained as to a respondent seeking a review of the order, must be supported by evidence sufficient to warrant a finding and conclusion as to such respondent, notwithstanding sufficiency as to other respondents.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—ORDER OF FEDERAL TRADE COMMISSION MUST CONFORM TO CHARGES.

The order of the Federal Trade Commission on charges of unfair methods of competition in interstate commerce, under Federal Trade Commission Act, paragraph 5 (Comp. St. par. 8836e), must conform to the charges.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—EVIDENCE HELD SUSTAINING FINDING OF FEDERAL TRADE COMMISSION THAT A CONCERN WAS ENGAGED IN THE WHOLESALE GROCERY BUSINESS.

In proceeding to review orders of Federal Trade Commission requiring food manufacturers, jobbers, and brokers to discontinue alleged unfair methods of competition in dealings with alleged wholesale-grocery concern, evidence that such concern had from 250 to 275 retail grocers as customers, of which only 75 or 80 were stockholders, and that it had no interest in any retail grocery business, *Held* sufficient to sustain finding of the commission that the concern was engaged in the wholesale grocery business, and was not merely a buyers' exchange for retail dealers.

¹ Reviewing Commission's order in 2 F. T. C., 151.

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—FEDERAL TRADE
COMMISSION'S FINDING, SUPPORTED BY LEGAL TESTIMONY,
CONCLUSIVE.

In proceeding to review orders of Federal Trade Commission, under Federal Trade Commission Act, paragraph 5 (Comp. St., par. 8836e), the finding of the Commission, if supported by legal testimony, is conclusive.

5. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 68—DEALER MAY REFUSE TO TRADE WITH CUSTOMER,
BUT CAN NOT AGREE TO SO DO WITH OTHERS.

A dealer may select his own customers for reasons sufficient to himself, and may refuse to deal with a proposed customer who, he thinks, is acting unfairly and is trying to undermine his trade, but can not combine and agree with others not to trade with particular customers.

6. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—EVIDENCE
HELD NOT TO SUSTAIN FINDINGS OF FEDERAL TRADE COMMISSION
AS TO CONSPIRACY OF SUGAR REFINERS AGAINST
WHOLESALE GROCER.

Evidence held insufficient to sustain findings of Federal Trade Commission that sugar refiners entered into a conspiracy to refuse to sell to a particular wholesale grocery company on the same terms and at the same price charged competitors of such company, in violation of Federal Trade Commission Act, paragraph 5, (Comp. St. par. 8836e), prohibiting unfair methods of competition in interstate commerce.

7. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—EVIDENCE
HELD TO SUSTAIN FINDING OF FEDERAL TRADE COMMISSION
AS TO CONSPIRACY TO COMPEL REFUSAL TO SELL FAIRLY TO
WHOLESALE GROCER.

Evidence held to sustain finding of Federal Trade Commission that jobbers entered into a conspiracy to induce, coerce, and compel manufacturers and distributors to refuse to sell directly to wholesale grocery concern on the terms and prices charged competitors of such concern, in violation of Federal Trade Commission Act, paragraph 5 (Comp. St. par. 8836e), prohibiting unfair methods of competition in interstate commerce.

8. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION
KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—EVIDENCE
HELD NOT TO SUSTAIN FINDING OF FEDERAL TRADE COMMISSION
AS TO BROKERS CONSPIRING TO COMPEL REFUSAL TO
SELL FAIRLY TO WHOLESALE GROCER.

Evidence held not to sustain finding of Federal Trade Commission that brokers conspired with others to induce food manufacturers and distributors, by coercion, persuasion, boycott, or threats, to refuse to sell merchandise directly to wholesale grocery concern at the same prices and on same terms as to its

competitors, in violation of Federal Trade Commission Act, paragraph 5 (Comp. St. par. 8836e), prohibiting unfair methods of competition in interstate commerce.

(The syllabus is taken from 275 Fed. 725.)

Petitions to Review Certain Orders of the Federal Trade Commission.

Petitions by the Western Sugar Refinery Co., by Haas, Baruch & Co., by the United Wholesale Grocery Co., by M. A. Newmark & Co., by Mailliard & Schmiedell, by R. L. Craig & Co., by Stetson-Barret Co., by the California Wholesale Grocery Co., by the Channel Commercial Co., and by the California & Hawaiian Sugar Refining Co. to review orders of the Federal Trade Commission requiring petitioners to cease and desist from certain alleged unfair methods of competition in interstate commerce, in dealings with the Los Angeles Grocery Co. Affirmed as to Haas, Baruch & Co., the Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., the United Wholesale Grocery Co., the Channel Commercial Co., and the California Wholesale Grocery Co., and reversed as to the Western Sugar Refinery Co., the California & Hawaiian Sugar Refining Co., and Mailliard & Schmiedell.

Morrison, Dunne & Brobeck and Herbert W. Clark, all of San Francisco, Calif., for Western Sugar Refinery.

Lawler & Degnan and James E. Degnan, all of Los Angeles, Calif., for Haas-Baruch & Co.

Loeb, Walker & Loeb and Irving M. Walker, all of Los Angeles, Calif., for United Wholesale Grocery Co. and M. A. Newmark & Co.

Edward J. McCutchen, A. Crawford Greene, and McCutchen, Willard, Mannon & Greene, all of San Francisco, Calif., for Mailliard & Schmiedell.

O'Melveny, Milliken & Tuller and Sayre Macneil, all of Los Angeles, for R. L. Craig & Co.

Mattison B. Jones, of Los Angeles, Calif., for Stetson-Barrett Co.

Harry W. Hanson, of Los Angeles, Calif., for California Wholesale Grocery Co.

Edward M. Selby, of Los Angeles, Calif., for Channel Commercial Co.

Donald Y. Campbell, of San Francisco, Calif., for California & Hawaiian Sugar Refining Co.

Adrien F. Busick and Marvin Farrington, both of Washington, D. C., Joseph A. Burdeau, of New York City, and D. N. Dougherty, of San Francisco, Calif., for Federal Trade Commission.

Before Gilbert, Ross, and Morrow, Circuit Judges.

MORROW, *Circuit Judge*:

The above-named petitioners have petitioned this court to review certain orders of the Federal Trade Commission, requiring them and their corespondents to cease and desist from certain alleged unfair methods of competition in interstate commerce in dealings with the Los Angeles Grocery Co., in violation of the provisions of section 5 of the Federal Trade Commission Act approved September 26, 1914 (38 Stat. 717).

It appears from the record that the Southern California Grocers Exchange was incorporated under the laws of the State of California in July, 1911. By its certificate of incorporation it was authorized, among other things, "to conduct a general merchandise business, buy and sell foodstuffs, hardware, drugs, chemicals, tobacco, and other merchandise." The stockholders of the corporation were retail grocers exclusively, and the corporation acted as a buying exchange for its stockholders. The name of the corporation was changed by the superior court of Los Angeles County on March 6, 1913, to "Los Angeles Grocery Company." The business of the corporation was continued on a buying-exchange basis until January 2, 1918. During this time goods were bought and afterwards sold or distributed to the stockholders of the corporation at approximately the purchase price. At the end of the month the expense of doing business was divided equally among those having purchased or received goods. On December 27, 1917, the board of directors of the corporation adopted a resolution providing that commencing January 2, 1918, the corporation would discontinue its plan of selling merchandise at cost coupled with an expense assessment, and in the future all merchandise would be sold at a jobbing profit and the business conducted as a jobbing business.

On January 4, 1918, the corporation published in the Commercial Bulletin, a trade paper published in Los Angeles, the following notice:

L. A. GROCERY CO. NOW JOBBING HOUSE.

Beginning January 2, the Los Angeles Grocery Co. ceased to operate as a buying exchange and became an out-and-out jobbing house.

The company has been pricing all sales to members at cost, plus a percentage to cover expenses of operation. This plan has not been favored by manufacturers generally for obvious reasons. It also has made it confusing for the members to compute their costs accurately. Under the new plan, straight list prices will

be charged, though naturally on a basis which will enable the company to compete. An annual accounting will be had, as in any regular business, and earnings, if any, will be distributed in the form of dividends.

The fact that the company long has enjoyed the option of selling to anybody—not necessarily a member—plus this change, puts it in the same position as the Girard Grocery Co., Philadelphia, which is grocer owned and which has been very successful. Its sales have grown from some \$15,000 to \$18,000 monthly two years ago to \$160,000 to \$175,000 at the present time.

The Southern California Grocers Exchange was incorporated with a capital stock of \$50,000. The capital stock of its successor, the Los Angeles Grocery Co., on August 1, 1919, was \$250,000, of which \$90,000 had been paid up. In the proceedings before the Federal Trade Commission, Flavel Shurtleff, the manager of the latter corporation, testified that on July 1, 1919, the corporation carried a stock of goods valued at \$280,000, and did business during the year 1919 estimated at \$1,750,000; that the corporation sold only to retail grocers, having approximately 250 to 275 customers; that of this number 75 or 80 were stockholders of the corporation; the remaining number were not.

It appears from the record that prior to 1918 the Los Angeles Grocery Co. had been purchasing from approximately 125 manufacturers and producers direct on regular wholesale terms and rates; that after January 2, 1918, this number gradually increased during the year 1918, but there still remained at the end of the year many standard articles of grocery merchandise, such as sugar, condensed milk, corn products, shredded wheat biscuits, Quaker Oats, baking powder, and other similar products always in demand and which the wholesale grocer is expected to have for sale to retail dealers. The manufacturers and producers and their brokers dealing in some of these standard products did not sell such articles to the Los Angeles Grocery Co. direct, upon wholesale rates and terms, even in carload lots, for the reason, as stated, that they did not consider the Los Angeles Grocery Co. a regular wholesale dealer in groceries.

This situation was brought to the attention of the Federal Trade Commission, which proceeded to investigate the charge that certain of the manufacturers and producers, their brokers, wholesalers, and jobbers, were violating the statute in using unfair methods of competition in commerce in dealing with the Los Angeles Grocery Co. On Friday, February 20, 1919, the Federal Trade Commission issued its complaint against the petitioners and their correspondents, charging them with a violation of the Federal Trade Commission Act. To this complaint all the respondents cited before the Commission made answer with such denials and averments as placed in issue the material allegations of the complaint. Testimony was thereupon taken upon said issues and

the Commission made its findings of fact and its conclusions and order thereon.

Its findings are in substance that the Los Angeles Grocery Co. since January 2, 1918, had been and then was engaged in the business of purchasing in wholesale quantities goods and commodities such as are generally carried by those engaged in business as a wholesale grocer, and selling the same in wholesale quantities for profit to its customers; that said company sells the goods and commodities dealt in by it to the retail grocery trade only, and does not sell to consumers; that there are about 80 stockholders of said company, most of whom are retail grocers; that said company sells to a large number of retail grocers who are not stockholders; that the business of said Los Angeles Grocery Co. is separate and distinct from the business of any of its stockholders, and said company has never owned, controlled, or had an interest in any retail grocery or groceries, and has never conducted a retail business; that the said Los Angeles Grocery Co. and the respondent jobbers, namely, Haas-Baruch & Co., Stetson-Barrett Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co., are competitors in the business of buying and selling in wholesale quantities, in the usual course of wholesale trade, groceries and food products, such as are bought and sold generally by persons, firms, and corporations engaged in the business generally known as that of a wholesale grocer; that the Los Angeles Grocery Co., in the course of its said business, purchases the goods and commodities dealt in by it in the various States and Territories of the United States, and said goods and commodities are transported to the said Los Angeles Grocery Co. in the State of California, where such goods and commodities are resold in the course of wholesale trade, and there is continuously, and has been at all times mentioned in the complaint, a constant current of trade and commerce in the goods and commodities so purchased by the Los Angeles Grocery Co. between the States and Territories of the United States; that since January 2, 1918, all of the respondents, with the purpose and intent of stifling, suppressing, and preventing competition in commerce between the Los Angeles Grocery Co. and the respondent jobbers, and with the purpose and intent of preventing the said Los Angeles Grocery Co. from obtaining the goods and commodities dealt in by it from manufacturers and manufacturers' agents and other usual sources from which a wholesale dealer in groceries must obtain such commodities, have secretly agreed and conspired among themselves, and have had secret understandings with each other that the said Los Angeles Grocery Co. was and is not conducting its business in accordance with

certain tests or standards fixed and established by said respondent jobbers; and have agreed and conspired among themselves to state and represent to various manufacturers and their agents that the Los Angeles Grocery Co. was not conducting its business in accordance with such tests and standards; and have further agreed and conspired among themselves to induce, coerce, and compel, by means of boycott and threats of boycott, manufacturers of grocery and food products and their agents to refuse to deal with or sell to the Los Angeles Grocery Co., in interstate commerce, upon the terms, and at the prices offered and charged to its competitors, including the respondent jobbers and others engaged in similar business; and to compel said company to purchase its supplies from and through the respondent jobbers, all of whom are competitors of said company. That the respondent brokers, namely, The C. E. Cumberson Co., The Colbert Co., Flint & Boynton, Franz, Cunningham & Co., Hamilton & Menderson, Henderson & Osborn, Holmes-Danforth-Creighton Co., Johnson, Carvel & Murphy, Kelley-Clarke Co., Laukota-Garriott Co., D. A. MacNeil & Son Co., Mailliard & Schmiehell, Cosmo Morgan Co., Parrott & Co., Bradley-Kuhl Co., Spohn-Cook Co., J. H. Stewart Co., The J. K. Armsby Co., and Schiff Lang Co., induced by coercion, persuasion, boycott, and threats of boycott on the part of the respondent jobbers, have agreed and conspired among themselves, and with the other respondents mentioned, to refuse to sell to the Los Angeles Grocery Co. the products manufactured by their respective principals upon the terms and at the prices offered and charged to the competitors of said company, including the respondent jobbers, and others engaged in similar business, and to recommend to their respective principals that they should not sell to said Los Angeles Grocery Co. upon such terms and at such prices; and have further agreed and conspired to compel the Los Angeles Grocery Co. to purchase said products from and through the respondent jobbers, who are competitors of said company, at prices higher than those charged to such competitors and others engaged in similar business. That the respondent refiners, namely, Western Sugar Refinery and California & Hawaiian Sugar Refining Co., have agreed and conspired between themselves and with each other, and with the other respondents mentioned in the complaint, with the purpose of stifling, suppressing, and preventing competition between the Los Angeles Grocery Co. and the respondent jobbers, to refuse to sell sugar to the Los Angeles Grocery Co. upon the terms and at the prices offered and charged to its competitors, and to compel the Los Angeles Grocery Co. to pay for sugar purchased by it

prices higher than those charged to its competitors and others engaged in similar business.

The Commission also found other facts in detail supporting and elaborating the facts stated, and as conclusions that under the conditions and circumstances set out in the findings of fact, the agreements, understandings, policies, and practices of the respondents as described in the findings of fact, constituted a conspiracy or combination as alleged in the complaint; that under the conditions and circumstances set forth in the findings of fact, the acts, agreements, understandings, and practices of the respondents constituted an interference with the right of the Los Angeles Grocery Co. and other persons, firms, and corporations, to buy and sell commodities in interstate commerce, wherever, from, and to whomsoever and at whatsoever price such persons, firms, or corporations may agree upon among themselves, and that under the conditions and circumstances set forth in the findings of fact, the acts, agreements, understandings, policies, and practices of the respondents, the respondent jobbers, the respondent brokers, and respondent refiners, and each and all of them, constituted 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."

Thereupon the Commission entered an order against the 28 parties named in the complaint, requiring them to cease and desist from directly or indirectly combining and conspiring among themselves to induce, coerce, or compel manufacturers or manufacturers' agents to refuse to sell to the Los Angeles Grocery Co. or to refuse to sell to said company upon the terms and at the prices offered and charged to competitors of said company and others engaged in similar business. The order of the Commission is also elaborated in detail with respect to the acts of each of the respondents.

The matters in detail in the findings and in the conclusions and order of the Commission need not be set out in determining the questions involved in this review of the order of the Commission.

The jurisdiction of this court is provided for in section 5 of the act of September 26, 1914 (38 Stat. 717), as follows:

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.

In a previous part of this section it was provided that—

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.

Ten of the twenty-eight respondents before the Commission have petitioned the court for a review. The remaining 18 are described as brokers. These accepted the order of the Commission, either because they believed they had not violated the statute and had no intention of doing so and the order imposed no restraint upon them that they cared to resist, or, having violated the statute, they would accept the order as directed.

In *St. Louis I. M. & S. Ry. Co. v. United States*, 217 Fed. 80, a score of railroads attacked an order of the Interstate Commerce Commission finding that there was undue preference in railroad rates in favor of Cairo, Ill., and undue discrimination in such rates against Metropolis. Two of the roads applied for an injunction against the order of the commission. The other roads acquiesced in the order. The application was heard by three judges under the provisions of the act of August 22, 1913 (38 Stat. 220). In the course of his opinion, Circuit Judge Baker, speaking for the court, said:

All of the respondent railroads, except these two complainants, have apparently acquiesced in the order; and we are of the opinion that the evidence before the commission was sufficient on which legally to base a finding that discrimination against Metropolis was exercised by some of the railroads which were respondents in the proceeding before the commission. It is now argued by the defendants in this case that, because there was evidence before the commission to justify a finding of discrimination by some, the order must stand as against all the railroads which were parties to the hearing. In our opinion this is erroneous. In a civil case against a number of defendants, or in a criminal indictment against numerous defendants, a judgment can not be permitted to stand against a certain defendant if there is no evidence against him, merely because there may be evidence which would support the judgment against other defendants.

And so we believe that, as a matter of law, an order of the Interstate Commerce Commission must be supported by evidence which is sufficient to warrant a finding separately against each railroad named in the order.

We are of the opinion that this law is applicable to the statute in this case and particularly in view of the charge against the respondents that they conspired and confederated together and with each other to deal with the Los Angeles Grocery Co. upon terms and conditions which the Commission has found and concluded constituted unfair methods of competition in interstate commerce. Manifestly the order of the Commission based upon such a charge of conspiracy and upon the findings and conclusions sustaining the charge, must be supported by evidence which is sufficient to warrant a finding and conclusion separately against each respondent seeking a review of this order of the Commission.

In *Federal Trade Commission v. Gratz*, 253 U. S. 421, 427, the Supreme Court, referring to the proceedings and order under section 5 of the Federal Trade Commission Act, said:

Such an order should follow the complaint; otherwise it is improvident and, when challenged, will be annulled by the court.

It follows that the order of the Commission must follow the charge in the complaint and that the charge in the complaint must be supported by evidence.

We have then before us the petitions of the two sugar refiners in San Francisco; the petitions of seven wholesalers or jobbers in Los Angeles, and the petition of one broker engaged in business in Los Angeles. These petitions raise substantially the same issues as were raised by their answers to the complaint before the Commission, but our inquiry is limited by the statute to the question whether there is testimony in the record supporting the findings and conclusions of the Commission and to questions of law.

1. Is there evidence in the record supporting the finding that the Los Angeles Grocery Co. was engaged in wholesale grocery business in Los Angeles after January 2, 1918?

2. Is there evidence in the record supporting the finding of the Commission that the respondents or any of them agreed and conspired among themselves and with each other for the purpose of using any unfair method of competition in commerce in dealing with the Los Angeles Grocery Co.?

With respect to the business of the Los Angeles Grocery Co. since January 2, 1918, there is evidence tending to establish the character of its business as that of a wholesale dealer or jobber. We have already referred to the testimony of Flavel Shurtleff, the manager of the company, on that subject. There is other testimony in the record to the same effect, but it is not necessary to

pursue this question further, for while respondents do not admit that the Los Angeles Grocery Co. has become a wholesale dealer or jobber, they do not directly or specifically deny it either by their petition or other specification of error. They contend that the company continued after January 2, 1918, to have such characteristics of a buyers' exchange for retail dealers that respondents were justified, acting separately and individually, in believing that the company was not a wholesale dealer in the sense in which that term is generally understood. If the finding of the Commission upon this issue is supported by legal testimony, it is by the statute made conclusive, and we can go no further in this review.

The important question is the conduct of the respondents in dealing with the Los Angeles Grocery Co., and the first element to be considered in that question is the charge of a conspiracy on the part of the respondents in using unfair methods of competition in commerce in such dealings.

It is the settled law that the individual dealer may select his own customers for reasons sufficient to himself, and he may refuse to deal with a proposed customer who he thinks is acting unfairly and is trying to undermine his trade. *Eastern States Lumber Assn. v. United States*, 234 U. S. 614. But, as was said by the Supreme Court in *Grenada Lumber Company v. Mississippi*, 217 U. S. 433, 440:

When the plaintiffs in error combine and agree that no one of them will trade with any producer or wholesaler who shall sell to a consumer within the trade range of any of them, quite another case is presented. An act harmless when done by one may become a public wrong when done by many acting in concert, for it then takes on the form of a conspiracy, and may be prohibited or punished, if the result be hurtful to the public or to the individual against whom the concerted action is directed.

The evidence before the court was the evidence before the Commission. Flavel Shurtleff, the manager of the Los Angeles Grocery Co., whose testimony has heretofore been referred to, testified that he had a telephone conversation with S. F. Brown about January 1, 1918. Brown was a member and manager of the brokerage firm of Parrott & Co., located in Los Angeles, engaged in selling sugar and other grocery commodities. This conversation Mr. Shurtleff reduced to writing at the time in the form of a memorandum, and when called as a witness he produced this memorandum and recalled the conversation he had with Mr. Brown as follows:

I called Mr. Brown on the phone and told him that I wanted to give him an order for a carload of 600 bags of sugar, and he says, "How is that? To be shipped direct to you fellows?" "Yes, sir." "It could not be done; out of the question; inconsistent; entirely out of line with our methods of doing business; would get us in trouble with the other jobbers." I told him it was necessary for us to have sugar direct or we would be put out of business. He said that our people could get sugar through

the regular channels, and he thought that was the proper way for them to get it. He said that it was against their policy of doing business; that they had well-defined lines of going through the old-line jobbers, and that that policy he would have to follow. I told him that I had called Mr. Strodoft, and Mr. Strodoft had referred me to him as the sales department, and I was now making application to him. He says: "Shurtleff, it can not be done. Personally, I would just as soon sell a car of sugar to you as I would to Haas Baruch or any of the other jobbers, but it would get us in trouble, disturb our business relations here, and it can't be done."

The witness testified that later on, after this telephone conversation, he called by appointment at the office of Parrott & Co. and spent an hour and a half with Mr. Brown going over the different lines that they had and asking him to sell the Los Angeles Grocery Co. the different lines direct. Shurtleff testified that it would be impossible for him to give the entire conversation, but he recalled it as follows:

I recalled to him that at one time I represented Parrott & Co. on some of the lines that he was representing them on and that I had sold those lines to the trade here and had gotten them a volume of business that was satisfactory, and that Parrott & Co. headquarters in San Francisco agreed to that policy, and I could not understand why they gave me that privilege as a broker and they did not give him that privilege. He said to me in answer, "Shurtleff, the same proposition holds good on this line that it does on the sugar. We can not sell you these goods direct without interfering with our business relations with the other jobbers, and until you can get on the direct list on sugar it is absolutely impossible for us to do business with you on the other lines."

Mr. Shurtleff testified further that he made application to the C. & H. Sugar Refining Co. (California & Hawaiian Sugar Refining Co.); that he had a conversation with Mr. W. R. K. Young, the assistant general manager of that company, as follows:

I said to Mr. Young, "I am simply asking of you personally what I have sent a number of—at least two—representatives to ask you for before. That is to put the Los Angeles Grocery Co. on direct for C. & H. sugar. And in order that you may realize that we can buy a quantity of sugar that would justify your giving us an affirmative answer, I will now place with you an order, if you will put us on the direct list, for 25,000 bags to be shipped to the Los Angeles Grocery Co. at specified periods and during the next few months. I will also give you an order for 20,000 bags to be shipped to certain canneries whose business I can give you. We will accept the sugar sight draft attached to bill of lading and take care of the payments." Mr. Young says: "That is a nice piece of business you are offering us, Shurtleff, and we want the business; we need the business; I am sorry Mr. Brown is not here, so that you can talk to him personally. I will report the matter to Mr. Brown, and I see no reason why we can't do business with you."

Mr. Shurtleff testified that he saw Mr. Young within 90 days in Los Angeles at the office of the Los Angeles Grocery Co., where he had a conversation with him. That he took Mr. Young around the place and Mr. Young said to him:

Mr. Shurtleff, Mr. Brown has sent me down to look you over. I will be glad to have you show me over your house and tell me how you are conducting your business.

Shurtleff testified further:

I took Mr. Young over the house, showed him our place of business, how we were conducting business, and he says: "It looks to me like you had a wholesale house here. I don't see why we can't sell you sugar. I will so report to Mr. Brown." The Los Angeles Grocery Co. was never put on the direct list. We buy sugar from that company through Louis Seroni. We get the regular terms on it plus 5 per cent brokerage. We bought \$20,000 worth last week.

Mr. S. F. Brown was called as a witness on behalf of the respondents. His attention was called to the testimony of Mr. Shurtleff wherein he testified that Brown had said it would get them into trouble with the jobbers referring to the matter of selling to the Los Angeles Grocery Co.; that it was his policy to do business with the old line jobbers and that it would get them into trouble to disturb their business relations and could not be done. He was asked if he ever made such a statement. His reply was: "I would say no." On cross-examination Brown was asked about a telephone conversation with Shurtleff concerning placing an order for 600 bags of sugar in a car, to which Brown replied:

A car? Well, how do you mean about that, to be shipped to you folks? Well, we couldn't do that anyhow. It would be absolutely inconsistent and unfair, and would lead us into trouble. Mr. Shurtleff asked him "How?" to which Brown replied, "Because it would lead us into trouble in the general business here."

and Mr. Brown testified that that was the substance of the conversation.

W. R. K. Young was also called as a witness for respondents. He contradicted Mr. Shurtleff's testimony in the main, but admitted that the California & Hawaiian Sugar Refining Co. declined to sell directly to the Los Angeles Grocery Co. On cross-examination he testified that the California & Hawaiian Sugar Refining Co. had always distributed its products through the wholesale grocers of the United States and the manufacturers.

Mr. Shurtleff testified with respect to an application to the Western Sugar Refinery Co. for sugar to be sold to the Los Angeles Grocery Co. direct. He said he had negotiated with Cosmo Morgan during the first four months of 1918 in his office about being put on the direct list on Western Sugar Refinery Co. sugar. The witness testified:

I told Mr. Morgan that I had come with the idea of asking him to put us on the direct list on sugar, and that the reason for coming was that we had changed our plan of doing business and were now conducting our business as a wholesale grocery, and that our representative in San Francisco had called on the San Francisco representative, Mr. Jennings, and we had been referred to him; and that I felt we were entitled to be put on the list, and asked him what he could do for us. He answered,

"Who are your stockholders?" I told him practically the same stockholders that we had had previously, with myself and Mr. Dole, and one or two others, but aside from that they were the same. He asked me how we were conducting the business. I told him. He said, "Mr. Shurtleff, it would be absolutely out of the question from my point of view, as it would be revolutionary. It would disturb conditions in Los Angeles, and you are not entitled to it. It can not be done."

A letter was introduced in evidence, dated at Los Angeles, January 7, 1918, addressed to the Western Sugar Refining Co., San Francisco, Calif., and signed by Cosmo Morgan Co. The letter reads as follows:

The Los Angeles Grocery Co. of this city, which was formerly a buying exchange for 88 retail grocers of southern California, have now applied to us to sell them direct. They claim that they have ceased being a buyer's exchange, and now sell their members on a profit basis, just as any wholesale grocery company does. They also intend to sell to other retailers in southern California, and do a general jobbing business. They base their claim on the fact of manufacturers selling direct to Girard of Philadelphia, whom, they claim, buys from all manufacturers.

We beg to inform you that we have interviewed all of the wholesale grocers of southern California, and they very much object to us selling them. We also called on the Los Angeles Grocery Co. to ask for particulars of how they made their claim of being wholesale grocers, and they stated that their former members, consisting of 88 retail grocers, furnished the capital for their wholesale grocery house. In other words, it is nothing else but a buying exchange, just as it always has been, except for the difference as stated above. If we do sell the Los Angeles Grocery Co., it will have the effect of revolutionizing the entire grocery business of southern California. From the fact, that there are other chain stores operating here, H. G. Chaffee Co., of Pasadena, have 26 stores, Ralph Groc. Co. and Albert Cohn have chain stores doing a larger business than the Los Angeles Grocery Co. have done with their 88 stores. These concerns would be fully justified in applying for the same buying privileges as the Los Angeles Grocery Co.

This contention to buy direct is something new with us and we feel that it is entirely up to our principals to decide the matter. We therefore ask you to kindly instruct us whether or not we shall sell them direct.

Mr. Morgan was called as a witness for the respondents. In the course of his testimony he said that he had been in the place of business of the Los Angeles Grocery Co.; that he found it had an excellent establishment, most excellently conducted; fair in size with a fair stock on hand; he did not know what they buy because he did not sell to them, but looking at their stock he would say that in some cases they did buy in wholesale quantities; they tendered an order to one of his principals for what he would regard as a wholesale order but the order was declined; he understood that all of their members were retail grocers but could not say that the company limited its sales to its stockholders. He understood that the corporation sold to anybody who came in to buy providing he was a retailer, but he never heard of the company owning or controlling a retail grocery.

A. A. Brown, the sales manager of the California & Hawaiian Sugar Refining Co., was called as a witness by the Commission upon a subpoena to produce certain records. He produced a telegram dated July 2, 1918, addressed to the California & Hawaiian Sugar Refining Co. at San Francisco, as follows:

Morning Times, Washington dispatch, states Food Administration rules Los Angeles Grocery Co. regarded a jobber under new sugar regulations. Local jobbers meet this morning to enter protest. D. A. MacNeil & Son Co.

To this telegram was attached a newspaper clipping which was also introduced in evidence without objection. The clipping reads as follows:

Los Angeles Grocery Co. a Jobber—Is Given That Classification in Connection With All Sugar Regulation (exclusive dispatch). Washington, July 1.—Herbert Hoover, Food Administrator, to-day ruled that the Los Angeles Grocery Co., the buying department for 250 retail stores in Los Angeles and vicinity, should be regarded as a jobber in the new sugar regulations. Accompanied by Congressmen Osborne and Kettner, F. M. Clark and J. B. McPheran, representing the grocery company, called on Mr. Hoover by appointment and were able to convince him that they are entitled to the jobbers classification in connection with all sugar regulation of the present and the future. Later in the day further conferences were held to work out the details of the proposition.

A telegram dated at San Francisco, July 2, 1918, signed by the California & Hawaiian Sugar Refining Co., and addressed to Andrew A. Brown, Washington, D. C., was also introduced in evidence, as follows:

Newspaper telegraphic dispatch from Washington this morning states Food Administration rules Los Angeles Grocery Co. be classified as a jobber under new sugar regulation. Can you verify?

Mr. Brown testified that he received this telegram at Washington; that he was the direct representative of the California & Hawaiian Sugar Refining Co. upon the American Finance Committee, and was representing general cane and beet arrangements. He testified that he went to the legal department of the Food Administration and found that the ruling did not apply to cane sugar at all.

Rollin W. Dole, a buyer for the Los Angeles Grocery Co., called as a witness for the Commission, testified to a conversation with Mr. Brown of the California & Hawaiian Sugar Refining Co., wherein Dole made application to have the Los Angeles Grocery Co. put on the direct list for sugar; that Mr. Brown in denying the application, said:

Well, if we put you people on the direct list we will have to put on a whole lot of people up and down this coast. There are several organizations here in San Francisco, and a lot of big retailers who would claim to be in the same position you are in, * * * and if we open up all those extra accounts, this building would not hold the office force that I would have to have.

that the order from Fear & Co. had placed him in a peculiar predicament; that it was absolutely necessary for him to protect or take off the hands of the jobbers who had "My Wife's Salad Dressing" all of that commodity they had on hand. Those who had the goods gave as reason that inasmuch as the Los Angeles Grocery Co. was to receive that article direct, it would be impossible for them to handle the goods and they would expect Crawford, as a broker, to relieve them of such goods. The negotiations resulted in the taking over by the Los Angeles Grocery Co. all the cases of this article in the hands of the jobbers in Los Angeles—from Haas-Baruch & Co., 5 cases of small, 2 cases of medium, and 2 cases of large; from Stetson-Barrett Co., 10 cases of small, 10 cases of medium, and 5 of large; from the United Wholesale Grocery Co., 10 cases of small, 10 cases of medium, and 5 of large, making a total of 25 small, 23 medium, and 12 large, or a total of 60 cases.

It further appears from the testimony of Arthur Lee that the Channel Commercial Co. objected to "My Wife's Salad Dressing" being sold direct to the Los Angeles Grocery Co. Mr. Lee testified:

On Friday, August 2, when Mr. Crawford came in, he says, "Mr. Lee, I thought that this matter that we had yesterday regarding My Wife's Salad deal was in confidence," I said, "I assure you, Mr. Crawford, it was, so far as I am concerned." I says, "What is the trouble now? Has somebody caught you at it?" He said, "Yes; as I told you I was going to explain to all the jobbers what my principals had instructed me to do in order to clear my skirts for future transactions, but I had intended only to confess to those whom I knew had merchandise." I said, "If anybody else knows of that, I can't imagine who it is, Mr. Crawford, unless it be the Channel Commercial Co., * * *." "Well," he says, "when I went into the office of the Channel; either that afternoon or that morning, Mr. R. J. Porter immediately jumped on me," as Mr. Crawford expressed it, "and said, 'I understand you have changed your policy from that of selling to wholesale grocers to that of selling to retailer.'"

Flavel Shurtleff testified that the Los Angeles Grocery Co. bought direct certain cereal products sold by Colbert & Co. William Russell Walters, connected with Colbert & Co. from April, 1917, to June, 1917, as salesman, and until November, 1918, as manager, called as a witness by the Commission, testified that he was the agent of Colbert & Co. at Los Angeles, and that while he was such agent and representative of Colbert & Co. he told Shurtleff that he was afraid he was going to lose his job if he did not discontinue selling to the Grocery Co. direct.

Walters further testified to a conversation with Hunt, of Stetson-Barrett Co., wherein Hunt said that he, Walters, would get in bad if he sold direct to the Los Angeles Grocery Co.

Arthur C. Chase, manufacturer's agent, selling breakfast food, health food, and canned goods, a witness for the Commission, testified that Hunt said to him: "If

you sell the Los Angeles Grocery Co. you will be dropped by the jobbers like a hot potato."

Walters also testified to a conversation with a representative of the Stetson-Barrett Co., Mr. Gough; that Gough asked him if he sold the Los Angeles Grocery Co. direct and he denied doing so. The denial he said was untrue. He gave as a reason for the denial that he didn't want the jobbers to know that he was selling the Los Angeles Grocery Co. direct. He, Walters, said his company could not afford to incur the jobbers' displeasure.

Verne M. Osborne, a merchandise broker, residing in Los Angeles, a witness for the respondents, testified to a conversation with Mr. Tuttle, of R. L. Craig & Co.; that Tuttle asked him if he sold the Los Angeles Grocery Co., and that he replied he would sell if he had anything to sell them.

Harry A. Pierce, representing Bixby & Co., of Los Angeles, a witness for the Commission, testified that he sold the Los Angeles Grocery Co. direct, and that he had received a letter from R. L. Craig & Co., asking if he had sold the grocery company direct; that later he had a conversation with Mr. Hartford, of R. L. Craig & Co., wherein Mr. Hartford explained to him that the Los Angeles Grocery Co. were retailers and not wholesalers, and that he didn't think retailers ought to buy on the wholesale list.

Arthur C. Chase also testified to a conversation with Mr. Robert Newmark, of M. A. Newmark & Co., one of the original respondents, and that Mr. Newmark inquired of him if he were selling the Los Angeles Grocery Co. direct. That was the end of the conversation.

C. H. Snead, a merchandise broker residing at Alhambra, representing Kelley Clarke Co., testified that Mr. Robert Newmark inquired of him if he were selling the Los Angeles Grocery Co. direct.

Henry A. Sloss, salesman for Woodman Packing Co. and their agent, a witness for the Commission, testified that he sold the Los Angeles Grocery Co. direct, and that Mr. Sprouse, of the California Wholesale Grocery Co., said to him he had heard—the rumor had been spread—that he, Mr. Sloss, was selling to the Los Angeles Grocery Co. direct.

The Western Sugar Refinery Co. and the California & Hawaiian Sugar Refining Co. sold their sugar to the Los Angeles jobbers and they, in turn, sold or would sell to the Los Angeles Grocery Co. as to a retail dealer, but the refiners would not sell direct to the Los Angeles Grocery Co. at the usual rates and terms to jobbers, for the reason as stated by them that they did not regard the Los Angeles Grocery Co. as a wholesale dealer or jobber. There is no testimony in the record that this course of action on the part of the two sugar refiners arose from any actual understanding or agreement between them or with the Los Angeles jobbers. The testi-

mony proves that it was a concurrence of opinion as to the classification to be given to the Los Angeles Grocery Co. but we do not find anything more in the testimony. This classification appears from the testimony to have been erroneous, but as long as it was the individual opinion and action of the refiners, it could not be made the basis of a finding of conspiracy or combination between the two refiners, or between them and the jobbers, or between them and the brokers.

The difficulty has long been recognized of drawing a definite line between the innocent act of an individual and the same act made unlawful by reason of its being the joint or combined act of two or more, but whenever this question arises there must be some legal evidence to establish the unlawful combination or conspiracy, or facts from which that inference may be legally drawn, or the charge must fail. We do not find such evidence in this record with respect to the two sugar refiners.

With respect to the Los Angeles jobbers, we think the testimony is more definite and clear and does tend to support the finding of a combination or conspiracy between them to prevent manufacturers and producers from selling directly to the Los Angeles Grocery Co. as to a wholesale dealer or jobber. This conclusion relates to the respondents Haas-Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co.

With respect to the acts of Mailliard & Schmiedell, the only brokers seeking a review of the order of the Commission, we do not find that the testimony supports the finding that they combined or conspired with other brokers or with the refiners or with the jobbers, or that they were induced by coercion, persuasion, boycott, or threats to prevent the Los Angeles Grocery Co. from purchasing direct from the manufacturers and producers at jobbers rates and terms.

The order of the court will be to affirm the order of the Federal Trade Commission with respect to the finding and conclusion that the Los Angeles Grocery Co. has been a wholesale dealer or jobber since January 2, 1918. The order will also provide for the affirmance of the order of the Federal Trade Commission with respect to the seven jobbers, namely: Haas-Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co., and to reverse it as to the Western Sugar Refinery Co., the California & Hawaiian Sugar Refining Co., and Mailliard & Schmiedell.

Ross, *Circuit Judge*, dissenting in part: .

I dissent from that portion of the order of this court affirming that of the Federal Trade Commission in any respect, for the reason that, in my opinion, the record shows that the true status of the Los Angeles Grocery Co. was that of a buying exchange, and can not be properly regarded as a wholesale dealer; and that being so, that the petitioning wholesale dealers, whose legitimate business, mainly if not entirely, depends upon the custom of retailers, were justified in combining to protect such legitimate business.

The witness Shurtleff, who had charge of the business of the Los Angeles Grocery Co., having admitted in his testimony that it was that of a buying exchange until January 1, 1918, said:

We bought the goods at a given price, turned around and sold those goods to our stockholders at approximately the same price that we bought them at, and at the end of the month the expense of doing business was divided equally among those having purchased. That was continued until January 1, 1918. Just prior to January 1, 1918, action was taken by the directors and confirmed by the stockholders that on and after that date we would discontinue buying goods and selling them without a profit and assessing the expense of doing business at the end of the month, but that the business would be conducted for profit. We would buy those goods in the regular jobbing way, as many of them as we could, direct, and what we could not buy direct, wherever we could get the best price, and in turn would sell those goods for profit, as any wholesale grocer would, taking into consideration the expense of doing business, and all the time figuring on having 1 per cent net above the cost of doing business, in which to justify the investment of our stockholders.

This testimony itself shows, it seems to me, that the change so made, arranging for a nominal 1 per cent net above the cost of doing business, was a mere incident in the main business for which the corporation was organized and carried on, namely, the buying for its large number of retail stockholders, and was so arranged in the endeavor to make it appear that the company was a wholesale dealer.

Moreover, in the cross-examination of the witness Morgan, that witness, in answer to a question by counsel for the Trade Commission as to what he meant by "members" of the grocery company, having answered:

"I mean that the members of the Los Angeles Grocery Co. and the stockholders are nothing else but retailers"—the counsel for the Commission said:

"That is quite true. *We admit that.* (Italics mine.) The stockholders are for the most part retail grocers. Have you any information by which you can say now that the Los Angeles Grocery Co. refuses to sell to others than their stockholders?"

The qualifications thus added to the admission by the counsel for the Commission should, in my opinion, be

read in connection with the endeavor shown by the above-quoted testimony of the man at the head of the grocery company in question to make it appear that it was a wholesale dealer, by arranging for a nominal 1 per cent net above the cost of doing business.

WINSLOW ET AL. v. FEDERAL TRADE COMMISSION.¹

NORDEN SHIP SUPPLY CO., INC., v. SAME.¹

(Circuit Court of Appeals, Fourth Circuit. November 1, 1921.)

Nos. 1887, 1892.

1. COMMERCE KEY No. 40 (1).—SHIP CHANDLERS SELLING GOODS BROUGHT FROM OTHER STATES NOT ENGAGED IN INTERSTATE COMMERCE.

That commodities dealt in by ship chandlers in the State of Virginia were in large part transported into that State from other States, from which they were procured, did not constitute the sales made in Virginia interstate commerce, within the jurisdiction of the Federal Trade Commission; the interstate transportation having ended when the goods reached their destination and were placed in the ship chandlers' warehouses.

2. COMMERCE KEY No. 40 (1).—SHIP CHANDLERS SELLING SUPPLIES TO VESSELS WITHIN THE STATE NOT ENGAGED IN FOREIGN COMMERCE, THOUGH SUPPLIES USED ON THE HIGH SEAS.

Ship chandlers selling goods from their storehouses in Virginia to ships lying in Hampton Roads, within the territorial limits of that State, were not engaged in interstate commerce, within the jurisdiction of the Federal Trade Commission, though the goods were used for the most part in navigating the high seas, and though the sales were made under contracts solicited and entered into in England, especially where such contracts were nothing but mere options given to the shipowners, of which they might or might not avail themselves.

(The syllabus is taken from 277 Fed. 206.)

On petitions for review of orders of Federal Trade Commission.

Original petitions by D. A. Winslow and others, a partnership doing business as D. A. Winslow & Co., and by the Norden Ship Supply Co., Inc., for review of orders of the Federal Trade Commission. Orders set aside and annulled.

¹ Reviewing and setting aside Commission's orders in 3 F. T. C. 217 et seq.

Herbert G. Cochran and Henry Bowden, both of Norfolk, Va., for petitioners.

John W. Davis, of New York City (Adrien F. Busick, of Washington, D. C., acting chief counsel of Federal Trade Commission, and Charles S. Moore, of Washington, D. C., on the brief), for respondent.

Before Knapp and Woods, circuit judges, and Watkins, district judge.

KNAPP, Circuit Judge:

Each of these suits is brought, by petition filed originally in this court, to set aside and annul an order of the Federal Trade Commission requiring the parties named therein to cease and desist from certain practices, presently to be described, which are declared to be "unfair methods of competition in interstate and foreign commerce." The same questions arise in both cases; they were argued together and may properly be disposed of in one opinion.

In the case of D. A. Winslow & Co. the findings of the commission are reproduced in the margin,¹ but a shorter statement will disclose the practices held to be unlawful. The petitioners are ship chandlers, having their principal place of business in Norfolk, Va., with a branch in Newport News. In those places they keep in stock and sell to ships coming to that port supplies of various kinds. Ninety per cent of their business is with English ships,

¹ 1. That the respondents, D. A. Winslow, J. Jones, and D. H. Robshaw, are copartners doing business under the name and style of D. A. Winslow & Co., with their principal places of business located at Norfolk and Newport News, State of Virginia, and are now and at all times hereinafter mentioned have been engaged in selling provisions, merchandise, and other supplies for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Virginia while engaged in transporting passengers and commodities between ports in various States of the United States and in transporting passengers and commodities between American ports and ports in foreign countries, in due course of commerce among the several States of the United States or with foreign nations; that such supplies so sold by respondents are for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted by the respondents in direct competition with other persons, partnerships, and corporations similarly engaged.

2. That in the course of their business as described herein, the respondents purchase provisions, merchandise, and other supplies for ships in the various States of the United States, transporting same from said places of purchase through other States to their places of business in the State of Virginia, where they are kept and stored for their trade in furnishing supplies for ships as aforesaid.

3. That in the course of their business of selling supplies for ships as described herein, the respondents in some instances secure orders for the sale of supplies from captains of ships after arrival at ports in the State of Virginia, dealing directly with the captains without having arrangements in advance with the owners to furnish their ships with supplies when calling at these ports; that approximately 90 per cent of the respondents' business, amounting to as much as \$750,000 in some years, is initiated with the owners of ships in foreign countries through contracts entered into and agreed upon, by a representative of the respondents soliciting business in those countries, in which the respondents agree to furnish ships with supplies when calling at Norfolk, and other ports in the State of Virginia, at prices named in the contracts, excepting when circumstances reasonably beyond the respondents' control compel them to vary such prices.

4. That upon the arrival of a ship and after arrangements have been made, either by contract or otherwise, for the respondents to furnish a ship with supplies, the captain, after some preliminary negotiations, usually visits one of the stores of the respondents in Norfolk or Newport News, and there selects and orders such supplies and in such quantities

and they appear to cater to that trade. Deliveries are made by launches from their warehouses to ships lying at anchor in Hampton Roads, which is in the State of Virginia.

When the transaction with a given ship has been completed by delivery of the supplies on board and receipt of payment therefor, the petitioners usually give the captain a gratuity, or commission on the purchase price, which is sometimes as much as 5 per cent, and amounts in instances to a considerable sum. They say that the making of such gifts, the purpose of which is obvious, is a custom of long standing generally observed in the ship-chandlery trade, and well known to all shipowners. It in this payment of gratuities or commissions to captains purchasing supplies for their ships which the Federal Trade Commission holds to be unfair competition, and the order under review directs discontinuance of the practice. Other facts will be referred to in the brief discussion which follows.

In carrying on the business thus outlined, were the petitioners engaged in interstate or foreign commerce? This is the fundamental question to be determined, since if they were not the commission was without jurisdiction. The claim that they were engaged in interstate commerce rests wholly on the fact that the commodities in which they deal are in large part transported into Virginia from other States in which they are procured. But

as he may determine his ship will require for its use in port and at sea; that after the supplies have been delivered and inspected and the ship is about to depart, the captain calls upon the respondents, checks over the bill for the supplies, and on his approval of same by signing it, the respondents secure payment of same from the agents of the owners at these ports authorized to pay the ship's disbursements, or by draft on the owners.

5. That in the course of their business of selling supplies for ships as described herein, the respondents for several years last past have given to the captain of practically all of the vessels to which they have furnished supplies, without the knowledge and consent of their employers and without other consideration therefor, large sums of money, amounting in some instances to as much as \$400, or 5 per cent of their bills, as inducements to purchase and as gratuities for purchasing for the owners of the vessels operated by them provisions, merchandise, and other supplies for ships from the respondents.

6. In many instances where the respondents have contracts with ship-owners to supply their vessels when calling at the ports at which respondents do business, such owners also have contracts or arrangements with ship chandlers in other ports of the United States to furnish their ships supplies when calling at those ports; that the captains of vessels whose owners have such contracts or arrangements with ship chandlers for supplies as herein described and found to exist are required to purchase from ship chandlers with whom the owners have such contracts or arrangements; that vessels of such owners frequently call at several ports of the United States on the same trip, and that captains are clothed with discretion to make their purchases at such port as they may select; that the payment of commissions and the giving of gratuities by respondents, as found in paragraph 5 hereof, have been for the purpose of inducing captains to purchase supplies from them rather than from their competitors at Norfolk or other ports; that failure of respondents to pay commissions and give gratuities has resulted and will result in captains purchasing supplies at other ports where ship chandlers under contract or other arrangement with the owners will or may pay gratuities. In the case of what are termed "free ships" the owners do not have subsisting contracts with ship chandlers to furnish supplies to the vessels when calling at ports of the United States, but the captains of such vessels have authority from the owners to purchase supplies at such ports, from such ship chandlers, and in such quantities as the captain may deem necessary and advisable; that the payment of commissions and the giving of gratuities by respondents in such cases have been to induce the captains to purchase supplies from the respondents.

this transportation ends when the goods reach their destination and are placed in petitioners' warehouses in Norfolk and Newport News. They are then incorporated in the general stock of merchandise there held for sale, and become subject, so far as now concerns us, to the exclusive jurisdiction of the State of Virginia. Their subsequent sale and delivery within that State, with which alone the condemned practices are connected, is in no sense interstate commerce. In short, it is quite beyond doubt that the jurisdiction of the commission over the matter in hand can not be supported by the prior but independent and completed transportation of the goods, or some part of them, from another State. *Brown v. Houston*, 114 U. S. 622; *Robbins v. Taxing District*, 120 U. S. 489, 497; *Wagner v. Covington*, 251 U. S. 95; *American Harrow Co. v. Shaffer*, 68 Fed. 750; *Ward Baking Co. v. Federal Trade Commission*, 264 Fed. 330, directly in point; *Roselle v. Commonwealth*, 110 Va. 235.

Were the petitioners engaged in foreign commerce? Their business is simply this: From stocks held in their storehouses in Virginia they sell and deliver supplies to ships lying in Hampton Roads, within the territorial limits of Virginia; that is, in waters under the jurisdiction of that State. *The Abby Dodge*, 223 U. S. 166. Their dealings in all cases are carried on and concluded in the State of Virginia. True, the supplies may be used by the ships, doubtless are used for the most part in navigating the high seas, but with that use or other use the petitioners having nothing to do. Their relations with the ships cease entirely when the supplies are put on board and payment therefor is received. What becomes of them afterwards is beyond their control and in no wise their concern. This being so, how can it be said that the petitioners are engaged in foreign commerce? Surely not because, and solely because, the ships to which they sell supplies in a Virginia port go from that port to foreign countries. The mere statement of the facts refutes the contention. Nor are we referred to any case in which such transactions as here appear are held to be foreign commerce, or in which similar transactions are held to be interstate commerce. It is indeed a novel proposition, to take a concrete example, that one who sells coal to an interstate railroad, which coal is necessary for and actually used on locomotives hauling interstate trains, is for that reason himself engaged in interstate commerce. To state the proposition is to reject it. Decisions under the employers' liability act are not in point, or at most but beg the question. Could an action be maintained under that act by an employee of the coal dealer, in the case supposed, who was injured in delivering coal to the railroad, or by an employee of petitioners injured in delivering supplies to a ship? Only a negative answer can be given to either question, because it is manifest, as we think, that neither would the coal dealer be engaged in

interstate commerce nor are the petitioners engaged in foreign commerce. The underlying principle as regards interstate commerce, equally applicable to foreign commerce, and in our judgment decisive of the instant case, is stated in *Hooper v. California*, 155 U. S. 648, 655, as follows:

If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the States, and would exclude State control over many contracts purely domestic in their nature.

The circumstance that many and perhaps most of the sales in question are brought about by solicitation of the shipowners in England, and contracts entered into with them in that country, can not serve to make foreign commerce of the business carried on by petitioners. In point of fact the so-called contracts are nothing but options given to the shipowners, of which they may or may not avail themselves, but even if they be regarded as binding agreements for supplies to be furnished the ships in the port of Norfolk, in accordance with which the supplies are there delivered, the transactions would not on that account constitute foreign commerce. The petitioners send no goods abroad either as principals or agents or otherwise. The ships transport nothing for them or belonging to them or in which they are interested. Between them and the ships there is no relation of shipper and carrier, but only the relation of vendor and vendee. It, therefore, can make no difference, as respects the matter in dispute, whether the supplies are furnished under contracts previously made in England or under contracts made at the time with "Free ships" in Norfolk Harbor. As is said in *Ware & Leland v. Mobile County*, 209 U. S. 405, 413:

These contracts are not, therefore, the subjects of interstate commerce any more than in the insurance cases where the policies are ordered and delivered in another State than that of the residence and office of the company. The delivery, when one was made, was not because of any contract obliging an interstate shipment, and the fact that the purchaser might thereafter transmit the subject matter of purchase by means of interstate carriage did not make the contracts as made and executed the subjects of interstate commerce.

We see no occasion to expand the argument or multiply citations, since upon principle and authority alike it seems to us beyond serious question that the commission was without jurisdiction, because the business carried on by petitioners, and with which the condemned practices are connected, is neither interstate nor foreign commerce. And this conclusion makes it unnecessary to consider the other grounds upon which the invalidity of the commission's order is asserted.

The same facts in substance appear in the case of *Norden Ship Supply Co.*, except that its dealings are mainly with ships from Scandinavian countries, and that

it solicits business in those countries and not in England. What is said above applies equally to this case and need not be repeated.

In each case a decree will be entered setting aside and annulling the order of the Federal Trade Commission for lack of jurisdiction.

FEDERAL TRADE COMMISSION *v.* BEECH-NUT
PACKING CO.¹

(Supreme Court of the United States. January 3, 1922.)

No. 47.

1. MONOPOLIES KEY NO. 17 (2).—TRADER MAY REFUSE TO SELL TO THOSE REFUSING TO RESPECT RESALE PRICES, BUT CAN NOT GO BEYOND SUCH RIGHT.

Notwithstanding the Sherman Antitrust Act (Comp. St. par. 8820 et seq.), a trader may refuse to sell his goods to those who will not sell them at the prices which he fixes for their resale, but he may not, consistently with that act, go beyond the exercise of this right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION, KEY NO. 80½, NEW, VOL. 8A, KEY NO. SERIES.—WHAT CONSTITUTES UNFAIR COMPETITION IN THE FIRST INSTANCE FOR THE FEDERAL TRADE COMMISSION.

Under the Federal Trade Commission Act (Comp. St. pars. 8836a-8836k), declaring unfair methods of competition unlawful, and giving the commission thereby created authority, after hearing, to make orders to compel the discontinuance of such methods, the commission in the first instance, subject to the judicial review thereby provided, has the determination of the practices which come within the scope of the act.

3. MONOPOLIES KEY NO. 17 (2).—SYSTEM OF MERCHANDISING CALCULATED TO MAINTAIN RESALE PRICES HELD TO SO PREVENT COMPETITION AS TO JUSTIFY ACTION BY THE FEDERAL TRADE COMMISSION.

A system of merchandising employed by a manufacturer of food and other products, under which distributors of its products not maintaining the resale prices fixed by it were subject to be reported to it by special agents or other dealers, and to be enrolled upon a list of price cutters, to whom goods would not be sold until their records were cleared by means of satisfactory assurances that they would not resell the goods, except at suggested prices, and would refuse to sell to distributors who did not maintain such prices, held to so prevent competition as to authorize the Federal Trade Commission to order a discontinuance of the practice of reporting the names of dealers not observing resale prices and enrolling their names on

¹257 U. S. 441. Reverses Beech-Nut Packing Co. *v.* Federal Trade Commission, 264 Fed. 885, and affirms, with modification, Commission's order in 1 F. T. C. 516.

lists of undesirable purchasers, etc., employing salesmen or agents to report dealers not observing such resale prices, etc., utilizing numbers and symbols marked on cases containing its products, with a view to ascertaining the names of dealers not observing its prices, or utilizing any other equivalent cooperative means of accomplishing the maintenance of prices fixed by it.

(The syllabus is taken from 42 Sup. Ct. 150.)

On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Proceeding by the Beech-Nut Packing Company to set aside an order of the Federal Trade Commission. The order of the Commission was reversed by the Circuit Court of Appeals (*Beech-Nut Packing Co. v. Federal Trade Commission*, 264 Fed. 885), and the Commission brings certiorari. Reversed and remanded.

Mr. Justice Holmes, Mr. Justice McKenna, Mr. Justice Brandeis, and Mr. Justice McReynolds dissent.

Mr. Solicitor General Beck, of Washington, D. C., for petitioner.

Mr. Charles W. Dunn, of New York City, for respondent.

Mr. Justice DAY delivered the opinion of the court.

This case is here upon a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, which court set aside an order of the Federal Trade Commission requiring the Beech-Nut Packing Company, a corporation engaged in the manufacture and sale of food and other products throughout the United States, to cease and desist from carrying out a plan of resale of its products.¹ (264 Fed. 885.)

The Commission condemned the plan as an unfair method of competition within the meaning of section 5 of the Federal trade commission act. (38 Stat. 719.)

In the original complaint it was charged that in order to accomplish the illegal purpose intended the Beech-Nut Company required its purchasers to agree to maintain or

¹ "Now, therefore, it is ordered, that respondent, the Beech-Nut Packing Company, its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly recommending, requiring, or by any means bringing about the resale of Beech-Nut products by distributors, whether at wholesale or retail according to any system of prices fixed or established by respondent, and more particularly by any or all of the following means:

"1. Refusing to sell to any such distributors because of their failure to adhere to any such system of resale prices.

"2. Refusing to sell to any such distributors because of their having resold respondent's said products to other distributors who have failed to adhere to any such system of resale prices.

"3. Securing or seeking to secure the cooperation of its distributors in maintaining or enforcing any such system of resale prices.

"4. Carrying out or causing others to carry out a resale price maintenance policy by any other means."

resell such products at standard selling prices, and that for the purpose of maintaining such standard resale prices and for the purpose of inducing and compelling its customers to maintain and keep such standard prices the company refused to sell its products to customers and dealers who would not agree to maintain such specified standard resale prices, and who did not resell such products at the specified standard selling prices fixed and determined by the company. By stipulation before trial the complaint was amended so as to charge: That the Beech-Nut Company has adopted and enforced a system of fixing and maintaining certain specified standard prices at which its chewing gum and food products shall be resold by purchasers thereof, including jobbers, wholesalers, and retailers, with the purpose and effect of securing the trade of such jobbers, wholesalers, and retailers and of enlisting their active support and cooperation in enlarging the sale of respondent's products, to the prejudice of its competitors who do not require and enforce the maintenance of resale prices for their products; and with the purpose and effect of eliminating competition in prices among all jobbers, wholesalers, and retailers, respectively, engaged in handling the products manufactured by the company, thereby depriving such distributors of their right to sell, and preventing them from selling its products at such prices as they may deem to be, and as are, adequate and warranted by their respective selling costs and efficiency, and with various other effects; and that the company as a means of making effective its system of resale prices and of inducing and compelling its customers and the dealer customers of its customers to maintain such resale prices, has for more than two years last past: Made it generally known to jobbers, wholesalers, and retailers, respectively, that it required and insisted that they should sell its products at the resale prices so fixed by it, and refused to sell to jobbers, wholesalers, or retailers not maintaining such prices; that the company threatened to and did refuse to sell to all jobbers, wholesalers, and retailers who failed to maintain the resale prices so fixed by it, or who sold to other distributors who failed to maintain such prices; induced or compelled the jobbers, wholesalers, and retailers, by divers other means, not only to maintain its resale prices so fixed, but also to discontinue selling its products to other jobbers, wholesalers, and retailers who did not maintain such resale prices; that the company caused the diversion of retailers' orders away from jobbers and wholesalers who did not maintain such resale prices so fixed by it, or who had resold its products to other jobbers, wholesalers, or retailers who had failed to maintain such resale prices, and caused such orders to be given to other jobbers and wholesalers who had maintained such resale prices and/or had refused to supply

other jobbers, wholesalers, and retailers failing to maintain such prices; that the company solicited and secured the cooperation of wholesalers, jobbers, and retailers in reporting price cutters, all in pursuance of its efforts to ascertain the names of all distributors of its products who had failed to maintain the resale prices fixed by it, and/or who had resold to other jobbers, wholesalers, and retailers failing to maintain such prices; that it entered in card records kept by it the names of all dealers reported to it, either in this or other ways, as not maintaining its resale prices or as selling to other distributors not maintaining such prices, and has taken various measures to prevent all such dealers from obtaining further shipments of its products from any source until it has received from them declarations, promises, assurances, statements, or other similar expressions, to the effect that in the future such dealers intend to and will sell such products at the resale prices fixed by the company and will refrain from selling the same to other jobbers, wholesalers, and retailers failing to maintain such prices; that respondent employed various other means and methods for the enforcement of its system of maintaining resale prices.

The case was heard before the Commission upon an agreed statement of facts, from which, among other things, it found:

The Beech-Nut Packing Company customarily markets its products principally through jobbers and wholesalers in the grocery, drug, candy, and tobacco lines, who in turn resell to retailers in these lines. Such wholesale and retail dealers are selected as desirable customers because they are known or believed to be of good credit standing; willing to resell at the resale prices suggested by the company and who do resell at such prices; are willing to refuse to sell and who do refuse to sell to jobbers, wholesalers, and retailers who do not resell at the resale prices suggested by the company, and who do not sell to such jobbers, wholesalers, and retailers who in other respects are good and satisfactory merchandisers. Such jobbers, wholesalers, and retailers are designated by the company as "selected" or "desirable" dealers. In a few instances the company also sells "direct" to certain large retailers who are selected as the jobbers, wholesalers, and retailers. The total number of such dealers handling the products of the company includes the greater portion of the jobbers, wholesalers, and retailers, respectively, in the grocery trades, and a large proportion of the jobbers, wholesalers, and retailers in the drug, candy, and tobacco trades, respectively, throughout the United States.

The company has adopted and maintained, and still maintained at the time complaint was filed by the Commission, in the sale and distribution of its products, a policy known as the "Beech-Nut Policy," and requests

the cooperation therein of all dealers selling the products manufactured by it, dealing with each customer separately.

In order to secure such cooperation and to carry out the Beech-Nut Policy the company:

Issues circulars, price lists, and letters to the trade generally showing suggested uniform resale prices, both wholesale and retail, to be charged for Beech-Nut products.

Requests and insists that the selected jobbers, wholesalers, and retailers sell only to such other jobbers, wholesalers, and retailers as have been and are willing to resell and do resell at the prices so suggested by the company; and requests and insists that such jobbers, wholesalers, and retailers discontinue selling to other jobbers, wholesalers, and retailers who fail to resell at the prices so suggested by the company.

Makes it known broadcast to such selected jobbers, wholesalers, and retailers, whether sold "direct" or not, that if they, or any of them, fail to sell at the resale prices suggested by the company, it will absolutely refuse to sell further supplies of its product to them, or any of them, and will also absolutely refuse to sell to any jobbers, wholesalers, and retailers whatsoever who sell to other jobbers, wholesalers, and retailers failing to resell at the prices suggested by the company.

The company, in the carrying out of its policy, has refused and does refuse to sell its products to practically all such jobbers, wholesalers, and retailers as do not sell at the prices so suggested by it. It has refused and does refuse to sell to practically all such jobbers, wholesalers, and retailers reselling to other jobbers, wholesalers and retailers, who have failed to resell at the prices so suggested by it. It has refused and does refuse to sell to practically all so-called mail-order houses engaged in interstate commerce on the ground that such mail-order houses frequently sell at cut prices, and has refused and does refuse to sell to practically all jobbers, wholesalers, and retailers who sell its products to such mail-order houses. It has refused and does refuse to sell to practically all so-called price cutters. It has maintained and does maintain a large force of so-called specialty salesmen or representatives who call upon the retail trade and solicit orders therefrom to be filled through jobbers and wholesalers, which orders are commonly known in the trade as "Turnover orders"; its salesmen, under respondent's instructions, have refused and do refuse to accept any such turnover orders to be filled through jobbers and wholesalers who themselves sell or have sold at less than the suggested resale prices, or sell or have sold to jobbers, wholesalers, and retailers who sell or have sold at less than such suggested resale prices; and in such cases has requested such retailers to name other jobbers.

The company has and does reinstate as distributors of its products jobbers, wholesalers, and retailers previously cut off or withdrawn from the list of selected jobbers, wholesalers, and retailers for failure to resell at the prices suggested by it, and for selling to distributors who do not maintain such suggested resale prices, upon the basis of declarations, assurances, statements, promises, and similar expressions, as the case may be, by such distributors, respectively, who satisfy the company that such distributors will thereafter resell at the prices suggested by it and will refuse to sell to distributors who do not maintain such suggested resale prices.

The company has added and does add to its list of new distributors, concerns reported by its representatives as declaring that they intend to and will resell at the prices suggested by it, and will refuse to sell to those who do not maintain such suggested resale prices. It has utilized a system of key numbers or symbols stamped or marked upon the cases containing the "Beech-Nut Brand" products, thus enabling it, for any purpose whatsoever, to ascertain the identity of the distributors from whom such products were purchased; and that repeatedly, when instances of price-cutting have been reported to it by the selected wholesalers and retailers, or ascertained in other ways, its salesmen and representatives have been instructed by it to investigate, and that in pursuance of these instructions they have by means of these key numbers or symbols traced the price cutters from whom the goods have been obtained, and have thus ascertained the identity of such price cutters, and have also thus traced and ascertained the identity of distributors from whom price cutters have purchased "Beech-Nut Brand" products; and has thereafter refused to supply all such dealers with its products, whether such dealers were themselves cutting the suggested resale prices or were selling to dealers cutting the suggested resale prices.

The company has and does maintain card records containing the names of thousands of jobbing, wholesale, and retail distributors, including the selected distributors, and in furtherance of its refusal to sell goods either to distributors selling at less than the suggested resale prices, or to distributors selling to other distributors selling at less than the suggested resale prices, has listed upon those cards, bearing the names of such distributors, the words "Undesirable—Price Cutters," "Do Not Sell," or "D. N. S.," the abbreviation for "Do Not Sell," or expressions of a like character, to indicate that the particular distributor was in the future not to be supplied with respondent's goods on account of failure to maintain the suggested resale prices, or on account of failure to discontinue selling to dealers failing to maintain such suggested resale prices. When the company has received

declarations, assurances, statements, promises, or similar expressions, as the case may be, by distributors which satisfy it that such distributors will resell at the prices suggested by it, and discontinue selling to distributors failing to maintain the resale prices suggested by it, it has issued instructions to "Clear the record," or directions of similar import, notation of which is made on the cards, and it has thereafter permitted shipments of its products to be made to such distributors; and such distributors to whom shipments are thus allowed to go forward constitute the company's list of so-called "selected" jobbers, wholesalers, and retailers; and no distributor is thus listed on such card record as one to whom goods are allowed to go forward who fails to maintain the resale prices suggested by it or sells to distributors failing to resell at such suggested price; and when a jobber, wholesaler, or retailer is reported as failing to maintain the suggested retail prices, and has been entered in the card records as one to whom shipments should not go forward, respondent notifies those jobbers, wholesalers, and retailers who supply the distributor of this fact, and also notifies its specialty salesmen, and gives similar notices to such jobbers, wholesalers, and retailers and to its specialty salesmen when reinstatements are made in its list of "selected" jobbers, wholesalers, and retailers.

The Circuit Court of Appeals was of opinion that the only difference between the price-fixing policy condemned as unlawful in *Miles Medical Company v. Park & Sons Company*, 220 U. S. 373, and the price-fixing plan embodied in the Beech-nut policy was that in the former case there was an agreement in writing, while in this case the success or failure of the plan depended upon a tacit understanding with purchasers and prospective purchasers. While it expressed its difficulty in seeing any difference between a written agreement and a tacit understanding in their effect upon the restraint of trade, it, nevertheless, regarded the case as governed by the decision of this court in *United States v. Colgate & Co.*, 250 U. S. 300, and, accordingly, held that the Commission had exceeded its power in making the order appealed from.

The *Colgate* case was prosecuted under the Sherman Anti-Trust Act and came to this court under the criminal appeals act. We therein held that this court must accept the construction of the indictment as made in the District Court; and that upon such construction the only act charged amounted to the exercise of the right of the trader, or manufacturer, engaged in private business, to exercise his own discretion as to those with whom he would deal, and to announce the circumstances under which he would refuse to sell, and that thus interpreted no act was charged in the indictment which amounted

to a violation of the Sherman Act prohibiting monopolies, contracts, combinations, and conspiracies in restraint of interstate commerce.

In the subsequent case of *United States v. Schrader's Son, Inc.*, 252 U. S. 85, this court had occasion to deal with a case under the criminal appeals act, wherein there was a charge that a manufacturer sold to manufacturers in several States under an agreement to observe certain resale prices fixed by the vendor—which we held to be a violation of the Sherman Anti-Trust Act. In referring to the Colgate case we said: “The court below misapprehended the meaning and effect of the opinion and judgment in that cause. We had no intention to overrule or modify the doctrine of *Dr. Miles Medical Company v. Park & Sons Co.* [220 U. S.], where the effort was to destroy the dealers' independent discretion through restrictive agreements. Under the interpretation adopted by the trial court and necessarily accepted by us, the indictment failed to charge that Colgate & Company made agreements, either express or implied, which undertook to obligate vendees to observe specified resale prices; and it was treated as alleging only recognition of the manufacturer's undoubted right to specify resale prices and refuse to deal with anyone who failed to maintain the same.”

In the still later case of *Frey & Son v. Cudahy Packing Company*, 256 U. S. 208, 41 Sup. Ct. Rep. 451, wherein this court again had occasion to consider the subject, it was said of the previous decisions in *United States v. Colgate* and *United States v. Schrader's Son, Inc.*, *supra*, “Apparently the former case was misapprehended. The latter opinion distinctly stated that the essential agreement, combination, or conspiracy might be implied from a course of dealing or other circumstances.”

By these decisions it is settled that in prosecutions under the Sherman Act a trader is not guilty of violating its terms who simply refuses to sell to others, and he may withhold his goods from those who will not sell them at the prices which he fixes for their resale. He may not, consistently with the act, go beyond the exercise of this right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.

The Sherman Act is not involved here except in so far as it shows a declaration of public policy to be considered in determining what are unfair methods of competition, which the Federal Trade Commission is empowered to condemn and suppress. The case now before us was begun under the Federal Trade Commission act which was intended to supplement previous antitrust legislation. (See Report No. 597, of the Senate Committee on Interstate Commerce, June 13, 1914, 63d Cong., 2d sess.) That act declares unlawful “unfair methods

of competition" and gives the Commission authority after hearing to make orders to compel the discontinuance of such methods. What shall constitute unfair methods of competition denounced by the act is left without specific definition. Congress deemed it better to leave the subject without precise definition, and to have each case determined upon its own facts, owing to the multifarious means by which it is sought to effectuate such schemes. The Commission, in the first instance, subject to the judicial review provided, has the determination of practices which come within the scope of the act. (See Report No. 597, Senate Committee on Interstate Commerce, June 13, 1914, 63d Cong., 2d sess.)

Of the Federal Trade Commission act we said, in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 427: "The words 'unfair methods 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."

If the "Beech-Nut system of merchandising" is against public policy because of "its dangerous tendency unduly to hinder competition or to create monopoly," it was within the power of the Commission to make an order forbidding its continuation. We have already seen to what extent the declaration of public policy, contained in the Sherman Act, permits a trader to go. The facts found show that the Beech-Nut system goes far beyond the simple refusal to sell goods to persons who will not sell at stated prices, which in the *Colgate* case was held to be within the legal right of the producer.

The system here disclosed necessarily constitutes a scheme which restrains the natural flow of commerce and the freedom of competition in the channels of interstate trade which it has been the purpose of all the antitrust acts to maintain. In its practical operation it necessarily constrains the trader, if he would have the products of the Beech-Nut Company, to maintain the prices "suggested" by it. If he fails to do so, he is subject to be reported to the company either by special agents, numerous and active in that behalf, or by dealers whose aid is enlisted in maintaining the system and the prices fixed by it. Furthermore, he is enrolled upon a list known as "Undesirable—Price Cutters," to whom goods are not to be sold, and who are only to be reinstated as one whose record is "clear" and to whom sales may be made upon

his giving satisfactory assurance that he will not resell the goods of the company except at the prices suggested by it, and will refuse to sell to distributors who do not maintain such prices.

From this course of conduct a court may infer, indeed can not escape the conclusion, that competition among retail distributors is practically suppressed, for all who would deal in the company's products are constrained to sell at the suggested prices. Jobbers and wholesale dealers who would supply the trade may not get the goods of the company, if they sell to those who do not observe the prices indicated or who are on the company's list of undesirables, until they are restored to favor by satisfactory assurances of future compliance with the company's schedules of resale prices. Nor is the inference overcome by the conclusion stated in the Commission's findings that the merchandising conduct of the company does not constitute a contract or contracts whereby resale prices are fixed, maintained, or enforced. The specific facts found show suppression of the freedom of competition by methods in which the company secures the cooperation of its distributors and customers, which are quite as effectual as agreements express or implied intended to accomplish the same purpose. By these methods the company, although selling its products at prices satisfactory to it, is enabled to prevent competition in their subsequent disposition by preventing all who do not sell at resale prices fixed by it from obtaining its goods.

Under the facts established we have no doubt of the authority and power of the Commission to order a discontinuance of practices in trading such as are embodied in the system of the Beech-Nut Company.

We are, however, of opinion that the order of the Commission is too broad. The order should have required the company to cease and desist from carrying into effect its so-called Beech-Nut policy by cooperative methods in which the respondent and its distributors, customers, and agents undertake to prevent others from obtaining the company's products at less than the prices designated by it—(1) by the practice of reporting the names of dealers who do not observe such resale prices; (2) by causing dealers to be enrolled upon lists of undesirable purchasers who are not to be supplied with the products of the company unless and until they have given satisfactory assurances of their purpose to maintain such designated prices in the future; (3) by employing salesmen or agents to assist in such plan by reporting dealers who do not observe such resale prices, and giving orders of purchase only to such jobbers and wholesalers as sell at the suggested prices and refusing to give such orders to dealers who sell at less than such prices, or who sell to others who sell at less than such prices;

(4) by utilizing numbers and symbols marked upon cases containing their products with a view to ascertaining the names of dealers who sell the company's products at less than the suggested prices, or who sell to others who sell at less than such prices in order to prevent such dealers from obtaining the products of the company; or (5) by utilizing any other equivalent cooperative means of accomplishing the maintenance of prices fixed by the company.

The judgment of the Circuit Court of Appeals is reversed, and the cause remanded to that court with instructions to enter judgment in conformity with this opinion.

Reversed.

Mr. Justice HOLMES, dissenting.

There are obvious limits of propriety to the persistent expression of opinions that do not command the agreement of the court. But as this case presents a somewhat new field—the determination of what is unfair competition within the meaning of the Federal Trade Commission Act—I venture a few words to explain my dissent. I will not recur to fundamental questions. The ground on which the respondent is held guilty is that its conduct has a dangerous tendency unduly to hinder competition or to create monopoly. It is enough to say that this I can not understand. So far as the Sherman Act is concerned I had supposed that its policy was aimed against attempts to create a monopoly in the doers of the condemned act or to hinder competition with them. Of course there can be nothing of that sort here. The respondent already has the monopoly of its own goods with the full assent of the law and no one can compete with it with regard to those goods, which are the only ones concerned. It seems obvious that the respondent is not creating a monopoly in them for anyone else, although I see nothing to hinder its doing so by conveying them all to one single vendee. The worst that can be said, so far as I see, is that it hinders competition among those who purchase from it. But it seems to me that the very foundation of the policy of the law to keep competition open is that the subject matter of the competition would be open to all but for the hindrance complained of. I can not see what that policy has to do with a subject matter that comes from a single hand that is admitted to be free to shut as closely as it will. And to come back to the words of the statute, I can not see how it is unfair competition to say to those to whom the respondent sells and to the world, you can have my goods only on the terms that I propose, when the existence of any competition in dealing with them depends upon the respondent's will. I see no wrong in so doing, and if I did I should not think it a wrong within the possible

scope of the word unfair. Many unfair devices have been exposed in suits under the Sherman Act, but to whom the respondent's conduct is unfair I do not understand.

Mr. Justice McKENNA and Mr. Justice BRANDEIS concur in this opinion.

Mr. Justice McREYNOLDS, dissenting.

With regret, I dissent from the opinion and judgment of the court.

This matter was submitted to the Commission upon an agreed statement of facts, the twelfth clause of which—the last but one—declares: "12. That the merchandising conduct of respondent heretofore defined and as herein involved does not constitute a contract or contracts whereby resale prices are fixed, maintained, and enforced."

Of course, the Packing Company entered into this stipulation relying upon the quoted clause; and I am not at liberty either to disregard it or to minimize the plain import of its words. It is not a mere conclusion of the Commission but a definite and essential admission of record upon which the company rested and without which I must conclude a different case might have been presented.

There is no question of monopoly. Acting alone, respondent certainly had the clear right freely to select its customers—to refuse to deal when and as it saw fit—and to announce that future sales would be limited to those whose conduct met with its approval. *United States v. Colgate & Co.*, 250 U. S. 300; *United States v. Schrader's Son, Inc.*, 252 U. S. 85; *Frey & Son v. Cudahy Packing Co.* (decided April 18, 1921), 256 U. S. 208, 41 Sup. Ct. Rep. 451.

If the solemn stipulation did not expressly negative the existence of contracts amongst the parties to maintain prices, I should think the detailed facts sufficient to support a finding that there were such agreements. But starting with that plain negation, I can find no adequate ground for condemning the respondent.

The very order which the court below is now directed to enter conflicts with the stipulation between the parties by presupposing "methods of cooperation between respondent and the distributors of its products, especially the cooperative methods by which the respondent and the distributors of its products undertake to prevent others from obtaining such products at less than the prices fixed by respondent, (by) the cooperation of customers in reporting the names of dealers who do not observe such resale prices with the view to prevent their obtaining the product of the Beech-Nut Company thereafter." How can there be methods of cooperation, cooperative methods, an undertaking to prevent others, or

the cooperation of customers with a view to prevent others, when the existence of the essential contracts is definitely excluded?

Having the undoubted right to sell to whom it will, why should respondent be enjoined from writing down the names of dealers regarded as undesirable customers? Nor does there appear to be any wrong in maintaining special salesmen who turn over orders to selected wholesalers and who honestly investigate and report to their principal the treatment accorded its products by dealers. Finally, as respondent may freely select customers, how can injury result from marks on packages which enable it to trace their movements? The privilege to sell or not to sell at will surely involves the right by open and honest means to ascertain what selected customers do with goods voluntarily sold to them.

Under the circumstances disclosed constraint upon the freedom of merchants can only result from withholding trade relations or threatening so to do. These, when acting alone, respondent may assume or decline at pleasure, there being neither monopoly nor attempt to monopolize. And the exercise of this right does not become an unfair method of competition merely because some dealers can not obtain goods which they desire and others may be deterred from selling at reduced prices. If a manufacturer should limit his customers to consumers he would thereby destroy competition among dealers, but neither they nor the public could complain.

WHOLESALE GROCERS' ASSN. OF EL PASO,
TEX., ET AL. *v.* FEDERAL TRADE COMMISSION.¹

II. LESINSKY CO. *v.* SAME.¹

(Circuit Court of Appeals, Fifth Circuit. January 6,
1922.)

Nos. 3653, 3677.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY NO. 80½, NEW, VOLUME 8A KEY NO. SERIES.—ONE NOT
NAMED IN FEDERAL TRADE COMMISSION'S ORDER AGAINST
UNFAIR COMPETITION NOT ENTITLED TO REVIEW THEREOF.

Since by the terms of Federal Trade Commission act, paragraph 5 (Comp. St. par. 8836e), only a party required by an order of the commission to desist from using what is found by the commission to be an unfair method of competition is given the right to obtain a review of such order by the Circuit Court of Appeals, a wholesale grocers' association was not entitled to maintain a petition to review an order as to unfair competition where not named therein.

¹ Reviewing and affirming order of the Commission in 3 F. T. C. 109.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 80½, NEW, VOLUME 8A KEY No. SERIES.—ORDER OF
FEDERAL TRADE COMMISSION RESTRAINING UNFAIR COMPE-
TITION SUSTAINED BY EVIDENCE.

An order by the Federal Trade Commission restraining unfair competition *held* supported by evidence showing concert of action by those petitioning for a review of such order to prevent sales by manufacturers and their agents to a wholesale and retail grocery company of food products and other groceries in wholesale quantities at the prices and on the terms accorded to other wholesalers and that such concert of action was a result of an agreement to which petitioners and others were parties and that by such means the grocery company was hindered and prevented from buying as a wholesaler in interstate commerce as it would have done without such opposition.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 80½, NEW, VOLUME 8A KEY No. SERIES.—EVIDENCE
OF EXPRESS AGREEMENT UNNECESSARY TO SUSTAIN ORDER
AGAINST UNFAIR COMPETITION.

To sustain charges of unfair competition made to the Federal Trade Commission, evidence of express agreements to obstruct or prevent dealings is not necessary, since a conspiracy may be inferred from things actually done by the alleged conspirators, where such things are the natural consequences of an agreement to do them and helped to accomplish a disclosed common purpose.

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 80½, NEW, VOLUME 8A KEY No. SERIES.—CREDI-
BILITY OF TESTIMONY HELD FOR FEDERAL TRADE COMMISSION.

On an application to the Federal Trade Commission for an order restraining unfair competition among wholesalers, the credibility of testimony is for the commission.

5. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 68.—CONSPIRACY BY WHOLESALERS TO PREVENT
SALES BY MANUFACTURERS TO COMPETITOR HELD UNFAIR
COMPETITION.

That associated jobbers and wholesalers combined and cooperated with others to keep manufacturers willing to do so from selling their products direct to a wholesale company in competition with them and by that means prevented such company from competing as a wholesaler on the ground that such company also sold at retail, *held* to constitute unfair methods of competition in commerce within Federal Trade Commission act, paragraph 5 (Comp. St. 8836e), as being against the public policy evidenced by the Sherman Act (Comp. St. pars. 8820-8823, 8827-8830).

(The syllabus is taken from 277 Fed. 657.)

Petition to Revise Order of Federal Trade Commission, sitting at Washington, D. C.

Separate petitions by the Wholesale Grocers' Association of El Paso, Tex., and others, and by the H. Lesinsky Company, against the Federal Trade Commission to revise an order. Petitions denied.

A. H. Culwell, of El Paso, Tex., for petitioners Wholesale Grocers' Association of El Paso, Tex., and others.

Otis Beall Kent, of Washington, D. C., for petitioner H. Lesinsky Co.

W. H. Fuller, chief counsel; Adrien F. Busick, acting chief counsel; and Marvin Farrington, assistant chief counsel, all of Washington, D. C., for respondent.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

By separate petitions filed in this court against the Federal Trade Commission by, respectively, the Wholesale Grocers' Association of El Paso, Tex., an unincorporated voluntary association of wholesale grocery firms and corporations doing business in El Paso; Trueba-Zozaya-Seggerman, Inc.; Bray & Co., Inc.; James A. Dick Co.; American Grocery Co. (the four parties last named being joined in one petition); the H. Lesinsky Co.; W. H. Constable Co.; and Dan T. White and John H. Grant, partners doing business under the name of White-Grant Co., a review of an order made by the Federal Trade Commission against the petitioners and others is sought. The respective parties will be referred to as the petitioners and the commission.

The order complained of was made in a proceeding which was initiated by a written complaint made by the commission against the petitioners and others, some of the parties so proceeded against being wholesale grocers or jobbers having their principal offices and places of business at El Paso, and others being brokers engaged in the business at El Paso of selling the products of manufacturers of groceries and food products. That complaint contained the following:

That the Standard Grocery Co. is a corporation having its principal place of business at El Paso, in the State of Texas, and also having a place of business at Deming in the State of New Mexico; and is engaged in the business of buying and selling in wholesale quantities, and in the usual course of wholesale trade, groceries and food products such as are bought and sold generally by persons, firms, and corporations engaged in the business generally known as that of a wholesale grocer; that in the course of its said business the Standard Grocery Co. purchases commodities dealt in by it in the various States and Territories of the United States, and transports the same through other States and Territories, to the city of El Paso, in the State of Texas, where such commodities are resold, and there is continuously and has been at all times herein mentioned, a constant current of trade and commerce in commodities so purchased by the said Standard Grocery Co., between and among the various States and Territories of the United States. That the said Standard Grocery Co. is in active competition with the respondents named in paragraph 3 hereof.

The parties referred to in the last sentence of the quoted paragraph were the wholesale grocers proceeded against. That complaint charged that said wholesale grocers combined and conspired together and with the other parties proceeded against, and with others—

* * * to prevent the said Standard Grocery Co. from obtaining commodities dealt in by it from manufacturers and manufacturers' agents, and other usual sources from which a wholesale dealer in groceries must obtain the commodities dealt in by him, and have by boycott and threats of boycott, in many instances, induced manufacturers of grocery products, and the agents of such manufacturers, to refuse to sell their products to the said Standard Grocery Co. and have threatened to withdraw their patronage from any and all manufacturers and manufacturers' agents who sell to the said Standard Grocery Co. upon the same terms and conditions usually accorded to buyers and sellers of such commodities in wholesale quantity in said district or who sell to said Standard Grocery Co. at the prices regularly charged to dealers in such commodities in said district who buy and sell in wholesale quantities; * * *.

It charged that the brokers proceeded against, with the purpose, intent, and effect of stifling and suppressing competition in the sale of grocery products at wholesale, combined and conspired together and with the other parties proceeded against, and with others—

* * * to prevent the said Standard Grocery Co. from obtaining the commodities dealt in by it from manufacturers and manufacturers' agents, and other usual sources from which a wholesale dealer in groceries must obtain the commodities dealt in by him, and to prevent manufacturers and manufacturers' agents from selling to said Standard Grocery Co. upon the same terms and conditions usually accorded to buyers and sellers of such commodities in wholesale quantity in said district, or from selling to said Standard Grocery Co. at the prices regularly charged to dealers in such commodities in said district who buy and sell in wholesale quantities; * * *.

That said brokers have permitted said jobbers—

* * * to persuade, induce, and compel them by boycott and threats of boycott, to refuse to sell the products manufactured by their respective principals to the said Standard Grocery Co., and to refuse to sell to said Standard Grocery Co. upon the same terms and conditions usually accorded to buyers and sellers of such commodities in wholesale quantity in said district; or to sell to said Standard Grocery Co. at the prices regularly charged to dealers in such commodities in said district who buy and sell in wholesale quantities.

That complaint further charged that each of the parties so proceeded against—

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

After that complaint was answered by the petitioners and others, after much evidence had been taken, and after a hearing thereon and argument of counsel, the commission, on November 9, 1920, made in writing its findings as to the facts and conclusion, such findings of fact including several which, taken together, were to the effect in substance that specified acts and conduct of the petitioners and others were such as were charged in the complaint; and the following being the stated conclusion:

The acts, agreements, understandings, policies, and practices of the respondent jobbers and the respondent brokers, and each and all of

them, are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

On the same day the commission made an order, of which, except its caption and a recital as to the making of such findings and conclusion, the following is a copy:

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

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

(b) Carrying on between and among themselves, or with others, communications having the purpose, tendency, or effect of inducing, coercing, or compelling manufacturers and manufacturers' agents to refuse to deal with or sell to the Standard Grocery Co. or others engaged in similar business, upon terms agreed upon between such manufacturers or their agents and said company and others;

(c) Combining and conspiring among themselves or with others, or using any scheme or device whatsoever to hinder, obstruct, and prevent the Standard Grocery Co., or others engaged in similar business, from freely purchasing and obtaining in interstate commerce the commodities and products usually handled by it in the course of its business, or from freely competing in interstate commerce with the respondents, F. S. Ainsa Company, Inc., M. Ainsa & Sons, Inc., Bray & Co., Inc., the James A. Dick Co., the H. Lesinsky Co., American Grocery Co., Inc., Trueba-Zozaya-Seggerman, Inc., and Western Grocery Co., Inc., or others engaged in similar business;

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

(e) Combining or conspiring together or with others, or using any schemes or devices whatsoever to hinder, obstruct, or prevent manufacturers or their agents from dealing with the Standard Grocery Co., or others engaged in similar business, upon any terms agreed upon by such manufacturers or their agents and said company and others;

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

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

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

PAR. 3. It is further ordered that the respondents, Dan T. White and John H. Grant, doing business under the name of White-Grant Co.; J. W. Lorentzen, doing business under the name of J. W. Lorentzen & Co.; H. W. Taylor and H. C. Smith, doing business under the name of Taylor & Smith; John H. McMahon, doing business under the name of John McMahon & Co.; W. T. Bush; Sims, Robert & Co., Inc., legal successors to the George H. Griggs Co.; and W. H. Constable Co., Inc., and their officers and agents, forever cease and desist from—

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

Five of the petitioners are wholesalers or jobbers named in the first clause of paragraph 1 of the above order. Two of the petitioners are brokers named in the first clause of paragraph 2 of that order.

By the terms of section 5 of the Federal Trade Commission act (38 St. 717; U. S. Compiled Statutes 1918, sec. 8836e), only a party required by an order of the commission to cease and desist from using what is found by the commission to be an unfair method of competition in interstate or foreign commerce is given the right to obtain a review of such order by this court. The petitioner, the Wholesale Grocers' Association of El Paso, Tex., as a separate entity, is not entitled to maintain its petition, as it was not named in the above set out order to cease and desist. That association, the members of which were wholesale grocers or jobbers at El Paso, came into existence in the fall of 1917 at the request of the local representative of the United States Food Administration, for the purpose of discussing and complying with rules and regulations promulgated during the war by the Food Administration and other Government agencies having to do with conservation, profiteering, and other matters dealt with by such agencies. The meetings of the association were held informally from time to time in the offices of different members, and were attended more or less regularly by the members, including those who are petitioners in this case. No formal minutes or records of the proceedings of the association were kept. The jobbers so coming together did not confine their discussions to the subjects for dealing with which the association was formed. Among subjects discussed by the jobbers when so brought together was that of manufacturers selling to grocers doing both a wholesale and a retail business, these discussions having special reference to the case of sales by manufacturers to the Standard Grocery Co. It was disclosed that the associated jobbers, without dissent, condemned the practice of some manufacturers in selling to that company on the same terms and conditions as those accorded to such jobbers. The Standard Grocery Co., which was or--

ganized in 1916, owned and operated six retail grocery stores in El Paso, in one of which it conducted for several years a wholesale grocery business, having storage and warehouse facilities therefor in the basements of several of its storehouses. In the fall of 1917, it opened a branch house at Deming, N. Mex., where it engaged, until about January 1, 1919, exclusively in the business of buying and selling in wholesale quantities groceries and other food products; its purchases and sales, at both El Paso and Deming, including such as were transactions in interstate commerce. It was in active competition at El Paso and Deming with the associated jobbers, both it and such jobbers selling to retail grocers, restaurants, cafés, commissaries of industrial and railway companies, Army post exchanges and zone supply offices, civilian branches of the United States Government, Army hospitals, and other Federal and State institutions. Following such discussions and adverse criticisms of the associated jobbers there were numerous instances of it being brought to the attention of manufacturers that sales by them direct to the Standard Grocery Co. were objected to by the associated jobbers at El Paso, and that the continuance of such sales would cause those jobbers to withhold patronage from such manufacturers; the means whereby such manufacturers were so advised including letters to them from brokers at El Paso handling their products plainly disclosing that sales of those products direct to the Standard Grocery Co. constituted an obstacle to selling those products to the associated jobbers at El Paso, numerous inquiries made by such jobbers of traveling salesmen of manufacturers as to whether their principals sold direct to the Standard Grocery Co., and other incidents indicating that such sales were condemned by the associated jobbers and the brokers at El Paso.

We are of opinion that direct and circumstantial evidence adduced furnished support for the inferences that there was concert of action by the petitioners and others with the object of preventing sales by manufacturers and their agents to the Standard Grocery Co. of food products, and other groceries in wholesale quantities, at the prices and on the terms accorded to other wholesalers or jobbers similarly situated, that that concert of action was a result and in pursuance of an agreement or understanding to which the petitioners and others were parties; and that by the means indicated sales by manufacturers and their agents to the Standard Grocery Co. were hindered or impeded, and that company was prevented from buying as a wholesaler in interstate commerce as it would have done without such opposition by the petitioners and others cooperating with them.

It is contended that the attacked order should be set aside because (1) the evidence upon which the commis-

sion acted did not support any of its findings as to the petitioners combining, conspiring, and cooperating as set forth, and because (2) the conduct of the petitioners stated in the findings did not amount to or involve an unfair method of competition in commerce within the meaning of the provision of section 5 of the Federal Trade Commission act (38 Stat. 707).

Evidence of an express agreement to obstruct or prevent dealings with the Standard Grocery Co. as a legitimate wholesaler or jobber was not necessary to support the charges made. A conspiracy may be inferred from the things actually done by the alleged conspirators, where those things are the natural consequences of an agreement or understanding to do them, and help to accomplish a disclosed common purpose. *Eastern States Lumber Association v. United States*, 234 U. S. 600, 612. What happened after it was disclosed that the associated jobbers were in accord in condemning sales of their products by manufacturers or their agents to a competitor which was obnoxious because it was a retailer as well as a wholesaler, indicated the existence of an agreement or understanding between the petitioners and others to take concerted action to obstruct or prevent the continuance of such sales. As above indicated, we are not of opinion that the order of the commission is subject to be set aside on the ground that no substantial evidence supporting its findings of fact was adduced. Failure to recognize or concede due probative effect to significant circumstances disclosed is a fault in criticism by counsel of the evidence adduced. Part of that criticism involves the assumption that the commission was bound to believe testimony relied on to support the conclusion that conduct of one of the petitioners did not have the meaning or effect indicated by a written communication signed by its representative. It was for the commission to pass on the credibility of that testimony.

Whether the conduct of the petitioners, which is the subject of the attacked order to cease and desist, comes within the meaning of the provisions of the Federal Trade Commission act declaring unlawful "unfair methods of competition in commerce" is a question of law presented for decision by this court. *Federal Trade Commission v. Gratz*, 253 U. S. 421. That conduct was concerted action having for its object the putting of a ban, within the trade range of the petitioners, upon manufacturers of food products or other groceries supplying their products at jobbers' prices and terms to a dealer doing or endeavoring to do both a wholesale and a retail business; a result of the success of such concerted action being to cut off such wholesale and retail dealer from sources of supply available to dealers whose business is exclusively wholesale. The facts of the instant case are quite similar to those passed on in the case of *Eastern States Lumber Associa-*

tion v. United States, supra. The just-cited case was an action brought by the United States under the Sherman Antitrust Act (26 Stat. 209), having for its object an injunction against certain alleged combinations of retail lumber dealers, which, it was averred, had entered into a conspiracy to prevent wholesale dealers from selling directly to consumers of lumber. It was held in that case that the circulation of a so-called official report among members of an association of retail lumber dealers, calling attention to actions of listed wholesale lumber dealers in selling direct to consumers, tended to prevent members of the association from dealing with the listed dealers referred to in the report, and to directly and unreasonably restrain trade by preventing it with such listed dealers, and was within the prohibition of the Sherman Act. The following are extracts from the opinion rendered in that case:

True it is that there is no agreement among the retailers to refrain from dealing with listed wholesalers, nor is there any penalty annexed for the failure so to do, but he is blind indeed who does not see the purpose in the predetermined and periodical circulation of this report to put the ban upon wholesale dealers whose names appear in the list of unfair dealers trying by methods obnoxious to the retail dealers to supply the trade which they regard as their own. * * *

A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade. "But," as was said by Mr. Justice Lurton, speaking for the court in *Grenada Lumber Co. v. Mississippi*, 217 U. S. 433, 440, "when the plaintiffs in error combine and agree that no one of them will trade with any producer or wholesaler who shall sell to a consumer within the trade range of any of them, quite another case is presented. An act harmless when done by one may become a public wrong when done by many acting in concert, for it then takes on the form of a conspiracy, and may be prohibited or punished, if the result be hurtful to the public or to the individual against whom the concerted action is directed."

The above-quoted decision is not rendered inapplicable to the facts of the instant case by the circumstances that the object of the concerted action to which the petitioners were parties was to restrict sales by manufacturers of their products to dealers who are exclusively wholesalers, instead of, as in the cited case, concerted action by retailers to prevent wholesalers selling directly to consumers, and that the methods adopted by the petitioners were different from those disclosed in the cited case. The just-mentioned differences between the two cases are not material. In legal effect there is no substantial difference between a conspiracy by retailers to prevent wholesalers selling directly to consumers and a conspiracy by wholesalers to prevent manufacturers selling directly to dealers whose business includes both wholesaling and retailing. It well may be inferred that the lawmakers, in using in the Trade Commission act the words "unfair methods of competition in commerce,"

intended to include concerted action to eliminate competition, in pursuance of what amounts to a conspiracy in restraint of trade or commerce among the several States, within the meaning of the Sherman Act. *Federal Trade Commission v. Gratz*, supra. What the associated jobbers severally did went beyond each of them refraining altogether or to a less extent from buying from manufacturers whose products were sold directly to the Standard Grocery Co. They combined and cooperated with others to keep manufacturers willing to do so from selling their products directly to the Standard Grocery Co., and by that means to obstruct or prevent that company from competing as a wholesaler in territory sought to be appropriated by dealers not doing a combined wholesale and retail business. The combining of wholesaling and retailing is not a novelty and is not unlawful. The success of the concerted action participated in by the petitioners meant the monopolizing of the wholesale grocery business in the El Paso territory by dealers not engaged in retailing.

We are of opinion that the practices forbidden by the attacked order were "unfair methods of competition in commerce," within the meaning of the provisions of section 5 of the Federal Trade Commission act, because, in the circumstances disclosed, they were against the public policy evidenced by the Sherman Act. *Federal Trade Commission v. Gratz*, supra; *National Harness Mfrs. Association v. Federal Trade Commission*, 268 Fed. 705.

It follows from the above stated conclusions that the petitions should be denied; and it is so ordered.

Petitions denied.

CHAMBER OF COMMERCE OF MINNEAPOLIS ET
AL. v. FEDERAL TRADE COMMISSION OF THE
UNITED STATES ET AL.

(Circuit Court of Appeals, Eighth Circuit. March 27,
1922.)

No. 222.

1. COURTS KEY NO. 404—TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—CIRCUIT COURT OF APPEALS HAS NO JURISDICTION TO ISSUE CERTIORARI TO REVIEW PRELIMINARY ORDERS OF TRADE COMMISSION.

A petition for writ of certiorari to review preliminary orders of the Trade Commission denying motions to dismiss the proceedings before the hearing seeks certiorari as an original writ which the Circuit Court of Appeals has no jurisdiction to issue in a case where

it is not in aid of appellate jurisdiction acquired or for the protection of appellate jurisdiction not yet acquired, but which otherwise might be defeated, and is not specifically authorized by the Federal Trade Commission Act.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—JURISDICTION OF CIRCUIT COURT OF APPEALS OVER TRADE COMMISSION IS LIMITED TO PROCEEDINGS SPECIFIED.

The jurisdiction of Circuit Court of Appeals under the Trade Commission Act (Comp. St., pars. 8836a-8836k) is limited to the enforcement or vacation of the final orders of the commission as stated in section 5 of the act, in view of other clauses in that section, and of section 9 giving the District Court authority to enforce obedience to subpoenas and to issue mandamus on the application of the Attorney General at the request of the commission.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—DISTRICT COURT, CAN NOT REVIEW PRELIMINARY ORDERS OF TRADE COMMISSION.

Though the language of Trade Commission Act, paragraph 9 (Comp. St., par. 8836i), giving the District Court jurisdiction to issue mandamus to compel compliance with the provisions of the act or any order of the commission made in pursuance thereof, is very broad, it was intended to refer only to orders of the nature involved in section 6, paragraph B (sec. 8836f), empowering the commission to require specified reports and answers under oath or otherwise, and does not give the District Court jurisdiction over orders of the commission denying motions to dismiss proceedings before the hearing.

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—HEARING BEFORE TRADE COMMISSION DOES NOT DENY DUE PROCESS OF LAW, THERE BEING A REVIEW BEFORE CIRCUIT COURT OF APPEALS.

Since a hearing is given before the Trade Commission before an order is entered, and ultimate review by the Circuit Court of Appeals is provided, and the commission exercises administrative powers and imposes no penalty, nor has power to make more than a finding of facts, which requires confirmation by the Circuit Court of Appeals before any burden is cast on the parties, there is no denial of due process of law.

5. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—REVIEW OF FINDING BY ADMINISTRATIVE BODY IS CONFINED TO EXISTENCE OF SUBSTANTIAL EVIDENCE TO SUPPORT.

The review of findings by an administrative body, such as the Federal Trade Commission, which has been given authority by Congress to find facts and make orders, is limited to determination whether such findings and orders are supported by substantial legal evidence, in which case they are conclusive, and it can not be presumed the commission will proceed erroneously and in excess of its powers, and thereby impose upon a party unnecessarily the expense incident to a hearing.

(The syllabus is taken from 280 Fed. 45.)

Petition to review order of the Federal Trade Commission of the United States of America.

Original petition for writ of certiorari by the Chamber of Commerce of Minneapolis and others against the Federal Trade Commission of the United States and others. Petition dismissed for want of jurisdiction.

David F. Simpson, of Minneapolis, Minn. (William A. Lancaster, John Junell, James E. Dorsey, Harold G. Simpson, and Leavitt R. Barker, all of Minneapolis, Minn., on the brief), for petitioners.

Adrien F. Busick and M. Markham Flannery, both of Washington, D. C. (W. H. Fuller, of Washington, D. C., on the brief), for respondents.

Before Sanborn and Lewis, Circuit Judges, and Van Valkenburgh, District Judge.

VAN VALKENBURGH, *District Judge*:

This is a suit filed originally in this court. The pleading is entitled "Petition for writ of certiorari to the Federal Trade Commission, and for order setting aside order of Federal Trade Commission denying motions."

On or about December 7, 1920, the commission filed a complaint against the Minneapolis Chamber of Commerce, its officers and board of directors, the Manager Publishing Company, John H. Adams and John F. Flemming, who are the petitioners herein, alleging that the commission had reason to believe, from a preliminary investigation made by it, that these petitioners were using unfair methods of competition in interstate commerce in violation of the provisions of the act creating the Federal Trade Commission and defining its powers and duties. In due time petitioners made and submitted a number of motions which, upon hearing before the commission, were denied by interlocutory order duly made and entered.

The preliminary motions referred to contained numerous specifications, which, upon analysis, raise the following matters of substance:

1. The commission is without jurisdiction both of parties and of subject matter.
2. The complaint states no cause of action.
3. The commission is biased and prejudiced against the petitioners.
4. The complaint is indefinite and uncertain in certain paragraphs.
5. The Federal Trade Commission Act is unconstitutional.

Accordingly, petitioners prayed that no issue of fact be joined or evidence received as to the allegations con-

tained in certain paragraphs of the complaint and that the entire proceeding be dismissed. As an incident to this review they seek the issuance of a writ of certiorari requiring respondents to certify to this court, for review and determination, the preliminary order of which they complain.

In our judgment certiorari, as such, will not lie, because this court has no power to issue the writ as original process, and because, further, we have not here presented a case where the writ is desired, as in the nature of an auxiliary process in aid of jurisdiction acquired; nor is it necessary for the protection of appellate jurisdiction before such jurisdiction is actually obtained, which otherwise might be defeated, nor to make the jurisdiction effectual, nor because of the absence of any other remedy. The writ, as asked, partakes largely of the nature of a writ of prohibition, but such is not justified by the circumstances in this case under any power conferred by statute upon Circuit Courts of Appeals.

What is really sought by petitioners is that this court should halt inquiry at the threshold, exercising, in effect, the powers of a court of original jurisdiction, in which a cause is pending, to rule in limine upon the propriety of the action and whether it should proceed further. The procedure invoked is similar, in effect, to that prevailing in a court of original jurisdiction which has control of the successive steps of pleading, practice, trial, and final judgment or decree. But it must be remembered that this court has no original jurisdiction of this nature. Its functions, under the act before us, are confined to a review of certain acts of the Federal Trade Commission, which are specifically defined by the Congress. This act creates powers not otherwise conferred upon Circuit Courts of Appeals, and such courts are limited strictly to the powers thus specified. It was not intended that the Circuit Courts of Appeals should be drawn into original conduct of these investigations. If this court is to exercise plenary power and control in determining at the outset what party shall be dealt with, what investigation shall be made, and what recommendation submitted, then it has, in effect, been constituted an original trial tribunal of controversies of this nature. This was in nowise contemplated, nor would it comport with the legitimate practical functions of a court of this nature.

The act itself clearly specifies when the jurisdiction of the Circuit Courts of Appeals may attach and to what extent that jurisdiction may be exercised. The power of the court is limited to the enforcement of the final orders of the commission to cease and desist, upon the application of the commission, and to review of such orders at the request of the party against whom such orders are made, and in such cases it has power to enforce, affirm, modify, or set aside as it may deem proper. Immediately after

these powers and duties are set forth in section 5 of the act this clause occurs:

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.

Manifestly this refers to the specific powers just previously recited, and this is made still more apparent by the clause which next follows, wherein it is said:

Such proceedings in the Circuit Court of Appeals shall be given precedence over other cases pending therein, and shall be in every way expedited.

This provision is made still more obvious by subsequent provisions of the act, because in them it clearly appears that not all orders of the commission are within the exclusive jurisdiction of the Circuit Courts of Appeals. In section 9 the District Court is given authority to enforce obedience to subpoenas, and it is further provided that:

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.

The final language of this clause is very broad, but we are convinced that it is intended to refer only to orders of the nature of such as are involved in paragraph B of section 6, which empowers the commission to require, by general and specific orders, certain corporations to file specified reports and answers under oath or otherwise. We do not think this language was intended to give the District Court jurisdiction over orders such as that now before us. It is our judgment that neither the District Court nor this court has power under the act to interfere with the investigation and inquiry of the commission, involving the taking of testimony and the finding of facts essential to the making of such an order as shall ultimately be passed upon by the Circuit Court of Appeals for enforcement, affirmance, modification, or setting aside.

A hearing is granted before the commission and ultimate review by the Circuit Court of Appeals is provided; therefore, there is no denial of due process. The Federal Trade Commission exercises administrative, not judicial, powers. The act provides no penalties, nor has the commission power to make more than a finding of facts which requires confirmation by this court before any burden is cast upon the parties subjected to inquiry. Full provision for review is made, confined, of course, to the limited right of courts to review administrative or legislative acts. In cases arising under this law injunctions to halt the taking of testimony have been uniformly denied. The powers conferred upon this commission are similar to those conferred upon the Interstate Commerce Commission, with the exception that

the powers of the latter are more pronounced and potential. In all cases where Congress has lodged in administrative officers or boards power to find facts and make orders, such findings and orders are conclusive when supported by substantial legal evidence. The courts will not consider with nicety the weight of such evidence. Illustrations of this principle are to be found in many cases arising under the Land Department, the Post Office Department, and before the Interstate Commerce Commission. To halt this investigation before testimony is taken would be an invasion of the powers of the legislative and executive branches of the Government.

The real gist of the complaint here is that it is claimed, and with plausibility, that the chief petitioner is not subject to the jurisdiction of the Federal Trade Commission; that the commission is proceeding erroneously and in excess of its powers; that the taking of the testimony before a final order can be made will be very expensive; and that a grievous burden is being inflicted upon petitioners, for which an ultimate setting aside of any order that may be made will not adequately compensate them. This is true in some degree of any order of the commission which may finally be set aside. The law does not contemplate that commissions of this nature will act arbitrarily nor without probable cause. It is, of course, conceivable that they may do so, but such a possibility can not justify this court in exceeding its statutory powers and authority. To do so would be to deny to the administrative and legislative branches of the Government the powers and authority which have been conferred upon them, and which have been uniformly upheld by the courts. It may be desirable that the law should provide for a preliminary review of questions of jurisdiction either by the Circuit Courts of Appeals or by the District Courts, but in the absence of such provision we can not assume that power.

The conclusion we have reached renders it both inappropriate and unnecessary to consider the other questions raised by petitioners. The petition must be dismissed for want of jurisdiction in this court to entertain it, and it is accordingly so ordered.

FEDERAL TRADE COMMISSION v. WINSTED
HOSIERY CO.¹

(Supreme Court of the United States. April 24, 1922.)

No. 333.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 80½, NEW, VOL. 8A KEY No. SERIES—FALSE LABELS
CONSTITUTE UNFAIR COMPETITION AGAINST THOSE USING
TRUE LABELS.

Where labels used by a manufacturer of underwear, designating the goods, which were made of wool mixed with cotton or silk, as "natural merino," "gray wool," "natural wool," "natural worsted," or "Australian wool," were false and misleading, and the Trade Commission found on sufficient evidence that dealers and consumers were deceived thereby, the use of such labels amounted to unfair competition against other manufacturers who correctly labeled their goods when they were not made of all wool, and use of such labels can be prevented by the Commission under act September 26, 1914, paragraph 5 (Comp. St. par. 8836c).

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION
KEY No. 80½, NEW, VOL. 8A KEY No. SERIES—FACT THAT
MISDESCRIPTION IS SO COMMON DEALERS DO NOT ACCEPT
LABELS IS NO DEFENSE.

The fact that misrepresentation and misdescription has become so common in the knit underwear trade that most dealers no longer accept labels at their face value does not prevent the use of false labels being an unfair method of competition against manufacturers who use true labels.

3. WORDS AND PHRASES—"AUSTRALIAN WOOL."

"Australian wool" means a distinct commodity, a fine grade of wool grown in Australia.

4. WORDS AND PHRASES—"MERINO WOOL."

"Merino," as applied to wool, means primarily and popularly a fine long-staple wool, which commands the highest price.

5. WORDS AND PHRASES—"WOOL."

The word "wool," when used as an adjective, means made of wool.

6. WORDS AND PHRASES—"WORSTED."

"Worsted" means primarily and popularly a yarn or fabric made wholly of wool.

(The syllabus is taken from 42 Sup. Ct. 384.)

On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Complaint by the Federal Trade Commission against Winsted Hosiery Company. An order by the Com-

¹258 U. S. —. Reverses *Winsted Hosiery Co. v. Federal Trade Commission*, 272 Fed. 957, and affirms Commission's orders in 2 F. T. C. 202, and 8 F. T. C. 189.

mission, directing the company to cease from using certain labels or brands, was set aside by the Circuit Court of Appeals (272 Fed. 957), and the Federal Trade Commission brings certiorari. Judgment of the Circuit Court of Appeals reversed.

Mr. Justice McReynolds dissents.

Messrs. Solicitor General James M. Beck and Adrien F. Busick, both of Washington, D. C., for petitioner.

Messrs. Melville J. France and Henry P. Molloy, both of New York City, for respondent.

Mr. Justice BRANDEIS delivered the opinion of the court.

The Winsted Hosiery Company has for many years manufactured underwear which it sells to retailers throughout the United States. It brands or labels the cartons in which the underwear is sold as "Natural Merino," "Gray Wool," "Natural Wool," "Natural Worsted," or "Australian Wool." None of this underwear is all wool. Much of it contains only a small percentage of wool; some as little as 10 per cent. The Federal Trade Commission instituted a complaint under section 5 of the act of September 26, 1914, c. 311, 38 Stat. 717, 719, and called upon the company to show cause why use of these brands and labels alleged to be false and deceptive should not be discontinued. After appropriate proceedings an order was issued which, as later modified, directed the company to "cease and desist from employing or using as labels or brands on underwear or other knit goods not composed wholly of wool, or on the wrappers, boxes, or other containers in which they are delivered to customers, the words 'Merino,' 'Wool,' or 'Worsted,' alone or in combination with any other word or words, unless accompanied by a word or words designating the substance, fiber, or material other than wool of which the garments are composed in part (e. g., 'Merino, Wool, and Cotton'; 'Wool and Cotton'; 'Worsted, Wool, and Cotton'; 'Wool, Cotton, and Silk') or by a word or words otherwise clearly indicating that such underwear or other goods is not made wholly of wool (e. g., part wool)."

A petition for review of this order was filed by the company in the United States Circuit Court of Appeals for the Second Circuit. The prayer that the order be set aside was granted; and a decree to that effect was entered.² That court said: "Conscientious manufacturers

² The original order of the Commission was based on findings which rested upon an agreed statement of facts. The petition for review urged, among other things, that the agreed statement did not support the findings. Thereupon the Commission moved in the Court of Appeals that the case be remanded to the Commission for additional evidence as provided in the fourth paragraph of section 5 of the act. Under leave so granted the evidence was taken; and modified findings of fact were made. The modified order was based on these findings. It is this modified order which was set aside by the Court of Appeals; and we have no occasion to consider the original order or the proceedings which led up to it.

may prefer not to use a label which is capable of misleading and it may be that it will be desirable to prevent the use of the particular labels, but it is in our opinion not within the province of the Federal Trade Commission to do so," 272 Fed. 957, 961. The case is here on writ of certiorari. 256 U. S. 688.

The order of the Commission rests upon findings of fact, and these upon evidence which fills three hundred and fifty pages of the printed record. Section 5 of the act makes the Commission's findings conclusive as to the facts, if supported by evidence.

The findings here involved are clear, specific, and comprehensive: The word "Merino" as applied to wool "means primarily and popularly" a fine, long-staple wool which commands the highest price. The words "Australian Wool" means a distinct commodity—a fine grade of wool grown in Australia. The word "wool" when used as an adjective means made of wool. The word "worsted" means primarily and popularly a yarn or fabric made wholly of wool. A substantial part of the consuming public, and also some buyers for retailers and sales people, understand the words "Merino," "Natural Merino," "Gray Merino," "Natural Wool," "Gray Wool," "Australian Wool," and "Natural Worsted," as applied to underwear, to mean that the underwear is all wool. By means of the labels and brands of the Winsted Company bearing such words part of the public is misled into selling or into buying as all-wool underwear which in fact is in large part cotton. And these brands and labels tend to aid and encourage the representations of unscrupulous retailers and their salesmen who knowingly sell to their customers as all-wool underwear which is largely composed of cotton. Knit underwear made wholly of wool has for many years been widely manufactured and sold in this country and constitutes a substantial part of all knit underwear dealt in. It is sold under various labels or brands, including "Wool," "All Wool," "Natural Wool," and "Pure Wool," and also under other labels which do not contain any words descriptive of the composition of the article. Knit underwear made of cotton and wool is also used in this country by some manufacturers who market it without any label or marking describing the material or fibers of which it is composed, and by some who market it under labels bearing the words "Cotton and Wool" or "Part Wool." The Winsted Company's product, labeled and branded as above stated, is being sold in competition with such all-wool underwear and such cotton and wool underwear.

That these findings of fact are supported by evidence can not be doubted. But it is contended that the method of competition complained of is not unfair within the meaning of the act, because labels such as the Winsted Company employs, and particularly those bearing the word "Merino," have long been established in the trade

and are generally understood by it as indicating goods partly of cotton; that the trade is not deceived by them; that there was no unfair competition for which another manufacturer of underwear could maintain a suit against the Winsted Company; and that even if consumers are misled because they do not understand the trade significance of the label or because some retailers deliberately deceive them as to its meaning, the result is in no way legally connected with unfair competition.

This argument appears to have prevailed with the Court of Appeals; but it is unsound. The labels in question are literally false, and, except those which bear the word "Merino," are palpably so. All are, as the Commission found, calculated to deceive and do in fact deceive a substantial portion of the purchasing public. That deception is due primarily to the words of the labels, and not to deliberate deception by the retailers from whom the consumer purchases. While it is true that a secondary meaning of the word "Merino" is shown, it is not a meaning so thoroughly established that the description which the label carries has ceased to deceive the public; for even buyers for retailers and sales people are found to have been misled. The facts show that it is to the interest of the public that a proceeding to stop the practice be brought. And they show also that the practice constitutes an unfair method of competition as against manufacturers of all-wool knit underwear and as against those manufacturers of mixed wool and cotton underwear who brand their product truthfully. For when misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods. That these honest manufacturers might protect their trade by also resorting to deceptive labels is no defense to this proceeding brought against the Winsted Company in the public interest.

The fact that misrepresentation and misdescription have become so common in the knit underwear trade that most dealers no longer accept labels at their face value does not prevent their use being an unfair method of competition. A method inherently unfair does not cease to be so because those competed against have become aware of the wrongful practice. Nor does it cease to be unfair because the falsity of the manufacturer's representation has become so well known to the trade that dealers as distinguished from consumers are no longer deceived.

The honest manufacturer's business may suffer, not merely through a competitor's deceiving his direct customer, the retailer, but also through the competitor's putting into the hands of the retailer an unlawful instrument, which enables the retailer to increase his own sales of the dishonest goods, thereby lessening the market for the honest product. That a person is a wrongdoer who so furnishes another with the means of consummating a fraud has long been a part of the law of unfair competi-

tion.³ And trade-marks which deceive the public are denied protection although members of the trade are not misled thereby.⁴ As a substantial part of the public was still misled by the use of the labels which the Winsted Company employed, the public had an interest in stopping the practice as wrongful; and since the business of its trade rivals who marked their goods truthfully was necessarily affected by that practice, the Commission was justified in its conclusion that the practice constituted an unfair method of competition; and it was authorized to order that the practice be discontinued.

Reversed.

Mr. Justice McREYNOLDS dissents.

ROYAL BAKING POWDER CO. v. FEDERAL
TRADE COMMISSION.¹

(Circuit Court of Appeals, Second Circuit. May 1, 1922.)

No. 263.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—FEDERAL TRADE COMMISSION'S FINDING, SUPPORTED BY EVIDENCE, CONCLUSIVE.

Under Federal Trade Commission act (Comp. St. par. 8836a-8836k) findings of the Trade Commission, supported by testimony, are conclusive.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—FEDERAL TRADE COMMISSION'S FINDING OF UNFAIR COMPETITION IN MISLEADING PUBLIC INTO THINKING PRESENT PRODUCT SAME AS PRODUCT FORMERLY SOLD HELD SUPPORTED BY EVIDENCE.

Where, due to the increased cost of cream of tartar, defendant discontinued manufacturing its widely advertised brand of cream of tartar baking powder, which had been on the market for 60 years, and began to manufacture a phosphate baking powder and advertised it for sale at about one-half the former price under practically the same trade name and put up in similar containers, the Trade Commission's findings that this method was misleading to the public and unfair to other manufacturers selling cream of tartar baking powder was justified by the evidence.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—MISLEADING PUBLIC BY FALSE LABELING AND ADVERTISEMENTS HELD UNFAIR METHOD OF COMPETITION

Where a manufacturer, by employing false and misleading labeling and advertising, induced the public to believe that a

³ Von Mumm v. Frash, 56 Fed. 830; Coca Cola Co. v. Gay-Ola Co., 200 Fed. 720, 722; New England Awl & Needle Co. v. Marlborough Awl & Needle Co., 108 Mass. 154, 155.

⁴ Manhattan Medicine Co. v. Wood, 108 U. S. 218; Worden v. California Fig Syrup Co., 187 U. S. 516, 538.

¹ Reviewing and affirming Commission's order in 4 F. T. C. 1.

phosphate baking powder which it was manufacturing was the same as a more expensive cream of tartar baking powder which it had formerly manufactured, this misrepresentation was an "unfair method of competition," which can be prevented by the Trade Commission, under act September 26, 1914, paragraph 5 (Comp. St., par. 8836e).

(The syllabus is taken from 281 Fed. 744.)

Petition to Review Order of the Federal Trade Commission.

Petition by the Royal Baking Powder Company to revise an order of the Federal Trade Commission. Order affirmed.

Moore, Hall, Swan & Cunningham, of New York City (William A. Moore and John H. Jackson, both of New York City, of counsel), for petitioner.

W. H. Fuller, Chief Counsel Federal Trade Commission, and James T. Clark, both of Washington, D. C., for respondent.

Before Rogers, Hough, and Manton, Circuit Judges.

ROGERS, *Circuit Judge*:

The Congress has passed what is known as the Federal Trade Commission Act. This act was approved on September 26, 1914. 38 U. S. St. at L., c. 311, p. 717.

The act authorized the creation of the Federal Trade Commission, to be composed of five commissioners, to be appointed by the President with the advice and consent of the Senate. It declares that unfair methods of competition in commerce are unlawful. The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers, from using unfair methods of competition in commerce.

The constitutionality of this act was challenged in *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307. The act invests the Commission with certain quasi-legislative and quasi-judicial power, and it was argued that there was an unlawful delegation both of legislative and judicial power. The Circuit Court of Appeals in the Seventh Circuit in the above-named case had no difficulty in sustaining the validity of the statute, and it pointed out that grants of similar authority to administrative officers and bodies had not been found repugnant to the Constitution, citing cases. In the cases which have been before us no attempt has been made to deny the validity of the act, and it is not questioned in the case now before us.

The Federal Trade Commission on February 4, 1920, caused a complaint to be issued against the Royal Baking Powder Co., a corporation organized under the laws of the State of New Jersey. The Royal Baking Powder

Co., hereinafter referred to as the petitioner, is engaged in manufacturing and selling in interstate commerce, and in competition with many other concerns similarly engaged, baking powders not only under its own name but in the name of its constituent companies, and particularly the Price Baking Powder Co., which was one of four preexisting corporations with which it was consolidated.

The complaint alleges that the petitioner is engaged in violating the provisions of section 5 of the act of Congress approved September 26, 1914, 38 St. at L. 717. That is the act which created the Federal Trade Commission and defined its powers and duties.

The petitioner in due time filed its answer and testimony was taken, and after oral argument before the Commission, the Commission made its findings and issued the order which we are now asked to review.

Section 5 of the act among other things declares "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."

The Commission in carrying into effect the provisions of the act is authorized to institute proceedings against those it has reason to believe are violating the terms of the statute. The proceedings which the Commission is authorized to institute are not punitive and no form of punishment is provided. It is not intended that compensation is to be made for any injuries which may have been suffered. The intent of the act is the prevention of injury to the general public. What the Commission is created to deal with is not acts of unfair competition but the use of unfair *methods* of competition.

The act provides that if at the hearing the Commission is of the opinion that the method of competition in question is prohibited by the act it shall make a report in writing in which it shall state its findings as to the facts, and that it shall issue an order requiring the person, partnership, or corporation found to be engaged in such unfair method "to cease and desist from using such method of competition"; and the act also provides that in any application to this court, either to enforce the order, or to affirm, set aside, or modify it "the findings of the Commission as to the facts, if supported by testimony, shall be conclusive."

The transcript of record which in this case has been filed in this court contains voluminous findings made by the Commission, covering 20 printed pages. These findings seem to us to be supported by the testimony, and they are therefore to be accepted and treated as conclusive.

The length of the findings makes it undesirable to incorporate them herein *ipsis* *verbis*, and we are compelled to confine ourselves to a statement of the sub-

stance thereof. From the findings as made it appears that the petitioner has been engaged since its organization in 1899 in the manufacture of baking powders and in their sale and shipment in interstate and foreign commerce. In 1899 it acquired the entire capital stock of the Price Baking Powder Co., the Cleveland Baking Powder Co., and a former corporation also known as Royal Baking Powder Co. The baking powder manufactured by the Price Baking Powder Co. was known as "Dr. Price's Cream Baking Powder." The Cleveland company manufactured the "Cleveland Superior Baking Powder," and the former Royal Baking Powder Co. the "Royal Baking Powder." And after the petitioner acquired the stock of these companies it continued the manufacture and sale of these three brands of powder. From 1899 to 1917 it had sold "Dr. Price's Cream Baking Powder" under the name of the Price Baking Powder Co., but in 1917 and thereafter up to September, 1919, it manufactured and sold it under its own name.

Baking powder consists of (1) a carbonate, usually bicarbonate of soda, mixed with (2) an acid ingredient capable of reacting with the alkaline carbonate, when moistened, and setting free carbonic acid gas, which gas raises the dough, and (3) a filler, usually flour or cornstarch, which tends to prevent any premature reaction caused by the moisture in the air.

The baking powder known as "Dr. Price's Cream Baking Powder" was originated in 1853 by Dr. Vincent C. Price, a physician, and was manufactured by him, and by various firms of which he was a member, up to 1884, when the Price Baking Powder Co. acquired the business and continued the manufacture and sale of said baking powder until the business was taken over by the petitioner, and during all of said time and until September, 1919, the said baking powder was a cream of tartar baking powder, and was advertised and sold exclusively as such. Doctor Price never manufactured a phosphate baking powder.

For a period of over 60 years prior to September, 1919, the "Dr. Price's Cream Baking Powder" had been marketed and advertised exclusively as a cream-of-tartar baking powder, and for at least 35 years (1884-1919) the petitioner and its predecessor, the Price Baking Powder Co., carried on an extensive advertising campaign throughout 22 States in the middle and western sections of the country to establish in the minds of consumers the superiority, especially from the point of view of healthfulness, of its cream-of-tartar baking powder and the inferiority of the baking powders manufactured and sold by competitors and containing phosphate or alum, or both, as their acid ingredients, which competing powders were represented by the petitioner to be unwholesome and deleterious.

Through circulars, pamphlets, cookbooks, newspapers, and other forms of advertising the petitioner for many

years prior to September, 1919, warned the purchasing public against the use of phosphate baking powders and asserted that cream of tartar was the only acid ingredient which should be used in baking powder. It emphasized the wholesomeness and food value of cream of tartar and maintained that phosphate was unwholesome and dangerous as an ingredient, was produced either by dissolving bones in oil of vitriol or from rocks formed by the action of the excreta of birds and animals on limestone. It referred to phosphate as "bone-acid" or "lime phosphate," and alleged that it was of purely mineral origin, left objectionable mineral residues in the food, and many other statements to the same or similar effect. It further asserted that it had never manufactured any but exclusively cream-of-tartar powders, that no cream-of-tartar baking powder ever contained phosphate, and that no phosphate powder ever contained cream of tartar.

By means of such advertising the petitioner was able to sell large quantities of its cream-of-tartar baking powder under the name "Dr. Price's Cream Baking Powder," in competition with phosphate baking powders and alum baking powders, selling for about one-half and one-fourth, respectively, of the selling price of petitioner's said cream-of-tartar baking powder.

The petitioner continued up to May 28, 1919, to publish and circulate disparaging advertisements concerning baking powders containing such phosphate.

In July, 1919, because of the scarcity and increased cost of cream of tartar, respondent determined to change Dr. Price's Cream Baking Powder, which had been well known for 60 years as a cream-of-tartar baking powder, to a phosphate powder and to conserve the available supply of cream of tartar for its other brands. Cream of tartar had increased in price until at that time it cost more than five times as much as phosphate.

In a "News Item for Trade Papers" petitioner asserted that in view of the high cost and scarcity of cream of tartar, the growing demand for a pure baking powder at a low price, and recent scientific developments in phosphate, which permitted the manufacture of a pure high-grade phosphate baking powder containing no deleterious or objectionable substances at a very much lower price, it had decided to change its well-known Doctor Price brand from a cream of tartar powder to a straight phosphate baking powder, to be sold at approximately one-half its former price after November 1, 1919.

The petitioner began the manufacture of said phosphate powder in September, 1919, and put the same on the market about the middle of November, 1919, in the States of Illinois, Wisconsin, Missouri, and part of Kansas. The label on the new goods was the same as had been previously used on the cream of tartar powder, except that a small circular "World's Fair Award" sticker was omitted from the front panel, and a clause

headed "A Pure Phosphate Powder" was printed in red diagonally across the back panel, giving the new ingredients, "Bicarbonate of Soda, Phosphate, Cornstarch." There was retained on this label the declaration in heavy black type, more conspicuous than the red overprint, that the powder contained "Pure Grape Cream of Tartar, Tartaric Acid."

In August, 1919, the petitioner ordered 18,000,000 new labels printed, to be used as the permanent label for the new phosphate baking powder. All of the distinctive features of the old cream of tartar labels were retained on these new labels, including the name "Dr. Price's," which had been advertised for many years as denoting exclusively a cream of tartar powder and not a phosphate powder. Quotation marks were placed around the word "Cream," registered as a trade-mark by petitioner, and the design of a cornucopia containing clusters of grapes was modified by changing the grapes to flowers, but retaining the general contour. At the bottom of the front panel the legend "Perfectly Pure" was replaced by the words "A Pure, Phosphate Powder" in the same size of type, "Standard for 60 years," became "Makers for 60 years"; and various other minor changes were made.

These new permanent labels, the Commission found, were so like the labels previously used by petitioner on the cream of tartar powder in arrangement of lettering and design, in coloration and general appearance, as to cause the one to be mistaken for the other and to confuse and mislead purchasers familiar with the former product as to the character of the contents of the new cans. In its efforts to avoid as far as possible any striking modification of the general appearance of the containers, respondent caused the bottom of the new cans to be forced up to make allowance for the smaller bulk of the phosphate goods. The petitioner's president regarded any change in the general appearance or coloration of the label inadvisable.

At the time the new phosphate powder was first put on the market the petitioner began an advertising campaign in newspapers, trade journals, and on billboards, window posters, card displays, and motion-picture films. In these advertisements the fact that the new powder was to be offered to the public at about one-half of the former price was given emphasis. In some instances the advertisements failed to make any mention whatever of the change from cream of tartar to phosphate as the acid ingredient. In others a reference was made in the body of the advertisement to the use of "new methods of production with pure phosphate." No mention of phosphate appeared in the headings of any of the advertisements prior to the beginning of the proceeding before the Commission, except that three of the advertisements bore the caption "The 'Cream' of Phosphate Baking Powders."

The following are examples, which might easily be multiplied, of respondent's advertisements of the new powder which contained no mention of phosphate.

WHAT ONE NEIGHBOR TOLD ANOTHER.

"Have you heard the good news? The price of Dr. Price's Baking Powder has been reduced nearly one-half. When the grocer told me, I just threw away that alum mixture I have been using, and ordered a can of

DR. PRICE'S

Baking Powder

A name famous for 60 years is a guaranty of quality," etc.

Again:

Don't Increase The High Cost of Living

By spending your shrunken dollar and risking your health, for doubtful baking powders when you can now get

DR. PRICE'S

Baking Powder

At about one-half the former cost.

A name famous for 60 years assures quality and dependability.

Again:

Putting More in the Market Basket

The greatly reduced price of Dr. Price's Baking Powder enables you to put more good things in your market basket. The saving will help pay for the flour and other things you put in your cakes, and besides, you are assured of the wholesomeness of

DR. PRICE'S

Baking Powder

A name famous for quality for 60 years.

In addition, the petitioner used for advertising purposes billboard posters and motion-picture slides which tended to create the belief on the part of the public that the new powder which it was placing on the market was in fact Price's baking powder, which had been well known for 60 years as a cream of tartar powder, and to conceal or obscure the fact that it was a radically different powder.

The Commission found that the advertising was false and misleading in representing to the public that the price of said new phosphate baking powder had been reduced to about one-half its former cost when in fact the price of said powder had been at all times the same, and petitioner's use on a phosphate baking powder of a brand which had by its own efforts become identified exclusively with a cream of tartar powder as opposed to a phosphate powder, which latter type of powders respondent had for many years denounced as undesirable and unhealthful, was calculated and designed to deceive

and did deceive the public, and especially such part of the public as was accustomed to obtain a pure cream of tartar baking powder under the well-known brand "Dr. Price's Baking Powder."

The Commission also found that petitioner's said advertising and its said conduct in using said well-recognized brand or name upon a phosphate baking powder tended, under the circumstances hereinbefore set forth, unfairly to hinder and obstruct the business of competitors engaged in manufacturing and selling cream of tartar baking powder at their normal prices, which were approximately double the prices asked by respondent for said phosphate powder.

The Commission further found that the petitioner's method of advertising and branding also tended unfairly to hinder and obstruct the business of respondent's competitors engaged in the manufacture and sale of phosphate baking powders in competition with said phosphate baking powder of respondent selling at an alleged reduced price under a name used for 60 years on an exclusively cream of tartar powder.

The Commission therefore declared that the petitioner was using unfair methods of competition in interstate and foreign commerce in violation of the act of September 26, 1914.

It thereupon issued its order directing the petitioner to cease and desist from:

"1. Using on the new phosphate baking powder manufactured by it the so-called 'overprint label' or the so-called 'new label' heretofore used by it, or any label simulating or resembling in coloration, design, or general appearance the labels formerly used by respondent on its 'Dr. Price's' brand of cream of tartar baking powder.

"2. Selling, or advertising for sale, said phosphate baking powder under the name 'Dr. Price's' or 'Price's' unless the word 'cream' is omitted and the word 'phosphate' is incorporated as part of the name of said baking powder on the labels thereof and in the advertisements relating thereto.

"3. Advertising or representing, in connection with the sale of said phosphate baking powder, that respondent's 'Dr. Price's' cream of tartar brand of baking powder has been reduced in price.

"4. Representing, by advertising or otherwise, that said phosphate baking powder is the baking powder sold by respondent for many years under its 'Dr. Price's' brand."

As this court is satisfied upon a careful examination of the transcript that the findings are amply justified by the evidence, the sole question left for us to determine is whether the order is one within the jurisdiction of the Commission and therefore valid.

The petitioner contends that misrepresentation of the quality or ingredients of one's own goods is not "an

unfair method of competition" within the meaning of the Federal Trade Commission Act. Counsel for the petitioner argues that no statute or decided case has declared that a manufacturer or trader owes to his competitors the duty of refraining from misrepresentation of the quality or ingredients of his own goods and that, on the contrary, it has been firmly held that no such duty exists. And it is said that in making the order now under review the Commission assumed not only to create a new rule of substantive law but to destroy one of long standing and universal acceptance. And our attention is called to the following cases in support of the above contention: *American Washboard Co. v. Saginaw Mfg. Co.*, 103 Fed. 281; *Borden's Condensed Milk Co. v. Horlick's Malted Milk Co.*, 206 Fed. 949; *Armstrong Cork Co. v. Ringwalt Linoleum Co.*, 235 Fed. 458. The first two of these three cases were decided prior to the enactment of the statute which created the Federal Trade Commission and defined its powers. The third case is a decision of the District Court of New Jersey and contains no reference to the statute creating the Federal Trade Commission. It was decided upon the authority of the *American Washboard Co.* case, which it followed, and which we shall refer to more fully in a moment.

In the district court the defendant moved to dismiss the bill, under equity rule 29, on the ground that it did not state facts sufficient to constitute a cause of action. The motion was granted, and the case was taken to the Circuit Court of Appeals for the Third Circuit and there reversed, without, however, any expression of opinion upon the merits. That court remanded the case with directions to reinstate the bill, overrule the demurrer, and proceed to final hearing, without prejudice to the right to raise the question as to the sufficiency of the bill. The court added:

We might add that, in view of the possibility of bringing such matters as are here involved before the Federal Trade Commission, this order is made without prejudice to the rights of the parties, while this appeal is pending, to apply for relief to that body if it so desires. (*Armstrong Cork Co. v. Ringwalt Linoleum Works*, 240 Fed. 1022.)

Afterwards this matter was brought before the Federal Trade Commission, and an order was made by it to cease and desist from using the word "linoleum," and from such order no appeal was taken.

In the *American Washboard Co.* case the complainant was the manufacturer of a washboard having the rubbing face made of aluminum and upon which it used the word "Aluminum" as a trade name. It was the only manufacturer of such boards in the country, having secured a monopoly of all the sheet aluminum produced which was suitable for use in their manufacture. The bill which asked for an injunction alleged that the defendant had placed on the market a washboard on which it used the

word "aluminum" by reason of which the public was deceived into buying it as a genuine aluminum wash-board, although there was none of that metal in its composition. The Circuit Court of Appeals for the Sixth Circuit, then composed of Judges Taft, Lurton, and Day, each of whom later became a member of the Supreme Court, held that the facts alleged did not entitle the complainant to relief, since it was not shown that purchasers bought defendant's board in the belief that they were made by complainant. In the course of the opinion, which was written by Judge Day, he said:

Can it be that a dealer who should make such articles only of pure wool could invoke the equitable jurisdiction of the courts to suppress the trade and business of all persons whose goods may deceive the public? We find no such authority in the books, and are clear in the opinion that, if the doctrine is to be thus extended, and all persons compelled to deal solely in goods which are exactly what they are represented to be, the remedy must come from the legislature, and not from the courts.

The above case illustrates the reason which led Congress to enact the statute creating the Federal Trade Commission and making unfair methods of competition unlawful and empowering the commission to put an end to them. By that statute the identical situation which the court in the above case said it was beyond its power to suppress has been brought within the jurisdiction of the Federal Trade Commission—created to redress unfair methods of competition. Before the enactment of the Federal Trade Commission Act the courts appear to have had jurisdiction of an action for unfair competition only when a property right of the complainant had been invaded. But the Federal Trade Commission Act gave authority to the Commission itself when it had reason to believe that any person, partnership, or corporation was using any unfair method of competition in commerce, if it appeared to it that a proceeding by it in respect thereof "would be to the interest of the public," to bring such offending party before it to answer to its complaint and after a hearing could, upon good cause shown, require it to cease and desist from its unlawful methods.

The answer to the contention of the counsel for the petitioner is found in a recent decision of the Supreme Court, which has not yet been published.² In *Winsted Hosiery Co. v. Federal Trade Commission*, 272 Fed. 957, this court had before it the method of an underwear manufacturing company of branding its products as wool, merino, etc., when in fact they were composed only partly of wool or merino. A great deal of testimony had been taken which this court thought fully established that the trade was not misled in any respect by the label complained of. But some witnesses testified that in their opinion some part of the consuming public was or might

² *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. —, 42 Sup. Ct. 384.

be misled into thinking the underwear so described was pure wool. It also appeared that the method of branding which this manufacturer pursued was in accord with the general custom and practice of the underwear trade throughout the United States and was well known to and recognized by the distributors of underwear in this country. We therefore held that the order of the Federal Trade Commission requiring the particular manufacturer to desist from such methods was error and did not constitute unfair competition. The reversal of the case by the Supreme Court has established the principle that advertisements which are false in fact constitute an unfair method of competition, although it was one commonly practiced and not intended to mislead the trade. The labeling of commodities in such a way as to deceive the public is an unfair method of competition. The manufacturer must not brand his goods as "wool" when they are part wool and part cotton. And it is now made plain that the statute has invested the Commission with jurisdiction to order anyone who misrepresents the quality of his goods in his advertising to cease and desist from such unfair methods of competition.

In the case now before the court the Commission was convinced and its opinion was justified by the evidence that the petitioner in the use of its labels, and otherwise, was employing false and misleading advertising which was calculated and designed to deceive the public and which did deceive the public into buying a phosphate baking powder believing that it was the Dr. Price's Baking Powder, which had been well known for 60 years as a cream of tartar powder, concealing and obscuring the fact that it was a radically different powder. The case is plainly governed by the principle laid down in the Winsted Hosiery Co. case.

The novelty of the present case lies in the fact that the manufacturer is passing off one of his products for another of his own products, and the basis of this proceeding is the deception of the public.

In *Sears, Roebuck & Company v. Federal Trade Commission*, supra, decided in 1919, the Commission had entered an order commanding a mail-order house to desist from circulating catalogues containing advertisements falsely representing to the public that because of its large purchasing power and quick-moving stock it was able to sell sugar at a price lower than its competitors. Manifestly such advertisements tended to injure competitors and to deceive purchasers, and the Commission's order was sustained, although it was subjected to verbal modification.

The difference in principle between that case and the one now before us is, at best, simply one of degree. The method of advertising adopted by the Royal Baking Powder Co. to sell under the name of Dr. Price's Cream

Baking Powder an inferior powder, on the strength of the reputation attained through 60 years of its manufacture and sale and wide advertising of its superior powder, under an impression induced by its advertisements that the product purchased was the same in kind and as superior as that which had been so long manufactured by it, was unfair alike to the public and to the competitors in the baking powder business. The purpose of the Congress in creating the Federal Trade Commission was aimed at just such dishonest practices, and business concerns that resort to dishonest devices of this nature must understand that they can not add to their revenues or maintain their business standing by methods of competition which the law brands as "unfair" and therefore unlawful.

The order of the Commission is affirmed.

RAYMOND BROS.-CLARK CO. v. FEDERAL
TRADE COMMISSION.¹

(Circuit Court of Appeals, Eighth Circuit. May 8, 1922.)

No. 216.

I. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY
No. 68—CEASING TO PURCHASE FROM MANUFACTURER, UNLESS
SALES TO COMPETITOR CEASE, IS NOT UNFAIR COMPETITION.

A wholesaler has a right to purchase merchandise or refuse to purchase it from any person he chooses, and for any reason, or no reason at all, and to refuse to make further purchases from a manufacturer unless that manufacturer agrees to cease selling to another wholesaler, who was also engaged in the retail business, without being guilty of unfair methods of competition, contrary to the Federal Trade Commission act (Comp. St., pars. 8836a-8836k).

(The syllabus is taken from 280 Fed. 529.)

Petition to Review Order of the Federal Trade Commission.

Petition by the Raymond Bros.-Clark Co. to review an order of the Federal Trade Commission. Petition granted, and order vacated.

Emmett Tinley, of Council Bluffs, Iowa (W. E. Mitchell and Tinley Mitchell, Pryor, Ross & Mitchell, all of Council Bluffs, Iowa, on the brief), for petitioner.

Adrien F. Busick, of Washington, D. C. (W. H. Fuller, of Washington, D. C., on the brief), for respondent.

¹ Reviewing and setting aside Commission's order in 3 F. T. C. 295. Petition for certiorari granted by the Supreme Court.

Before Sanborn and Carland, Circuit Judges, and
Trieber, District Judge.

CARLAND, *Circuit Judge*:

This is an original proceeding by petitioner to obtain a review of an order of the Commission whereby petitioner, its officers and agents, were ordered to forever cease and desist from directly or indirectly,

“(1) Hindering or preventing any person, firm, or corporation in or from the purchase of groceries, provisions, or the like commodities direct from the manufacturers or producers thereof, in interstate commerce, or attempting so to do.

“(2) Hindering or preventing any manufacturer, producer, or dealer in groceries, provisions, and the like commodities in or from the selection of customers in interstate commerce, or attempting so to do.

“(3) Influencing or attempting to influence any manufacturer, producer, or dealer in groceries, provisions, and the like commodities, not to accept as a customer any firm or corporation with which the manufacturer, producer, or dealer in the exercise of a free judgment, has or may desire to have such relationship.”

This order was made in a proceeding commenced by the Commission against petitioner for the alleged violation of the provisions of Sec. 5 of an Act to create a Federal Trade Commission, approved Sept. 26, 1914 (38 Stat. 717), in using an unfair method of competition against the Basket Stores Company, a corporation organized under the laws of Nebraska. Although the charge made against petitioner was with reference to said Basket Stores Co., the order above set forth is as broad as the business world, and in any event would have to be modified if it were to be sustained in any particular. The order, however, was made pursuant to findings of fact made by the Commission, which are as follows:

“(1) Respondent is a corporation organized under and existing by virtue of the laws of the State of Nebraska. Its principal place of business is at Lincoln, Nebraska. Respondent's business is that of a wholesale grocer, buying groceries, provisions, and the like commodities in wholesale quantities from the manufacturers thereof throughout the United States, which commodities are transported from points outside the State of Nebraska to the warehouse of the respondent at Lincoln, Nebraska, and are resold and transported to customers in and beyond the State of Nebraska. The business operations of the respondent include sales and deliveries in Nebraska, Colorado, Kansas, Wyoming, South Dakota, and Montana, and its annual volume of business is approximately \$2,500,000.00. In the conduct of its business the respondent is in competition, among others, with the Basket Stores Company.

"(2) The Basket Stores Company is a corporation organized under and existing by virtue of the laws of the State of Nebraska. Its principal place of business is at Omaha, Nebraska. The Basket Stores Company conducts two lines of business—one, that of a wholesale grocer, and that of retail selling through a chain or organization of retail stores. As a wholesale grocer, the Basket Stores Company maintains a warehouse at Omaha and a branch warehouse at Lincoln, Nebraska. It buys groceries, provisions, and the like commodities in wholesale quantities from the manufacturers thereof throughout the United States, which commodities are transported from points outside the State of Nebraska to the warehouses of the Basket Stores Company at Omaha and Lincoln, Nebraska, and are resold in part and transported to customers within and outside the State of Nebraska. This part of the Basket Stores Company's business is about ten per cent of the total. The Basket Stores Company was licensed as a wholesale grocery house by the U. S. Food Administration, which fact was known to the respondent. The Basket Stores Company also operates a series or chain of retail stores, seventy-two in number, four of which are in Iowa, the remainder being located in Nebraska. There are, at this time, eighteen stores operated by the Basket Stores Company in Lincoln. The groceries, provisions, and like commodities distributed through these stores were supplied from the Basket Stores Company's warehouses. About ninety per cent of the company's business was done through these retail stores. The total annual volume of the Basket Stores Company's business is approximately \$2,500,000.00.

"(3) In the month of September, 1918, a representative of F. A. Snider Preserve Company solicited from the Basket Stores Company's officials at its head office at Omaha and obtained an order for commodities produced by the Snider Company, to be shipped to the warehouse of the Basket Stores Company at Lincoln. The Snider Company also secured orders from the respondent and other customers in neighboring communities. The commodities sold in and around Lincoln were placed by the Snider Company in one car, consigned to respondent at Lincoln, making up what is known as a "pool" car, to get the benefit of the freight rate on a car-lot shipment. The Snider Company sent to respondent a statement of the car contents showing the various business houses for which certain specified goods were intended, the Basket Stores Company, and its purchase from Snider Company being shown on this statement.

"(4) This pool car consigned to respondent reached Lincoln, Nebraska, on October 10, 1918, and was promptly unloaded and the contents distributed by respondents. Its own commodities were placed in its warehouse, the commodities belonging to business houses outside of

Lincoln were reconsigned to them by local freight, and the other purchasers in Lincoln were notified of the arrival of their goods and promptly obtained the same, except the Basket Stores Company. The commodities belonging to this company were stored in respondent's warehouse. The Basket Stores Company was not notified of the arrival of these goods in Lincoln or of their presence in respondent's warehouse, and no opportunity to obtain its goods was afforded the Basket Stores Company until November 15th, 1918, when respondent notified the Basket Stores Company of the presence of its property.

"(5) The Basket Stores Company was in need of these commodities for its trade, its stock of these goods was low, and the delay in receipt due to the actions and failure of the respondent to extend to the Basket Stores Company the same course of dealing that it used with all the other owners of commodities contained in the pool car was a hindrance and an obstruction to the Basket Stores Company in the conduct of its business in competition with the respondent and others in the wholesale trade and with its competitors in the retail trade.

"(6) On October 8, 1918, prior to the arrival of the pool car at Lincoln, the respondent, having received the statement from F. A. Snider Preserve Company regarding the contents of the car and the distribution to be made thereof, in writing protested to the Snider Company against the sale direct to the Basket Stores Company and asked for the allowance of the regular jobbers' profit on the sale as though made through respondent. The Snider Company did not reply to this letter. Subsequent to the arrival of the car at Lincoln, the distribution of its contents to the owners thereof, except as to the Basket Stores Company, and while the goods purchased by that company were in respondent's custody respondent wrote the Snider Company on October 22, 1918, referring to the unanswered letter and asking what it was to charge the Snider Company for checking out, unloading, and reshipping the other jobbers' goods. It likewise wrote the Snider Company on the same day with reference to damage to goods in transit. In response to a request from the Snider Company for payment respondent wrote on November 16 declining to make payment to the Snider Company for goods purchased from it by the respondent until reply was made by the Snider Company to respondent's letters (of October 8 and 22) and until allowance was made respondent for the jobbers' commission on the sale to the Basket Stores Company. The Snider Company suggested that respondent remit, taking credit for amounts claimed and explaining fully the reasons therefor. The respondent complied, deducting, among other amounts, the sum of \$100.00 as commission on the sale to the Basket Stores Company. This

deduction, among others, the Snider Company refused to allow and returned the remittance. Whereupon on December 16 respondent wrote the Snider Company, insisting upon the allowance of this commission, protesting against the action of the Snider Company in selling direct to the Basket Stores Company and threatening the Snider Company with the cessation of respondent's business and return of all the goods produced by the Snider Company then in respondent's stock if this commission were not allowed and the Snider Company continued direct sales to the Basket Stores Company.

"(7) Early in January following, the Snider Company sent a representative to Lincoln, who interviewed the president of the respondent in an attempt to obtain a settlement of the controversy, which was not successful. The respondent, in accordance with the statements in its letter of December 16, ceased to purchase from the Snider Company."

The Commission concluded from the above findings of fact that the conduct of petitioner unduly hindered competition between the Basket Stores Co. and others similarly engaged in business, and that the intent and purpose of the petitioner was to press the F. A. Snider Co. to a selection of customers in restraint of its trade and to restrict the Basket Stores Co. in the purchase of commodities in competition with other buyers. We are of the opinion that the findings of the Commission do not show petitioner to have been guilty of an unfair method of competition so far as the Basket Stores Co. is concerned, or others similarly engaged in business. There is no finding that petitioner combined with any other person or corporation for the purpose of affecting the trade of the Basket Stores Co. or others similarly engaged in business. So far as petitioner itself is concerned it had the positive and lawful right to select any particular merchandise which it wished to purchase and to select any person or corporation from whom it might wish to make its purchase. The petitioner had the right to do this for any reason satisfactory to it or for no reason at all. It had a right to announce its reason without fear of subjecting itself to liability of any kind. It also had the unquestioned right to discontinue dealing with any manufacturer or in this particular instance with the F. A. Snider Preserve Co. for any reason satisfactory to itself or for no reason at all. Any incidental result which might occur by reason of petitioner exercising a lawful right can not be charged against petitioner as an unfair method of competition. *U. S. v. Trans-Missouri Freight Association*, 166 U. S. 290; *U. S. v. Colgate & Co.*, 250 U. S. 300; *Victor Talking Machine Co. v. Kemeny*, 271 Fed. 810; *Federal Trade Commission v. Gratz*, 253 U. S. 421; *Jergens v. Woodbury*, 271 Fed. 43, 44; *Cudahy Company v. Frey & Sons*, 261 Fed. 65, 67; *Union Pacific Coal*

Co. v. U. S., 173 Fed. 737; *Dueber Watch-Case Co. v. Howard Watch & Clock Co.*, 66 Fed. 637, 644, 645; *Western Sugar Refining Co. et al. v. Federal Trade Commission* (Ninth Circuit, Oct. 10, 1921)²; *Kinney-Rome v. Federal Trade Commission* (Seventh Cir. Sept. 8, 1921)³; *Sinclair Refining Co. v. Federal Trade Commission*, 273 Fed. 478; *Eastern States Retail Lumber Dealers' Association v. U. S.*, 234 U. S. 600; *U. S. v. American Tobacco Co.*, 221 U. S. 106; *Atlantic & Pacific Tea Co. v. Cream of Wheat Co.*, 227 Fed. 46, 48.

Being of the opinion that the facts found by the Commission do not show an unfair method of competition by petitioner, its petition to revise is granted and the order of the Commission is vacated and set aside.

²275 Fed. 725.

³275 Fed. 665.

APPENDIX III.

RULES OF PRACTICE BEFORE THE COMMISSION.

[Adopted June 27, 1915. Amended as shown by footnotes.]

I. SESSIONS.

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Principal office.

Commission may exercise power elsewhere.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Hearings as ordered.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.

Sessions for orders and other business.

Quorum.

All orders of the Commission shall be signed by the Secretary.

Orders signed by Secretary.

II. COMPLAINTS.

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Who may ask complaint.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Form of application.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at

Commission to investigate.

Issuance and service of complaint.

Notice. a place therein fixed, at least 40 days after the service of said complaint.¹

III. ANSWERS.

Time allowed for answer. Within 30 days from the service of the complaint, unless such time be extended by order of the Commission, the defendant shall file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. It shall specifically admit or deny or explain each of the facts alleged in the complaint, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Answers in typewriting must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide. Three copies of such answers must be filed.²

Form of answer.

Size of paper, margin, etc.

IV. SERVICE.

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director, of the corporation or association to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other

Personal, or

By leaving copy, or

By registered mail.

Return.

¹The third paragraph of Rule II originally read as follows: "The Commission shall investigate the matters complained of in such application, and if upon investigation it shall appear to the Commission that there is a violation of law over which the Commission has jurisdiction, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed at least 40 days after the service of said complaint." It was amended to its present form on Oct. 29, 1915.

²Resolution passed by the Commission Oct. 19, 1920, calls for the filing of three copies of the answer.

process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

V. INTERVENTION.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Form of application.

Permitted by order.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

Size of paper, margin, etc., used on application.

VI. CONTINUANCES AND EXTENSIONS OF TIME.

Continuances and extensions of time will be granted at the discretion of the Commission.

In discretion of Commission.

VII. WITNESSES AND SUBPŒNAS.

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Examination ordinarily oral.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpœnas for witnesses.

Subpœnas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Subpœnas for production of documentary evidence.

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

Witness fees and mileage.

shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees shall be paid by the party at whose instance the witnesses appear.³

VIII. TIME FOR TAKING TESTIMONY.⁴

Examination of witnesses to proceed as fast as practicable.

Notice to counsel.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.⁵

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

³ This sentence added pursuant to resolution passed by the Commission Nov. 19, 1920.

⁴ Rules VIII, IX, X, and XI were not a part of the original rules. They were adopted on Apr. 25, 1917. The rules now numbered XIII, XIV, XV, and XVI were originally numbered VIII, IX, X, and XI.

⁵ The sentence originally read: "Not less than five *nor more than ten* days' notice," etc. It was amended to its present form by resolution passed by the Commission Dec. 9, 1921.

may, in the discretion of the commissioner holding same, be public.

XII. HEARINGS BEFORE EXAMINERS.*

When issue in the case is set for trial, it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown, the Commission shall extend the time. The examiner shall, within 10 days after the receipt of the stenographic report of the testimony, make his proposed finding as to the facts and his proposed order thereon, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, to such proposed findings and order and said exceptions shall specify the particular part or parts of the proposed findings of fact or proposed order to which exception is made, and said exceptions shall include any additional findings and any change in or addition to, the proposed order which either party may think proper. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions to the proposed findings and order, if exceptions be filed, shall be had at the final argument on the merits.

Examiner to take testimony.

Testimony to be completed within 30 days except for good cause.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument thereon.

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.

* Rule adopted by the Commission May 20, 1921, making rules therefore XII to XV, inclusive, XIII to XVI. The language of the first sentence of the rule was changed by resolution passed by the Commission Jan. 25, 1922, and again, to its present form, Sept. 22, 1922.

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.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. The presiding Commissioner or Examiner shall fix the time within which briefs shall be filed and service thereof shall be made upon the adverse parties. Time of filing.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Twenty⁷ copies of each brief shall be furnished for the use of the Commission, unless otherwise ordered. Filed with secretary with proof of service.

Application for extension of time in which to file any brief shall be by petition in writing, stating the facts upon which the application rests, which must be filed with the Commission at least five days before the time for filing the brief. Applications for extension of time.

Every brief shall contain, in the order here stated—

- (1) A concise abstract or statement of the case. Form of brief.
- (2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited. Requirements if more than 10 pages.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10½ inches, with inside margins not less than 1 inch wide and with double-ledged text and single-ledged citations. Size of type, paper, etc.

Oral arguments will be had only as ordered by the Commission. Oral arguments.

XVI. ADDRESS OF THE COMMISSION.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed. Federal Trade Commission, Washington, D. C.

⁷ Fifteen copies originally called for. Amended to its present form July 29, 1920.

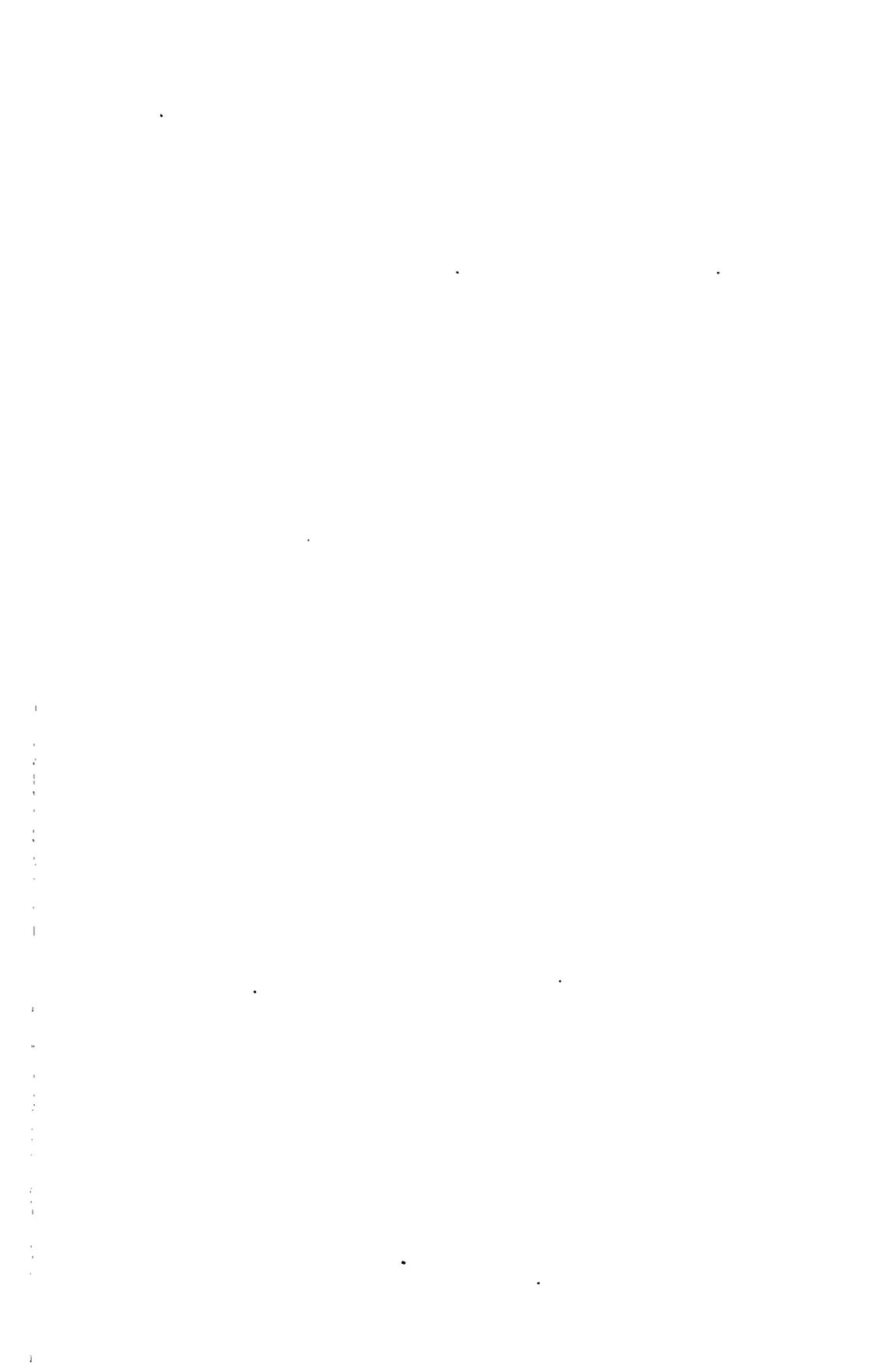


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Not based upon quantity, difference in cost of selling, transportation, competitive conditions, or selection of customers in bona fide transactions and not in restraint of trade. <i>See</i> Discriminating in price.	
Trade directories, furnishing with lists of "legitimate" jobbers as part of plan to block or limit sales to objectionable competitors. <i>See</i> Combining or conspiring.	
Trade-marks or trade names. <i>See</i> Appropriating competitor's firm or business name, etc.; Naming products misleadingly; Simulating.	
Trade periodicals, attempting to cut off or restrict access of price cutters to markets by inducing publishers thereof to refuse their advertising. <i>See</i> Cutting off or restricting access to market.	
Unfair competition or practices condemned in this volume. <i>See</i> Acquiring stock to eliminate competition; Adulterating; Advertising falsely and misleadingly; Appropriating competitor's firm or business name, etc.; Assuming misleading firm or business name; Boycotting; Bribing; Combining or conspiring; Concealing business identity; Cutting off competitors' supplies; Cutting off Customers' supplies; Cutting off or restricting access to market; Discriminating in price; Disparaging or misrepresenting competitors or their products; Inducing breach of competitors' contracts; Intimidating or threatening; Maintaining resale prices; Misbranding or mislabeling; Misrepresenting business status or situation; Misrepresenting prices; Misrepresenting products; Naming products misleadingly; Offering deceptive inducements to purchase; Simulating; Spying on competitor's business; Violating agreement to discontinue unfair practices.	
United States. <i>See</i> Government.	
Used products, offering as new or rebuilt. <i>See</i> Misrepresenting products.	
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Wholesaler. <i>See</i> Jobber.	
Withdrawal of patronage. <i>See</i> Boycotting; Combining or conspiring; Cutting off competitor's supplies.	

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