

AND STYLE OF AUTO SURPLUS STOCK CO.

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

Docket No. 191.—April 15, 1919.

SYLLABUS.

Where a firm dealing in automobile supplies, parts, and accessories knowingly adopted and used a firm name so similar to one already in use by a competitor that it resulted in confusion on the part of customers and the public as to the identity of the respective firms:

Held, That the adoption and use of a similar firm name, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Bert Symonds, Genevieve Symonds, and Irving Symonds, copartners, doing business under the firm name and style of Auto Surplus Stock Co., 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 respondents, Bert Symonds, Genevieve Symonds, and Irving Symonds, are copartners doing business under the firm name and style of Auto Surplus Stock Co., having their principal office and place of business located at the city of Chicago, State of Illinois, and are now, and were at all times hereinafter mentioned, engaged in the business of selling automobile supplies, parts, and accessories throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business, respondents purchase the aforesaid automobile supplies, parts, and accessories in the various States of the United States and the Territories thereof, and transport the same through other States and Territories in and to the city of Chicago, State of Illinois, which are from there sold, by means of catalogues and circulars, and shipped to dealers in different States and Territories of the United States and the District of Columbia, and there is continually, and has been at all times herein mentioned, a constant current of trade and commerce in said automobile supplies, parts, and accessories between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and especially from other States and Territories of the United States, the District of Columbia, and foreign countries to and through the city of Chicago, State of Illinois, and from there to and through other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 3. That L. H. Smith and S. N. Dover are copartners, having their principal office and place of business located at the city of Chicago, in the State of Illinois, and for the three years last past have been engaged in the business of selling automobile supplies, accessories, and parts in interstate commerce under the firm name and style of Surplus Auto Supply Co., and that such trade name is and was well known to the respondents.

PAR. 4. That the respondents within the year last past began the business of selling automobile supplies, parts, and accessories as aforesaid, and with the purpose, intent, and effect of stifling and suppressing competition in interstate commerce in the sale of such supplies, parts, and accessories has adopted the firm name and style of Auto Surplus Stock Co., advertising and displaying the said firm name in catalogues, circulars, and other advertising matter, all of which simulation is designed and calculated to, and does deceive and mislead the trade and general public and cause purchasers to believe that respondents' firm is one and the same as that of the aforesaid copartners trading as the Surplus Auto Supply Co.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having duly issued and served upon the above-named respondent its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Genevieve Symonds, doing business under the name and style of Auto Surplus Stock Co., has been and now is using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondent having entered appearance and filed answer to said complaint of the Commission and the said respondent thereafter having signed and filed an agreed statement of facts, wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its order disposing of this proceeding without the introduction of testimony in support of the same; the respondent forever waiving and relinquishing any and all right to the introduction of such testimony.

PARAGRAPH 1. That the respondent is Genevieve Symonds, and that said respondent is now and has within the year last past been engaged in business as the sole trader, under the name and style of Auto Surplus Stock Co., and that

during said time said respondent's principal place of business has been located at the city of Chicago, in the State of Illinois; and that said respondent is now, and was at all times hereinafter mentioned, engaged in the business of selling automobile supplies, parts, and accessories throughout the various States and Territories of the United States in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the course and conduct of business, purchases the aforesaid automobile supplies, parts, and accessories in the various States and Territories of the United States and transports the same through other States and Territories of the United States in and to the city of Chicago, State of Illinois, which are from there sold, by means of catalogues and circulars, and shipped to dealers in different States and Territories of the United States, and there is constantly and has been at all times herein mentioned a constant current of trade and commerce in said automobile supplies, parts, and accessories between and among the various States and Territories of the United States, and especially from other States and Territories of the United States to and through the city of Chicago, State of Illinois, and from there to and through other States and Territories of the United States.

PAR. 3. That L. H. Smith and S. N. Dover are copartners, having their principal office and place of business located at the city of Chicago, in the State of Illinois, and for three years last past have been engaged in the business of selling automobile supplies, parts, and accessories in interstate commerce under the firm name and style of Surplus Auto Supply Co., and that such trade name is and was well known to respondent.

PAR. 4. That about January 1, 1918, the respondent began and has up to the present time continued to sell said automobile supplies, parts, and accessories in interstate commerce as aforesaid, under the said trade name of Auto Surplus Stock Co., not incorporated; that at the time this trade name was selected by respondent, she well knew that a competing and established business was being conducted by said L. H. Smith and S. N. Dover, copartners, operating under

the name of Surplus Auto Supply Co., in the next block on the same street in the said city of Chicago and State of Illinois; that from time to time said copartners as Surplus Auto Supply Co. has issued and distributed various catalogues of automobile parts and accessories throughout the various States of the United States of America under said trade name of Surplus Auto Supply Co. A true copy of one of said catalogues so distributed by said Surplus Auto Supply Co. is hereto attached and marked Exhibit "A" and made a part of this record; that in the course of business as aforesaid said Surplus Auto Supply Co. used certain cards and stationery, true copies of which are attached hereto, marked Exhibit "H-2," Exhibit "No. 4," and Exhibit "No. 6" and made a part of this record; that said respondent being fully aware of the distribution of said catalogues and the use of said stationery by said Surplus Auto Supply Co. as aforesaid, issued and distributed throughout the various States of the United States of America a catalogue under the name of Auto Surplus Stock Co., not incorporated, true copies of which are filed herein and described as Exhibit "No. 7" and Exhibit "No. 8" and made a part of this record; that respondent used cards and stationery in the course of business with the said named Auto Surplus Stock Co. and that true copies thereof are filed herein and described as Exhibit "No. 1," Exhibit "No. 3" and Exhibit "No. 5" and made a part of this record; that by reason of the similarity of said trade names, certain confusion has arisen among purchasers buying automobile parts and accessories from both and each of said parties; that by reason of the foregoing, there has been some confusion in the delivery of the United States mail addressed to each of said parties, in that mail intended for the said Surplus Auto Supply Co. has been delivered to the respondent; that by reason of said similarity of trade names more confusion is liable to reoccur in the future; that the similarity in said trade name is such as to deceive and mislead prospective customers of each other and does deceive and mislead the trade and general public and cause persons to believe that respondent's firm is one and the same as that of the aforesaid copartners trading as Surplus Auto Supply Co.

CONCLUSIONS.

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

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having duly issued and served upon the above-named respondent its complaint herein on the 30th day of September, 1918, wherein it alleged that it had reason to believe that said 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 fully stating its charges in that respect, and the said respondent, having duly entered appearance and filed answer to said complaint of the Commission, and the said respondent thereafter being desirous of expediting the disposition of this matter, entered into an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon said statement of facts to make and enter its report stating its findings as to the facts and its conclusions, and to enter its order disposing of this proceeding without the introduction of testimony in support of the same, said respondent forever waiving and relinquishing any and all right to the introduction of such testimony and the Commission having made and filed its report stating its findings as to the facts and its conclusions that the respondent, Genevieve Symonds, doing business under the name and style of Auto Surplus Stock Co., has violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to

define its powers and duties, and for other purposes," said report being hereby referred to and made a part hereof: Now, therefore,

It is ordered: That the respondent, Genevieve Symonds, doing business under the name and style of Auto Surplus Stock Co., city of Chicago, State of Illinois, and respondent's agents, representatives, servants, and employees forever cease and desist from—

Using the name Auto Surplus Stock Co. as a trade name and all words tending to indicate that the business of the respondent is the same as the business of the Surplus Auto Supply Co., or from representing that the business of the respondent is owned, controlled, or managed by the Surplus Auto Supply Co., and from using the name Auto Surplus Stock Co. as applied to selling, offering for sale, or advertising automobile supplies, parts, and accessories.

FEDERAL TRADE COMMISSION *v.* ARMOUR & CO. AND FARMERS' COOPERATIVE FERTILIZER CO.

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

Docket No. 231.—April 15, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of fertilizers—

- (a) Owned the capital stock of a subsidiary corporation engaged in the same business and held the same out to be an independent farmers' cooperative company;
 - (b) Through such subsidiary controlled the purchase of raw materials used by the reputed farmers' cooperative company and the prices at which its products were sold; and
 - (c) Took no steps to disclose to the trade or purchasing public the truth regarding the actual ownership and control of such subsidiary:
- Held*, That the concealed operation of a subsidiary, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Armour & Co. and Farmers' Cooperative Fertilizer 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, 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 located at the city of Chicago, in said State, now and at all times hereinafter mentioned, engaged, directly and through its subsidiary and owned and controlled concerns, in the manufacture, purchase, and sale of fertilizing materials and fertilizers generally in commerce throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; that the respondent, Farmers' Cooperative Fertilizer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at the city of Richmond, in said State, now and at all times hereinafter mentioned, engaged in the purchase and sale of fertilizing materials generally in commerce throughout the United States, the Territories thereof, the District of Columbia, and foreign countries in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. That in the conduct of their business, respondents purchase large amounts of raw materials in different States of the United States, and cause the same to be transported through other States to its factories where they are made or

manufactured into the finished product and then sold and shipped to purchasers thereof in the various States and Territories of the United States, the District of Columbia, and foreign countries; that after such products are so manufactured, they are continuously moved to, from and among other States of the United States and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in said products between and among the various States of the United States, and especially as to respondent Farmers' Cooperative Fertilizer Co. to and through the cities of Richmond, Blackstone and Kenbridge, State of Virginia, and therefrom to and through other States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, Armour & Co., in the conduct of its business purchased, acquired or obtained control of respondent the Farmers' Cooperative Fertilizer Co., and has since and within the three years last past continued to operate the business of said corporation under the trade name of the Farmers' Cooperative Fertilizer Co.

PAR. 4. That respondent, Armour & Co., now and for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of fertilizing materials in interstate commerce, has concealed and still conceals from the purchasing and consuming public its control of interest in and affiliation with respondent, the Farmers' Cooperative Fertilizer Co.; and respondent, Armour & Co., for more than two years last past has permitted, and still permits, respondent, the Farmers' Cooperative Fertilizer Co., to be held out and advertised as wholly independent and without connection with the respondent, and its products to be sold and offered for sale to the public without general disclosure of its real ownership, and respondent has directed the efforts and business of respondent the Farmers' Cooperative Fertilizer Co. and the acquisition of certain trade by respondent the Farmers' Cooperative Fertilizer Co., which respondent, Armour & Co., could not and can not acquire if the control of the Farmers' Cooperative Fertilizing Co. by Armour & Co. were generally known to the public.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served upon the above named respondents, its complaint herein, wherein it is alleged upon information and belief that said respondents have been and now are, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondents having entered their appearances and filed their answers to said complaint, admitting certain allegations therein contained and denying certain others thereof, and having thereafter entered into a stipulation of facts wherein it was agreed that such stipulation of facts might be taken as and in lieu of testimony herein, and that the Commission might proceed without delay on said stipulation to make its findings and order and the Commission having duly considered the same and being fully advised in the premises, is of the opinion that the method of competition in question, set out in the complaint, is prohibited by said act, and makes this its report in writing, stating its findings as to the facts, as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Armour & Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the city of Chicago, in said State, and is now and at all times hereinafter mentioned, has been engaged, through its subsidiary and owned and controlled concerns, and particularly Armour Fertilizer Works, in the manufacture, purchase, and sale of fertilizing materials and fertilizers generally in commerce throughout the States of the United States, the Territories thereof, and the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; that the respondent, Farmers' Coopera-

tive Fertilizer Co. (Inc.), is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at the city of Richmond, in the State of Virginia, the capital stock of which is owned and controlled by the respondent, Armour & Co., through its subsidiary, the Armour Fertilizer Works, and is now and at all times hereinafter mentioned has been engaged in the manufacture and sale of fertilizing materials generally in commerce throughout the States of the United States, the Territories thereof and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Armour & Co., through its subsidiary, Armour Fertilizer Works, in November, 1912, caused to be organized the respondent, Farmers' Cooperative Fertilizer Co. (Inc.), to take over the business of manufacturing and selling fertilizers and fertilizer products in commerce, of the Farmers' Cooperative Guano Co. That respondents have continuously manufactured, advertised, and sold the products of said Farmers' Cooperative Fertilizer Co. (Inc.), in commerce, to the trade and consumers generally from 1912 to 1919 as fertilizers and fertilizer products made and sold by a farmers' cooperative company.

PAR. 3. That since November, 1912, the business of the respondent, the Farmers' Cooperative Fertilizer Co. (Inc.), has been conducted for the benefit of said respondent, Armour & Co., through its subsidiary, the Armour Fertilizer Works, the profits arising from the operation of said business being divided between the said Armour Fertilizer Works and the Farmers' Cooperative Fertilizer Co. (Inc.), in equal shares, up to the summer of 1916, and since said date, upon the basis of 40 per cent of said profits to said Armour Fertilizer Works and 60 per cent to said Farmers' Cooperative Fertilizer Co. (Inc.). That at all times since November, 1912, said respondent, Armour & Co., through its said subsidiary, has controlled the purchase of raw materials used by said Farmers' Cooperative Fertilizer Co. (Inc.) in the course of its business and has controlled the

prices at which said Farmers' Cooperative Fertilizer Co. (Inc.) sold its manufactured products.

PAR. 4. That prior to the service of the complaint herein, neither of the respondents herein or any of their officers or agents, did any acts or took any steps to disclose to the trade or purchasing public the fact of the ownership and control, by the respondent, Armour & Co., through its subsidiary, the Armour Fertilizer Works, of the stock of said Farmers' Cooperative Fertilizer Co. (Inc.), but since the issuance of said complaint on, to wit, January 24, 1919, the words, "Armour owned" have been placed upon all bags, tags, stationery, and advertising material used by the respondent, the Farmers' Cooperative Fertilizer Co. (Inc.), in the conduct of its business.

CONCLUSION.

That the practice of respondents set forth in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and as such are within the meaning, and in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served upon the above-named respondents its complaint herein, wherein it alleged upon information and belief that said respondents have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondents having entered their appearances and filed their answers to said complaint, admitting certain allegations therein contained and denying certain others thereof, and having thereafter entered into an agreed statement of facts wherein it was stipulated and agreed that such agreed statement of facts might be taken as and in lieu of testimony, and

that the Commission might proceed forthwith to make its report and findings as to the facts and issue its order without the introduction of further testimony, and said respondents having waived any and all right to make argument or file briefs and the Commission being fully advised in the premises, having made its report containing its findings as to the facts and its conclusion that respondents had violated the provisions of said section 5, which said report is hereby referred to and made a part hereof; now, therefore,

It is ordered that the respondents, Armour & Co. and Farmers' Cooperative Fertilizer Co. (Inc.), cease and desist from directly or indirectly, through their officers, agents, servants, or owned, controlled, or subsidiary companies, or through any medium whatsoever, selling or offering for sale in commerce fertilizers or fertilizer products manufactured by said Farmers' Cooperative Fertilizer Co. (Inc.) without fully disclosing to the trade and purchasing and consuming public that said respondent Armour & Co., through stock ownership, controls the distribution and sale of the fertilizers and fertilizer products sold or offered for sale in commerce by said respondent Farmers' Cooperative Fertilizer Co. (Inc.).