

DUCTIONS CO.

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

Docket No. 210.—July 18, 1919.

SYLLABUS.

Where a concern engaged in the production, leasing, sale, and exhibition of motion pictures; with a tendency and capacity to mislead the motion-picture theater-going public—

- (a) acquired a substantial number of motion pictures of a well-known actor, William S. Hart, which pictures had theretofore been exhibited throughout the United States and become well known under their respective titles to the motion-picture theater-going public;
- (b) adopted a trade name of "W. H. Productions Co." without the knowledge or consent of said William S. Hart or of the "William S. Hart Productions, Inc.," through which latter company said Hart marketed his motion pictures exclusively;

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(c) changed the title of the motion pictures so acquired; and
(d) advertised, held out, exploited, and exhibited such old pictures with their new titles, without indicating or notifying the motion-picture theater-going public that they had been retitled:

Held, That such simulation and deception 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 Joseph Simmonds, doing business under the trade name and style of W. H. Production 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 general public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., is a resident of the State of New York, with his principal office and place of business located at the city of New York, in said State, now and for more than one year last past engaged in the business of producing, leasing, selling, and exhibiting motion pictures generally in commerce throughout the various 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. 2. That the William S. Hart Productions, Inc., is a Delaware corporation, organized in July, 1917, with offices located at the city of New York, State of New York, and in the city of Los Angeles, State of California, engaged in the business of producing, selling, leasing, distributing, and advertising the motion pictures of one William S. Hart, a motion-picture actor; that such pictures are and have been advertised, distributed, and exhibited in the principal cities

and towns of the States of the United States, the Territories thereof, and the District of Columbia, and the name and pictures of the said William S. Hart, through long-continued advertising and exhibition, constitute and are well-established trade names used and controlled since July 1, 1917, exclusively by said William S. Hart Productions, Inc., and are advertised and commonly known and referred to as "Art-craft pictures."

PAR. 3. That William S. Hart, who resides in the city of Los Angeles, State of California, is a well-known motion-picture actor of national reputation and of unusual ability, who has been constantly before the public for several years and has established himself in the distinctive character of Hart productions, which said productions represent the investment and outlay of large sums of money; that for four years prior to July, 1917, the said William S. Hart was employed exclusively by the New York Motion Pictures Co. as a motion-picture actor in the production of motion pictures, which were extensively distributed throughout the States of the United States by The Triangle Film Co., acting as the distributing agent of said New York Motion Pictures Co., and such pictures became well and extensively known to the motion-picture theater-going public by their respective titles and names under which they were distributed, advertised, and exhibited; that since July, 1917, said William S. Hart has appeared only in pictures made and distributed by the said William S. Hart Productions, Inc.

PAR. 4. That the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., in September, 1917, with the intent, purpose, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, without the consent or knowledge of said William S. Hart or said William S. Hart Productions, Inc., adopted and assumed the trade name of W. H. Productions Co. and has ever since carried on and is now conducting his business under such trade name; that such simulation is calculated and designed to and does deceive exhibitors and the motion-picture theater-going public, and mislead them into the belief that W. H. Produc-

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tions Co. and William S. Hart Productions, Inc., are one and the same.

PAR. 5. That within the year last past the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., with the intent, purpose, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, has produced, sold, leased, advertised, and exhibited motion pictures of the said William S. Hart, which had been made, advertised, produced, and exhibited prior to July, 1917, as aforesaid, and has held out and advertised the same as being those of "The artcraft star"; that such simulation is calculated and designed to and does deceive and defraud exhibitors and the motion-picture theater-going public and mislead them into the belief that "The artcraft star" and "Artcraft pictures" are one and the same.

PAR. 6. That within the year last past the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., with the intent, purpose, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, has produced, sold, leased, advertised, and exhibited motion pictures of the said William S. Hart, which had been made, advertised, produced, and exhibited prior to July, 1917, as aforesaid, under names and titles of the same character and similar or likened to those given to pictures produced, sold, leased, advertised, and exhibited by said William S. Hart Productions, Inc.; that such simulation is calculated and designed to and does deceive and defraud exhibitors and the motion-picture theater-going public, and mislead them into the belief that respondent's pictures and those of said William S. Hart Productions, Inc., are one and the same.

PAR. 7. That within the two years last past the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., with the intent, purpose, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, has produced, sold, leased, exhibited, and advertised, and has offered to sell, lease, and exhibit motion pictures of Charlie Chaplin, William S.

Hart, and other well-known motion-picture actors and actresses, which had theretofore been exhibited to the public and whose titles and names were well known to the patrons of motion-picture theaters, under new names and titles without notifying, apprising, or informing exhibitors and the general public that they were such; that such practices are calculated and designed to and do defraud and deceive the exhibitors and general public and mislead them into the belief that said pictures are new and original and never before exhibited or produced.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered his appearance by Walter N. Seligsberg, Esq., his attorney, duly authorized to act in the premises, and having filed his answer admitting that certain matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, the Federal Trade Commission having presented testimony in support of its case before Hon. John R. Dowlan, examiner for the said Commission, and both parties, desiring to expedite this proceeding and to avoid the time and expense of further litigation, having entered into an agreed statement of facts, wherein is stipulated and agreed that the Federal Trade Commission shall proceed forthwith upon said agreed statement of facts to make and enter its report, stating its findings as to the facts and its conclusions and its order dispos-

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ing of this proceeding without the introduction of further testimony or the presentation of argument in support of the same; now, therefore, the Commission makes and enters this, its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Joseph Simmonds, is a resident of the city and State of New York, with his principal office and place of business located at said city, now and at all times hereinafter mentioned doing business under the trade name and style of W. H. Productions Co., and for more than one year last past engaged in the business of producing, leasing, selling, and exhibiting motion pictures in interstate commerce throughout the various 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. 2. That William S. Hart is a resident of the city of Los Angeles, State of California, and is a well-known motion-picture actor of national reputation and unusual ability, who has been constantly before the public for more than three years last past, and whose name and pictures, and the motion-picture plays in which he has appeared and their names and titles, have become well known to the motion-picture theater-going public throughout the States and Territories of the United States and the District of Columbia.

PAR. 3. That the William S. Hart Productions, Inc., is a corporation organized in July, 1917, under and by virtue of the laws of the State of Delaware, with offices located in the city and State of New York and at Los Angeles, State of California, engaged in the business of producing and selling the motion pictures in which the said William S. Hart appears, and that all the stock and share capital of said corporation save and except the qualifying shares for officers is owned by the said William S. Hart and one Thomas H. Ince, who is director of all said Hart motion pictures.

PAR. 4. That all of the motion pictures in which the said William S. Hart appears, made or produced since July, 1917, have been so made or produced by the said William

S. Hart Productions, Inc. Said pictures are hereinafter named and referred to as new pictures, and such new pictures have become well and extensively known to the motion-picture theater-going public by their respective titles under which they have been distributed, advertised, and exhibited.

PAR. 5. Respondent, Joseph Simmonds, in September, 1917, without the consent or knowledge of the said William S. Hart or said William S. Hart Productions, Inc., adopted and assumed the trade name of W. H. Productions Co. and has ever since conducted and carried on his business under such trade name.

PAR. 6. That during September, 1917, the respondent, Joseph Simmonds, acquired and still owns all the right, title, and interest in and to 21 motion pictures of the said William S. Hart which had been made or produced, and advertised, exhibited, shown, and exploited to the motion-picture theater-going public generally throughout the States of the United States, the Territories thereof, and the District of Columbia, prior to the 1st day of July, 1917, which said pictures are hereinafter named and referred to as old pictures.

PAR. 7. That since the acquisition of the aforesaid old pictures the respondent, Joseph Simmonds, has advertised, exploited, exhibited, and shown such old pictures to the motion-picture theater-going public throughout the States and Territories of the United States and the District of Columbia, under new names or titles, the old and new titles of such motion pictures being as follows, to wit:

Old titles.	New titles.
Fools of Providence.	Dakota Dan.
Cash Parish's Pal.	Double Crossed.
Keno Bates Liar.	The Last Card.
A Knight of the Trail.	A Knight of the Trail.
The Ruse.	A Square Deal.
Pinto Ben.	Horns and Hoofs.
Bad Buck of Santa Ynez.	The Bad Man.
Taking of Luke McVane.	The Fugitive.
The Roughneck.	The Gentleman from Blue Gulch.
The Man From Nowhere.	The Silent Stranger.
Mr. Silent Haskins.	The Marked Deck.
The Grudge.	The Haters.
Passing of Two Gun Hicks.	Taming the Fourflusher.

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Old titles.	New titles.
In the Sage Brush Country.	Mr. Nobody.
Conversion of Frosty Blake.	The Convert.
Grit.	Over the Great Divide.
The Scourge of the Desert.	A Reformed Outlaw.
The Bargain.	The Two-Gun Man in the Bargain.
On the Night Stage.	The Bandit and the Preacher.
The Darkening Trail.	The Hell Hound of Alaska.
Conversion of Frosty Blake.	{The Convert.
	{Staking His Life.

PAR. 8. That the respondent, during the two years last past, has advertised, held out, exploited, and exhibited such old pictures with the new titles as aforesaid, without indicating, apprising, or notifying the motion-picture theater-going public that they had been retitled, and that this advertising, exploiting, and exhibiting aforesaid has had a tendency and a capacity to mislead the motion-picture theater-going public into the belief that such retitled pictures were different from the pictures theretofore issued under their original titles.

PAR. 9. That the respondent, Joseph Simmonds, has not held out and advertised motion pictures of the said William S. Hart as being those of "The Artcraft star."

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraphs 1, 2, 3, 4, 5, 7, and 8, and each and all of them are under the circumstances therein set forth, 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."

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 above-named respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., has been and now is using unfair

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methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered his appearance by Walter N. Seligsburg, Esq., his attorney, duly authorized to act in the premises and having filed his answer admitting that certain matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and the Federal Trade Commission having presented testimony in support of its case before Hon. John R. Dowlan, examiner for the said Commission, and both parties desiring to expedite this proceeding and to avoid the time and expense of further litigation, having entered into an agreed statement of facts, wherein it is stipulated and agreed that the Federal Trade Commission shall proceed forthwith upon said agreed statement of facts to make and enter its report, stating its findings as to the facts and its conclusions and its order disposing of this proceeding without the introduction of further testimony or the presentation of argument in support of the same, and the Federal Trade Commission having entered and made its report stating its findings as to the facts and its conclusions 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," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., his agents, servants, and employees, cease and desist from directly or indirectly changing the titles and names of old motion-picture films which have been exhibited and displayed to the public by motion-picture exhibitors prior to the date said respondent secured them and substituted the names and titles for the same, unless it is

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clearly, definitely, distinctly, and unmistakably shown to purchasers and lessees of motion-picture films and the motion-picture theater-going public that the motion-picture films so renamed and retitled are old motion-picture films and are reissued under new names and new titles.

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v.

CURTIS PUBLISHING COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 15.—July 21, 1919.

SYLLABUS.

Where a corporation engaged in the publication, distribution, and sale of periodicals entered into contracts with a large number of established wholesale dealers, and with other dealers who subsequently became wholesalers, constituting in most instances the principal and most efficient and, in numerous cases, the only medium for the distribution of such publications, whereby such dealers were bound not to, and did not, "act as agent for or supply at wholesale rates any periodicals other than those published" by the corporation without the written consent of such corporation, which consent was uniformly refused as to certain immediate competitors, and thus prevented competitors from utilizing established channels for the distribution and sale of their periodicals:

Held, That the use of such contracts, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914; and

That such contracts, under the circumstances set forth, had the effect of substantially lessening competition with the publisher's periodicals, tended to create a monopoly in the business of publishing magazines of the character of those published by the corporation in question, and constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Curtis Publishing Co., hereinafter referred to as respondent, has

been, and is, using unfair methods of competition in interstate commerce 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," 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 Curtis Publishing Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of business in the city of Philadelphia, in said State, and is now, and was at all the times hereinafter mentioned and for many months prior thereto, engaged in the publication, sale, and circulation of weekly and monthly periodicals in commerce among the several States and Territories of the United States and the District of Columbia.

PAR. 2. That with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the publication, sale, and circulation of such periodicals, the respondent now refuses, and for several months last past has refused, to sell its periodicals and publications to any dealer who will not agree with the respondent that he will not sell or distribute the periodicals and publications of certain of the competitors of the respondent to other dealers or distributors.

II.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Curtis Publishing Co., hereinafter referred to as respondent, has violated, and is violating, the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Curtis Publishing Co., is a corporation organized and existing under and by

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virtue of the laws of the State of Pennsylvania, having its principal office and place of business in the city of Philadelphia, in said State, and is now and was, at all times herein-after mentioned, and for many months prior thereto, engaged in the publication, sale, and circulation of weekly and monthly periodicals, in commerce among the several States and Territories of the United States and the District of Columbia.

PAR. 2. That the respondent, the Curtis Publishing Co., for several months last past, in the course of interstate commerce, has sold and made contracts for sale, and is now selling and making contracts for sale, of large supplies of its publications and periodicals for use and resale within the United States and the Territories thereof and the District of Columbia, and has fixed, and is now fixing, the price charged therefor on the condition, agreement or understanding that the purchasers thereof shall not use or deal in the publications or periodicals of a competitor or competitors of respondent, and that the effect of such sales and contracts for sale, or such conditions, agreements or understandings, may be and is to substantially lessen competition and to tend to create a monopoly.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and evidence having been adduced by the respective parties to said proceeding, and the Commission having considered the same, together with the written briefs and arguments and the oral arguments of the attorneys for the said parties, and the Commission being now fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Curtis Publishing Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, having its

principal office and place of business in the city of Philadelphia, State of Pennsylvania, and is now, and was at all times hereinafter mentioned, and for many months prior thereto, engaged in the publication, sale, and distribution of weekly and monthly periodicals, in commerce among the several States and Territories of the United States and the District of Columbia.

PAR. 2. That in the course of such commerce the respondent has entered into contracts with certain persons, partnerships, or corporations to sell or distribute its magazines, by the terms of which contracts such persons, partnerships, or corporations have agreed, among other things, not to "act as agent for or supply at wholesale rates, any periodicals other than those published by the publisher"—the respondent herein—without the written consent of such publisher; that of such persons, partnerships, or corporations approximately 447, hereinafter referred to as "dealers," are and previous to entering into such contracts with respondent were regularly engaged in the business of wholesale dealers in newspapers or magazines, or both, and as such are, as aforesaid, engaged in the sale or distribution of magazines or newspapers, or both, of other publishers; that many of said 447 dealers, and many others who have become such wholesale dealers since entering into such contracts, bound by said contract provision as aforesaid, have requested respondent's permission to engage also in the sale or distribution of certain publications competing in the course of said commerce with those of respondent, which permission as to said competing publications has been uniformly denied by respondent; that in enforcing said contract provision as to said dealers and in denying them said permission, respondent has prevented and now prevents certain of its competitors from utilizing established channels for the general distribution or sale of magazines or newspapers, or both, of different and sundry publishers; that such established channels are in most instances the principal and most efficient and, in numerous cases, the only medium for the distribution of such publications in the various localities of the United States; that such method of competition so employed

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by respondent in the course of such commerce as aforesaid has proved and is unfair.

PAR. 3. That in the course of such commerce the respondent has made sales of its magazines to or entered into contracts for the sale of the same with certain persons, partnerships, or corporations, by the terms of which sales or contracts for such sales such persons, partnerships, or corporations have agreed, among other things, not to "act as agent for or supply at wholesale rates any periodicals other than those published by the publisher"—the respondent herein—without the written consent of such publisher; that of such persons, partnerships, or corporations, approximately 447, hereinafter referred to as "dealers," are, and previous to entering into such contracts with respondent were, regularly engaged in the business of wholesale dealers in newspapers or magazines, and as such are engaged in the sale or distribution of magazines or newspapers, or both, of other publishers; that many of said 447 dealers, and many others who have become such wholesale dealers since entering into such contracts, bound by said contract provision hereinabove referred to, have requested respondent's permission to engage also in the sale or distribution of certain publications competing in the course of said commerce with those of respondent, which permission as to said competing publications has been uniformly denied; that in enforcing said contract provision as to said dealers and in denying them said permission respondent has prevented, and now prevents, certain of its competitors from utilizing established channels for the general distribution or sale of magazines or newspapers, or both, of different and sundry publishers; that such established channels are in most instances the principal and most efficient, and, in numerous cases, the only medium for the distribution of such publications in the various localities throughout the United States; that the effect of said contract provision has been and is to substantially lessen competition with respondent's magazines and tends to create for the respondent a monopoly in the business of publishing magazines of the character of those published by respondent.

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CONCLUSIONS.

From the foregoing findings the Commission concludes that the method of competition set forth in paragraph 2 of said findings is, under the circumstances therein set forth, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that the acts and conduct set forth in paragraph 3 of said findings are, under the circumstances therein set forth, in violation of the provisions of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the said respondent, Curtis Publishing Co., having filed its answer admitting certain allegations of the complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having offered testimony in its behalf, and the attorneys for the Commission and the respondent having submitted their briefs as to the law and facts in said proceeding, and the Commission having made and filed its report containing its findings as to the facts and conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Curtis Publishing Co., and its officers, directors, agents, and employees, cease and desist, while engaged in competition in commerce among the several States and Territories of the United States and

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the District of Columbia, from entering into any contracts, agreements, or understandings with persons, partnerships, or corporations already engaged in the sale or distribution of the magazines or newspapers, or both, of other publishers, which provide that such persons, partnerships, or corporations shall not act as agents for, or sell, or supply to others at wholesale rates, any periodicals other than those of respondent without the written consent of respondent; and from entering into any contracts, agreements or understandings with persons, partnerships, or corporations already engaged in the sale or distribution of the magazines or newspapers, or both, of other publishers, which provide that such persons, partnerships, or corporations shall not sell or distribute, or shall not continue to sell or distribute the magazines or newspapers, or both, of other publishers; and from enforcing any provision which may be contained in any of respondent's present outstanding contracts with persons, partnerships, or corporations now engaged in the sale or distribution of magazines or newspapers, or both, of other publishers which provide that such persons, partnerships, or corporations shall not sell or distribute the magazines or newspapers, or both, of other publishers, or shall not sell or distribute the magazines or newspapers, or both, of other publishers without the written consent of respondent.

FEDERAL TRADE COMMISSION

v.

STANDARD OIL CO. OF INDIANA.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTIONS 2 AND 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 85.—July 21, 1919 (as modified Sept. 27, 1920).

SYLLABUS.

Where a corporation competitively engaged in refining crude petroleum, buying and selling gasoline, and in transporting and marketing such products, doing 64 per cent of such business in its

territory, and also engaged in leasing pumps, tanks, and other equipment for the storage and handling of petroleum products in competition with manufacturers and sellers of such equipment, to its retail customers, of whom relatively very few required more than a single-pump outfit in the conduct of their business;

Lensed to such retailers pumps, tanks, and equipment at a nominal rental, not affording it a reasonable profit on its investment, upon the condition that they should use the same only for the purpose of storing and handling its products, a practice having for its purpose the furtherance of the corporation's petroleum business, and resulting in loss of customers by competitors:

Held, (a) That the use of such leases constituted, under the circumstances set forth, an unfair method of competition, in violation of section 5 of the act of September 26, 1914, both as against competitors engaged exclusively in the petroleum business, and also as against competitors engaged in the manufacture and sale of such equipment;

(b) That the effect of such leases, under the circumstances set forth, might be to substantially lessen competition and tend to create for the corporation a monopoly in the business of selling petroleum products, and that the use of the same constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Standard Oil Co. of Indiana, 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, Standard Oil Co. of Indiana, 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 Indiana, having its

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principal office and place of business located at the city of Chicago, State of Illinois, and is now and for more than two years last past has been engaged in commerce in petroleum and in the manufacture, sale, and distribution of its products, as more fully alleged and set forth hereafter in this complaint, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Standard Oil Co. of Indiana, is engaged in the various branches of the business of purchasing petroleum in oil-producing districts of the United States; in causing to be shipped and transported crude oil from such districts through and into other States; in refining the petroleum and manufacturing it into various products; in shipping and transporting petroleum products through and into different States of the United States and in selling petroleum products in various places in the States of the United States; that after such products are so manufactured in various States of the United States 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 to and through the city of Chicago, State of Illinois, and therefrom to and through other States of the United States.

PAR. 3. That the respondent, Standard Oil Co. of Indiana, is one of several corporations with similar names and engaged in like business in different parts of the United States and in foreign countries, which resulted from and grew out of the dissolution of the Standard Oil Co. of New Jersey pursuant to a certain decree in equity made and entered by the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, on the 20th day of November, A. D. 1909, and affirmed by the Supreme Court of the United States on the 15th day of May, A. D. 1911; that such other corporations aforesaid are hereinafter referred to and mentioned as "other Standard companies."

PAR. 4. That the respondent confines the sale and distribution of its products, except as hereinafter set forth, largely to that area of the United States which lies within the borders of the States of Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, North Dakota, South Dakota, and Oklahoma, which territory is hereinafter referred to and mentioned as "its territory"; that "tank-wagon price" at all times hereinafter mentioned refers to and means the selling price of respondent's oils and gasoline in any locality within its territory from its tank wagons, which said price is based upon the Chicago tank-wagon price plus freight differentials from the point of shipment.

PAR. 5. That the respondent, Standard Oil Co. of Indiana, maintains a system in the contract and sale of its gasoline and kerosene products, whereby the same are shipped from its refineries to numerous stations or depots called tank-wagon stations, situated in different localities throughout its territory, and from these delivered direct into the storage tanks of its customers by means of tank wagons owned and operated by it, and with the intent, purpose, and effect of stifling and suppressing competition in the manufacture, sale, and distribution of petroleum products in interstate commerce, respondent refuses to, and does not, except to other Standard companies, sell and deliver its said products in carload lots or in such manner or quantity that the same can be diverted or reshipped to other territories where higher prices for such products prevail; that respondent sells and ships all of its surplus products to other Standard companies in different territories who do not interfere with the general business and marketing system of Standard companies generally, and that such system is designed and calculated to and does prevent customers in territories other than those of respondent from obtaining such products at and for a price as low as that maintained by respondent in its territory, plus freight differentials, which said price is kept by respondent below that of the market in localities of the United States outside of its territory.

PAR. 6. That the respondent, Standard Oil Co. of Indiana, with the purpose, intent, and effect of stifling and suppress-

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ing competition in the manufacture, distribution, and sale of petroleum products in interstate commerce, refuses to and does not sell its products to independent jobbers or wholesalers in territories in which other Standard companies operate, but sells its surplus supply of oil and gasoline to such other Standard companies at prices below the tank-wagon prices maintained by it in its own territory, and sells other of its products through such other Standard companies at jobbers' discounts for resale in their respective territories.

PAR. 7. That in the conduct of its business, the respondent, Standard Oil Co. of Indiana, generally confines the sale of its products in its territory to retail distributors at wholesale or tank-wagon prices, who in turn resell the same to the consumers, but in certain local competitive areas within its territory where retail dealers do not handle the products of respondent in such quantities as desired by it, respondent has sold, and does sell, its products at wholesale or tank-wagon prices direct to such consumers, thereby punishing such retail dealers and compelling them to deal in the products of respondent under conditions and restrictions imposed by it.

PAR. 8. That the respondent makes a practice of loaning tanks and other necessary equipment used in the handling of its products to customers and prospective customers, both dealers and consumers, in competitive areas, upon the condition and agreement that the same shall be used exclusively in the storage and handling of the products of respondent; that such practice is designed and calculated to, and does, cause customers to confine their purchases exclusively to the products of respondent.

PAR. 9. That the respondent, Standard Oil Co. of Indiana, maintains a system of contracts named and designated as "Commission agency agreements," by the terms of which respondent is obligated to pay dealers 1 cent per gallon, measured at the pump, on all pump-selling products of respondent so handled by such dealers, as a rental for the necessary tanks and also for the dealers' services in handling its products, provided, and only provided, that such dealers

use or deal in respondent's products exclusively; where such dealers do not possess the necessary equipment therefor respondent furnishes the same, and where the dealer has equipment an additional monthly rental is paid for the exclusive use of the same in the sale of respondent's products.

PAR. 10. That the respondent maintains a system of contracts named and designated as "Commission agent agreements," by the terms of which the respondent is obligated to pay, and does pay, consumers in certain competitive areas, with but little or no opportunity to resell to other consumers, a commission, rebate, or discount of 1 cent per gallon on the outgo, provided, and only provided, such consumers use or deal in respondent's products exclusively, such commission being based and graded upon the total gallonage outgo from the storage tank, and respondent allows and pays such commission not only upon such gallonage resold by these customers, but also upon that used in addition thereto by them.

PAR. 11. That the respondent, through and by certain of its agents, servants, and employees, has in certain localities within its territory threatened to sell its products direct to consumers at dealers' prices, and that such threats were calculated and designed to intimidate such dealers and cause them to deal in the products of respondent in preference to those of its competitors.

PAR. 12. That the respondent, Standard Oil Co. of Indiana, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture, sale, and distribution of petroleum products in interstate commerce, sells its gasoline and kerosene products only to those dealers and agents who will handle and deal in the other products of respondent and who make diligent effort to cause the sale of the same to be as large as possible and who refrain from handling or dealing in the gasoline of any of respondent's competitors.

PAR. 13. That the respondent, through and by certain of its agents, servants, and employees, and by means of advertisements placed in newspapers, magazines, periodicals, and trade journals circulated generally through the States and Territories of the United States, the District of Columbia,

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and foreign countries, has made certain statements and representations concerning the:

(a) Quality, grade, ingredients, and effectiveness of its products and those of certain of its competitors;

(b) Officers of competitive corporations and the officers of purchasing corporations which were not handling or dealing in the products of respondent;

(c) Alleged methods of certain of its competitors of selling their products by measures short of the amount purchased;

(d) Ability of certain of its competitors to continue in business and make deliveries of their products; and, further

(e) That in the event lubricating oils other than those of respondent were used upon certain agricultural machinery guarantees upon the same issued by the manufacturers thereof would not be binding;

(f) That certain of its products which were blends or mixtures of gasoline with heavier oils or a result of a "cracking process" were held out as gasoline;

and that such statements and representations were false and misleading and calculated and designed to deceive the trade and general public.

PAR. 14. That the respondent varies the price of petroleum products in different areas within its territory by selling such products at and for a lower price in highly competitive areas than that which it receives for similar products in areas where competition is less active, and in such areas renders services and incurs selling expenses for which no charge above the wholesale price is made to the customer, and which in more competitive areas are either not rendered or, if rendered, a charge therefor is added to the tank-wagon price.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Standard Oil Co. of Indiana, hereinafter referred to as the respondent, has violated and is violating the provisions of section 2 and section 3 of the act of Congress approved

October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Standard Oil Co. of Indiana, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal office and place of business in the city of Chicago, State of Illinois, and is now, and was at all times hereinafter mentioned, engaged in commerce in petroleum and in the manufacture, sale, and distribution of its products among the several States and Territories of the United States, as more fully alleged and set forth in paragraphs 1 and 2 of section 1 of this complaint.

PAR. 2. That the respondent, Standard Oil Co. of Indiana, for several years last past in the course of interstate commerce in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of petroleum products, which products are sold for use, consumption, or resale within the United States or the Territories thereof, and the District of Columbia, and the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

PAR. 3. That the respondent, Standard Oil Co. of Indiana, for several years last past in the course of interstate commerce in violation of section 3 of the Clayton Act, has sold and made contracts for sale, and is now selling and making contracts for sale, of large quantities of petroleum products for use, consumption, and resale in the United States, and has fixed and is now fixing the price charged therefor, or discount from or rebate upon such price, on the condition, agreement, or understanding that the purchasers thereof shall not use or deal with the goods, wares, merchandise, supplies, or commodities of a competitor or competitors of respondent, with the effect that such sales and contracts for sale, or such conditions, agreements, or understandings may be and are to substantially lessen competition and tend to create a monopoly.

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REPORTS, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to said Commission, subject to its approval, an agreed statement of facts in said cause in lieu of testimony, and the Commission having approved all the agreed statement of facts except paragraphs 4 and 5 for the purpose of this proceeding only, and having considered that portion approved, together with the arguments by counsel, and being now fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Standard Oil Co. of Indiana, is now and has been since prior to 1912, a corporation, organized and existing under the laws of the State of Indiana, and doing business in said State and in the States of Michigan, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, South Dakota, North Dakota, and Oklahoma; that one of its principal offices and places of business is in the city of Chicago, State of Illinois; that during all of said time respondent has been and now is engaged in the business of refining crude petroleum into its various products, and in buying gasoline, and in transporting and marketing said products and gasoline, and in buying and selling and leasing pumps and tanks and their equipments; that during all of said period its refineries have been and now are located at Whiting, Ind., Wood River, Ill., Sugar Creek, Mo.; that in 1917, of all the business of the character of that done by respondent in the said territory approximately 64 per cent thereof was done by respondent, the same approximating in figures, \$170,000,000; that 36 per cent of said business was done by others with whom respondent competed and now competes.

PAR. 2. That during all of the period since organization, said respondent has been and now is maintaining numerous

storage stations in the several States in which it operates, to which it ships from its said refineries refined oil and gasoline in tank cars; that the contents of said storage stations are drawn off into tank wagons or trucks, and either transported direct to purchasers thereof—generally in the same States—or transported direct to and sold from respondent's so-called service or filling stations in the same States; that carload lots of lubricating oil in barrels are shipped by respondent from its refineries to other States and placed in warehouses, from which such oil is sold and delivered in the original barrels and also in lesser quantities to purchasers in the same States; that respondent sells large quantities of petroleum products, to wit, lubricating and other refined oils and gasoline, in tank car lots at prices f. o. b. at its refineries.

That the respondent in the conduct of its business buys oil pumps and tanks and their equipment, hereinafter referred to as "equipment," 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; that in the course of commerce in buying and selling said equipments, said equipments are moved to, through, and among various States of the United States; and that there is a constant current of trade in the conduct of its said business in buying and selling said equipments among said various States of the United States.

PAR. 3. That during all of said period, respondent in the course of commerce among the several States and Territories of the United States and the District of Columbia, and in the conduct of its business as aforesaid, and to further its particular business in the sale of its petroleum products, has been and now is selling and leasing to retailers of its petroleum products said "equipments" for use by such retailers in storing and handling respondent's said petroleum products; that respondent in leasing such equipments as aforesaid, has entered during said period and is now entering into contracts with lessees of the form attached to re-

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spondent's answer as Exhibit A¹; that the rental or lease charge provided by such contracts is but a nominal sum of money; and that no other consideration for the leasing of such equipments by respondent is provided for in said contract other than that hereinafter mentioned in paragraph 4 hereof; that such equipments are leased at nominal rentals as aforesaid to further respondent's petroleum business; that such rentals do not afford a reasonable profit to respondent on the amount invested in such equipments; that respondent leases such equipments in competition in interstate commerce with manufacturers of similar equipments who are engaged in the sale of the same in such commerce and who also do a substantial part of all the business done in such equipments in the territory in which respondent conducts its business; that the practice of leasing such equipments at a nominal rental is an unfair method of competition in interstate commerce as against its competitors engaged in the manufacture of such equipments and in the sale of the same for profit in the territory where respondent leases such equipments; and also as against any of its competitors engaged exclusively in the petroleum business.

PAR. 4. That the contracts mentioned in the preceding paragraph also provide that such equipments shall be used by the lessee only for the purpose of holding and storing the respondent's petroleum products; that a small proportion of such lessees handle similar products of respondent's competitors; and 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 as a result of the leasing of such equipments by respondent in the manner and under the terms aforesaid its 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 and tend to create

¹ See p. 39.

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for the respondent a monopoly in the business of selling petroleum products.

CONCLUSIONS.

That the methods of competition and the business practices set forth in the foregoing findings as to the facts are, under the circumstances set forth therein, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and are in violation of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to said Commission subject to its approval an agreed statement of facts in said cause in lieu of testimony, and the Commission having approved the agreed statement of facts, except paragraphs 4 and 5, for the purpose of this proceeding only, and having on consideration of the pleadings, the stipulation, and the arguments of counsel thereon made its report and findings as elsewhere set forth, and having concluded upon such report and findings that the respondent has been guilty of unfair methods of competition in interstate commerce in violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that respondent has violated section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which report, findings, and conclu-

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sions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That respondent, Standard Oil Co. of Indiana, shall cease and desist from—

(1) Directly or indirectly leasing pumps or tanks or both and their equipments for storing and handling petroleum products in the furtherance of its petroleum business at a rental which will not yield to it a reasonable profit on the cost of the same after making due allowance for depreciation and other items usually considered when leasing property for the purpose of obtaining a reasonable profit therefrom, and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

(2) Entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipments the same shall be used only for storing or handling the products of respondent, and from doing anything having the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

Provided, however, That as to such pumps and tanks and equipments as are now leased by respondent contrary to the orders contained in paragraphs 1 and 2 herein, respondent shall have four months from the date hereof to enter into new contracts or agreements with respect to the same which shall not be incompatible with the spirit and intent of this order.

It is also ordered, under and by virtue of the authority conferred on the Commission by paragraph B of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, that the said Standard Oil Co., respondent, shall, within 30 days after the expiration of the time allowed within which respondent shall have fully complied with the order to cease and desist, hereinabove set

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forth, report in writing to the Federal Trade Commission, fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in the order to cease and desist, and shall set forth in such report in complete detail the plan or plans adopted for the lease, loan, gift, or sale of any oil tanks and pumps for use in storing refined oil or gasoline, which plan or plans are in use or are proposed to be put in use, and also attach to such report any contracts used by the respondent in the conduct of such business.

EXHIBIT A.

TANK LOAN AGREEMENT.

Agreement made at _____ this _____ day of _____, 191____, between the Standard Oil Company, a corporation of the State of Indiana, party of the first part, and _____, of _____, part____ of the second part, witnesseth,

That whereas the said part____ of the second part, _____, now purchasing petroleum products from the said party of the first part, and _____ requested the said party of the first part to loan _____ tank ____ for the storage thereof; and

Whereas the said party of the first part has consented to loan this (these) tank____ to said part____ of the second part, for _____ convenience and use in _____ business upon the terms and conditions hereinafter mentioned:

Now, therefore, in consideration of the purchase of its petroleum products by said part____ of the second part, said first party hereby does agree to furnish and loan to said part____ of the second part tank____ of the capacity of about _____ gallons, more or less, to be used by said part____ of the second part for the storage of petroleum products purchased from said party of the first part, and for no other purpose whatsoever.

It is expressly understood and agreed that said tank____ and all appliances connected therewith or used in connection with the same, furnished by said first party, shall at all times (except as hereinafter provided) be and remain the property of said party of the first part and shall be used by said part____ of the second part only for the purpose of holding and storing petroleum products purchased from the said party of the first part; and if said part____ of the second part shall at any time cease to purchase _____ petroleum products from said party of the first part, or shall use said tank____ for the storage of petroleum products purchased from any other person,

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firm, or corporation, or for any other purpose than that herein specified, then the said party of the first part shall have the right to declare this agreement null and void, and said first party shall thereupon have the right and privilege, without notice to said part____ of the second part, to charge said tank____ and all appliances connected or used therewith, furnished by the first party, to the account of said part____ of the second part, at the sum of _____ dollars, which it is hereby mutually agreed is the reasonable value of said tank____ and appliances and connections, or, at its option, to enter upon the premises where said tank____ is (are) located, with men, horses, wagons, and such appliances as may be necessary, and remove therefrom said tank____ and connections and appliances furnished by said first party, without recourse to any legal proceedings for that purpose.

It is further expressly understood and agreed that in event of said tank____ being charged as aforesaid the amount so charged shall be due and payable forthwith.

The part ____ of the second part agrees to pay the party of the first part one dollar (\$1.00) per month in advance on the first day of each month for the use of said tank_____.

And in further consideration of the premises, said part____ of the second part, for _____ heirs, executors, administrators, and assigns, hereby agree_____ to indemnify and save harmless the said party of the first part of and from any and all claims for liability for any and all loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of or from said tank____, or the appliances connected or used therewith, or through any imperfection in the construction, installation, or operation of the same, whether due to negligence of the party of the first part or otherwise.

And also, for _____ heirs, executors, administrators, and assigns, do ____ hereby expressly waive, relinquish, exonerate, discharge, and protect the said party of the first part from any and all liability for damages which may be suffered by _____ or _____ neighbors by reason of any leakage, fire, explosion, or other casualty occurring through any imperfection in said tank____ or the appliances connected therewith or from any other cause whatsoever.

Witnesses:

STANDARD OIL COMPANY.
(Indiana.)

By -----

----- [SEAL.]

The undersigned, owner____ of the premises upon which the above-described tank____ is to be or has been installed, hereby consent____ to the installation thereof and agree____ to be bound by the terms and conditions of the foregoing agreement.

----- [SEAL.]

FEDERAL TRADE COMMISSION

v.

SOLOMON M. HEXTER, KAUFMAN W. HEXTER,
TOBIAS FELDER, DOING BUSINESS UNDER
THE FIRM NAME AND STYLE OF S. M. HEXTER
& CO.

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

Docket 97.—September 12, 1919.

SYLLABUS.

Where a concern engaged in the manufacture and sale of a cotton fabric, the trade-mark of which included the word "Sol," but not the word "Satin," marketed and extensively advertised the same as "Sol Satin," without any other descriptive words indicating the nature of the fabric or the raw materials of which it was made, with a tendency thereby to mislead the public into the belief that the fabric in question was made either wholly or partly of silk:

Held, That such labeling, advertising, and sales, 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 Solomon M. Hexter, Kaufman W. Hexter, Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect 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, Solomon M. Hexter, Kaufman W. Hexter, and Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., have

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their principal office and place of business located at the city of Cleveland, State of Ohio, now and for more than two years last past engaged in the manufacture and sale of a cotton fabric 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. 2. That in the conduct of their business the respondents purchase their fabric in England, and cause the same to be transported to the city of Cleveland, in the State of Ohio, where the same is sold and shipped to dealers in different States and Territories of the United States and the District of Columbia, for resale to the public; and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said fabric between and among the various States and Territories of the United States and the District of Columbia, and more particularly from other States and Territories of the United States, the District of Columbia, and foreign countries to and through the city of Cleveland, State of Ohio, and from there to and through other States and Territories of the United States, and the District of Columbia.

PAR. 3. That the respondents, within the last year, with the purpose, intent, and effect of stifling and suppressing competition in interstate commerce in the sale of cotton fabrics, have adopted the trade name of "Sol Satin," and have advertised, and are now advertising, and holding out to the public, its fabric as such; which simulation is designed and calculated to, and does, deceive and mislead the public and cause purchasers to believe that respondents' fabric is composed of silk.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, in which it is alleged that it had reason to believe that the above-named respondents, Solomon M. Hexter, Kaufman W. Hexter, and Tobias Felder, have been, and now are, using unfair methods of competition in inter-

state commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect, and respondents having entered their appearance by Edward D. Brown, Esq., their attorney, duly authorized and empowered to act in the premises, and having filed their answer admitting certain allegations therein contained and denying others, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony and shall forthwith thereupon make its report stating its findings as to the facts, its conclusion, and its order disposing of this proceeding without the introduction of testimony or argument in support of the same, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion, as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents, Solomon M. Hexter, Kaufman W. Hexter, and Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., have their principal office and place of business located at the city of Cleveland, State of Ohio, now and for more than two years last past engaged in the manufacture and sale of a cotton fabric 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. 2. That in the conduct of their business the respondents purchase their fabric in England and cause the same to be transported to the city of Cleveland, in the State of Ohio, where the same is sold and shipped to dealers in different States and Territories of the United States and the District of Columbia for resale to the public, and that

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there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said fabric between and among the various States and Territories of the United States and the District of Columbia, and more particularly from other States and Territories of the United States, the District of Columbia, and foreign countries to and through the city of Cleveland, State of Ohio, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That in connection with the sale of the aforesaid cotton fabric the respondents have adopted and for a period of more than three years last past have used the trade name of "Sol Satin" as the name by which said fabric has been known and extensively advertised and sold in interstate commerce; that in the course of such advertising the respondents on June 22, 1915, registered in the United States Patent Office the trade-mark by which their said fabric has been and is known, which trade-mark consists of the fanciful word "Sol" appearing on a disk having radiant lines extending therefrom and representing the sun, below which appears the word "Satin," the latter word, however, being expressly disclaimed in the application, which trade-mark and the trade name "Sol Satin" without any other descriptive words indicating the nature of the fabric or the raw materials out of which said fabric is made have been extensively used in advertisements appearing in newspapers and magazines, on silk labels inserted in garments lined with said fabric, and on the back of the said fabric itself, and in other ways designed to bring said fabric to the attention of the purchasing public.

PAR. 4. That the word "satin," both in technical and popular usage, has a precise and exact meaning and is only properly used as the name of a fabric made either wholly or partly of silk and woven in a certain peculiar manner so as to impart a high luster to the surface of the fabric, though the word "satin," in the technology of the manufacturer, is sometimes used also to designate the kind of weave itself.

PAR. 5. That the word "satin" or "sateen," both in technical and popular usage, has a precise and exact meaning and is properly used as the name of a fabric of cotton in

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satin weave and somewhat resembling satin; that the best grades of "satine" or "sateen" are also technically and popularly known as venetian cloth, to which latter class of fabrics the fabric of the respondents marketed under the name of "Sol Satin" properly belongs.

PAR. 6. That the use of the word "satin" in the aforesaid trade name and trade-mark of the respondents tends to deceive and mislead the public into the belief that the said fabric so sold by the respondents under the said trade name and trade-mark of "Sol Satin" was and is made either wholly or partly of silk.

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, Solomon M. Hexter, Kaufman W. Hexter, Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., having entered their appearance by Edward D. Brown, Esq., their attorney, duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence and in lieu of testimony in this case and proceed forthwith to enter its report stating its findings as to the facts, its conclusion, and its order without the introduction of testimony or argument in support of the same, and waiving therein any and all right to the introduction of such testimony, and the Federal Trade Commission having made

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and entered its report stating its findings as to the facts and its conclusion, that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the said respondents cease and desist from advertising, labeling, holding out, and selling as satin the fabric heretofore advertised and sold by them under the trade name of "Sol Satin," and from using the word "satin" in any way to designate or describe said fabric or any fabric like or similar thereto.

FEDERAL TRADE COMMISSION

v.

STANDARD OIL CO. OF INDIANA.

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

Docket 133.—September 12, 1919 (as modified Sept. 27, 1920).

SYLLABUS.

Where a corporation competitively engaged in refining crude petroleum, buying and selling gasoline, and in transporting and marketing such products, doing 65 per cent of such business in its territory, and also engaged in leasing pumps, tanks, and other equipment for the storage and handling of petroleum products in competition with manufacturers and sellers of such equipment, to its retail customers, of whom relatively very few required more than a single pump outfit in the conduct of their business;

Leased to such retailers pumps, tanks, and equipment at a nominal rental, not affording it a reasonable profit on its investment, upon the condition that they should use the same only for the purpose of storing and handling its products, a practice having for its purpose the furtherance of the corporation's petroleum business, and resulting in loss of customers by competitors:

Held, (a) That the use of such leases constituted, under the circumstances set forth, an unfair method of competition in violation of section 5 of the act of September 26, 1914, both as against competitors engaged exclusively in the petroleum business, and also as against competitors engaged in the manufacture and sale of such equipment;

(b) That the effect of such leases, under the circumstances set forth, might be to substantially lessen competition and tend to create for the corporation a monopoly in the business of selling petroleum products, and that the use of the same constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Standard Oil Co. of Indiana, 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, Standard Oil Co. of Indiana, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Chicago, State of Illinois; that said respondent is now and for more than one year last past has been engaged in commerce in petroleum and in selling and lending automatic measuring oil pumps, tanks, and other outfits and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, which pumps, tanks, and other outfits and patented devices are products of Gilbert & Barker Manufacturing Co., of Springfield, Mass., throughout the States of the United States, the Territories thereof, the District of Columbia, and

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foreign countries, in direct competition with other persons, firms, corporations, and copartnerships similarly engaged.

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

PAR. 3. That the respondent, for more than one year last past, by and through its agents, servants, and employees, has represented, stated, and held out to customers and prospective customers that the products of certain of its competitors were unsatisfactory, defective, would not operate, and were being sold by such competitors at exorbitant prices, and that such statements and representations were false, misleading, and defamatory, and calculated and designed to deceive the trade and general public.

PAR. 4. That the respondent for more than one year last past with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce has, by divers means and methods, induced and procured and attempted to induce and procure a large number of its customers and prospective customers and the customers and prospective customers of its competitors to cancel and rescind orders and contracts for the purchase of pumps, tanks, and other outfits placed and made with the competitors of the respondent.

PAR. 5. That the respondent for more than one year last past with the purpose, intent, and effect of stifling and sup-

pressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce has sold and lent pumps, storage outfits, and other products of the Gilbert & Barker Manufacturing Co. at and for prices below the cost of producing the same and which gave no adequate return upon such cost.

PAR. 6. That the respondent for more than one year last past with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce has threatened dealers using such products in the conduct of their business that they, the said respondent, would sell gasoline and oils direct to retail customers unless such dealers purchased and installed the outfits and products of the Gilbert & Barker Manufacturing Co.; that such threats were calculated and designed to intimidate such dealers and cause them to refrain from purchasing and installing the products of its competitors.

PAR. 7. That the respondent for more than one year last past, by and through its agents, representatives, servants, and employees, has represented, stated, and held out to its customers and prospective customers, and the customers and prospective customers of its competitors, that it is the agent of and dealer in the products of both the Gilbert & Barker Manufacturing Co. and their competitors, and have quoted excessive and exorbitant prices on the products of their competitors; that such statements and representations were false and misleading and calculated and designed to deceive the trade and general public and induce such customers and prospective customers to purchase and enter into contracts of purchase for the products of Gilbert & Barker Manufacturing Co.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Standard Oil Co. of Indiana, hereinafter referred to as respondent,

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ent, has violated 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," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, Standard Oil Co. of Indiana, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Chicago, State of Illinois; that said respondent is now and for more than one year last past has been engaged in commerce in petroleum and in selling and lending automatic measuring pumps, tanks, and other outfits and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, which pumps, tanks, and other outfits and patented devices are products of Gilbert & Barker Manufacturing Co., of Springfield, Mass., throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent for several years last past, in the course of interstate commerce, in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of pumps, tanks, and outfits for the storage and handling of inflammable liquids, which products are sold for use, consumption, or resale within the United States or the Territories thereof, and the District of Columbia, and the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above entitled proceeding, and the

respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to said Commission, subject to its approval, an agreed statement of facts in said cause in lieu of testimony, and the Commission having approved such agreed statement of facts and having considered the same, and being now fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Standard Oil Co. of Indiana, is now and has been since prior to 1912 a corporation, organized and existing under the laws of the State of Indiana, and doing business in said State and in the States of Michigan, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, South Dakota, North Dakota, and Oklahoma; that one of its principal offices and places of business is in the city of Chicago, State of Illinois; that during all of said time respondent has been and now is engaged in the business of refining crude petroleum into its various products, and in buying gasoline, and in transporting and marketing said products and gasoline, and in buying and selling and leasing pumps and tanks and their equipments; that during all of said period, its refineries have been and now are located at Whiting, Ind.; Wood River, Ill.; and Sugar Creek, Mo.; that in 1917, of all the business of the character of that done by respondent in the said territory, approximately 65 per cent thereof was done by respondent, the same approximating in figures \$170,000,000; that 35 per cent of said business was done by others with whom respondent competed and now competes.

PAR. 2. That during all of the period since its organization said respondent has been and now is maintaining numerous storage stations in the several States in which it operates, to which it ships from its said refineries refined oil and gasoline in tank cars; that the contents of said storage station are drawn off into tank wagons or trucks, and either transported direct to purchasers thereof—generally in the same States—or transported direct to and sold from respondent's so-called

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service or filling stations in the same States; that carload lots of lubricating oil in barrels are shipped by respondent from its refineries to other States and placed in warehouses, from which such oil is sold and delivered in the original barrels and also in lesser quantities to purchasers in the same States; that respondent sells large quantities of petroleum products, to wit, lubricating and other refined oils and gasoline, in tank-car lots at prices f. o. b. at its refineries.

That the respondent, Standard Oil Co. of Indiana, in the conduct of its business, buys oil pumps and tanks and their equipments, hereinafter referred to as "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; that in the course of commerce in buying and selling said equipments, said equipments are moved to, through, and among various States of the United States; and that there is a constant current of trade in the conduct of its said business in buying and selling said equipments among said various States of the United States.

PAR. 3. That during all of said period respondent in the course of commerce among the several States and Territories of the United States and the District of Columbia, and in the conduct of its business as aforesaid, has been and now is selling and leasing to retailers of its petroleum products said "equipments" for use by such retailers in storing and handling respondent's said petroleum products; that respondent in leasing such equipments as aforesaid has entered during said period and is now entering into contracts with lessees of the form attached to and made a part of the stipulation herein and marked "Exhibit A"¹; that the rental or lease charge provided by such contracts is but a nominal sum of money and that no other consideration for the leasing of such equipments by respondent is provided for in said contract other than that hereinafter mentioned in paragraph 4 hereof; that such equipments are

¹ See p. 56.

leased at nominal rentals as aforesaid to further respondent's petroleum business; that such rentals do not afford a reasonable profit to respondent on the amount invested in such equipments; that respondent leases such equipments in competition in interstate commerce with manufacturers of similar equipments who are engaged in the sale of the same in such commerce and who also do a substantial part of all the business done in such equipments in the territory in which respondent conducts its business; that the practice of leasing such equipments at a nominal rental is an unfair method of competition in interstate commerce as against its competitors engaged in the manufacture of such equipments and in the sale of the same for profit in the territory where respondent leases such equipments; and also as against any of its competitors engaged exclusively in the petroleum business.

PAR. 4. That the contracts mentioned in the preceding paragraph also provide that such equipments shall be used by the lessee only for the purpose of holding and storing the respondent's petroleum products; that a small proportion of such lessees handle similar products of respondent's competitors; and 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 as a result of the leasing of such equipments by respondent in the manner and under the terms aforesaid, its 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 and tend to create for the respondent a monopoly in the business of selling petroleum products.

CONCLUSIONS.

That the methods of competition and the business practices set forth in the foregoing findings as to the facts are, under the circumstances set forth therein, unfair methods of

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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 are in violation of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to said Commission subject to its approval an agreed statement of facts in said cause in lieu of testimony, and the Commission having approved the agreed statement of facts, for the purposes of this proceeding only, and having on consideration of the pleadings and the stipulation made its report and findings as elsewhere set forth, and having concluded upon such report and findings that the respondent has been guilty of unfair methods of competition in interstate commerce in violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that the respondent has violated section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which report, findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That respondent, Standard Oil Co. of Indiana, shall cease and desist from:

(1) Directly or indirectly leasing pumps or tanks or both and their equipments for storing and handling petroleum products in the furtherance of its petroleum business at a rental which will not yield to it a reasonable profit on the

cost of the same, after making due allowance for depreciation and other items usually considered when leasing property for the purpose of obtaining a reasonable profit therefrom, and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

(2) Entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipments the same shall be used only for storing or handling the products of respondent, and from doing anything having the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

Provided, however, That as to such pumps and tanks and equipments as are now leased by respondent contrary to the orders contained in paragraphs 1 and 2 herein, respondent shall have four months from the date hereof to enter into new contracts or agreements with respect to the same which shall not be incompatible with the spirit and intent of this order.

It is also ordered, under and by virtue of the authority conferred on the Commission by paragraph B of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, that the said Standard Oil Co., respondent, shall within 20 days after the expiration of the time allowed within which respondent shall have fully complied with the order to cease and desist, hereinabove set forth, report in writing to the Federal Trade Commission, fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in the order to cease and desist, and shall set forth in such report in complete detail the plan or plans adopted for the lease, loan, gift, or sale of any oil tanks and pumps for use in storing refined oil or gasoline, which plan or plans are in use or are

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proposed to be put in use, and also attach to such report any contracts used by the respondent in the conduct of such business.

EXHIBIT A.

TANK LOAN AGREEMENT.

Agreement made at _____ this _____ day of _____, 19____, between the Standard Oil Company, a corporation of the State of Indiana, party of the first part, and _____ of _____ part____ of the second part, witnesseth,

That whereas the said part____ of the second part ____ now purchasing petroleum products from the said party of the first part and _____ requested the said party of the first part to loan _____ tank____ for the storage thereof; and

Whereas the said party of the first part has consented to loan this (these) tank____ to said part____ of the second part, for _____ convenience and use in _____ business upon the terms and conditions hereinafter mentioned;

Now therefore, in consideration of the purchase of its petroleum products by said part____ of the second part, said first party hereby does agree to furnish and loan to said part____ of the second part, tank____ of the capacity of about _____ gallons, more or less, to be used by said part____ of the second part for the storage of petroleum products purchased from said party of the first part, and for no other purpose whatsoever.

It is expressly understood and agreed that said tank____ and all appliances connected therewith or used in connection with the same, furnished by said first party, shall at all times (except as hereinafter provided) be and remain the property of said party of the first part and shall be used by said part____ of the second part only for the purpose of holding and storing petroleum products purchased from the said party of the first part, and if said part____ of the second part shall at any time cease to purchase _____ petroleum products from said party of the first part or shall use said tank____ for the storage of petroleum products purchased from any other person, firm, or corporation, or for any other purpose than that herein specified, then the said party of the first part shall have the right to declare this agreement null and void and said first party shall thereupon have the right and privilege, without notice to said part____ of the second part, to charge said tank____ and all appliances connected or used therewith furnished by the first party, to the account of said part____ of the second part, at the sum of _____ dollars, which it is hereby mutually agreed is the reasonable value of said tank____

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Exhibit.

and appliances and connections, or, at its option, to enter upon the premises where said tank is (are) located, with men, horses, wagons, and such appliances as may be necessary, and remove therefrom said tank---- and connections and appliances furnished by said first party, without recourse to any legal proceedings for that purpose.

It is further expressly understood and agreed that in event of said tank---- being charged as aforesaid, the amount so charged shall be due and payable forthwith.

The part---- of the second part agrees to pay the party of the first part one dollar (\$1.00) per month in advance on the first day of each month, for the use of said tank----.

And in further consideration of the premises, said part---- of the second part, for ----- heirs, executors, administrators, and assigns, hereby agree---- to indemnify and save harmless the said party of the first part, of and from any and all claims for liability for any and all loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of or from said tank----, or the appliances connected or used therewith, or through any imperfection in the construction, installation, or operation of the same, whether due to negligence of the party of the first part or otherwise.

And also, for ----- heirs, executors, administrators, and assigns, do---- hereby expressly waive, relinquish, exonerate, discharge, and protect the said party of the first part from any and all liability for damages which may be suffered by ----- or ----- neighbors by reason of any leakage, fire, explosion, or other casualty occurring through any imperfection in said tank----, or the appliances connected therewith or from any other cause whatsoever.

Witnesses:

STANDARD OIL COMPANY.
(Indiana.)

----- By -----
----- [SEAL.]

The undersigned, owner---- of the premises upon which the above-described tank---- is to be, or has been installed, hereby consent---- to the installation thereof, and agree---- to be bound by the terms and conditions of the foregoing agreement.

----- [SEAL.]

Complaint.

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FEDERAL TRADE COMMISSION

v.

J. FRANK BATES, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF MALZO COFFEE
CO.

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

Docket 241.—September 12, 1919.

SYLLABUS.

Where a firm styling itself "Mazo Brothers" sold and distributed certain brands of coffee known as "Mazo Coffee," which trade name, through years of sale and advertising, had acquired a well-defined meaning and reputation with the purchasing public, and had become known as the product of said firm, and thereafter a competitor adopted and used the name "Malzo Coffee Co" and displayed the word "Malzo" on wagons, packages, advertising, and printed matter; with a tendency thereby to mislead and deceive the public into believing that the coffee of the new company was one and the same as that of the older concern:

Held, That such simulation of name, 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 J. Frank Bates, doing business under the trade name and style of Malzo Coffee 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 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 further 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, J. Frank Bates, is a resident of the District of Columbia, doing business under

the trade name and style of Malzo Coffee Co., with his principal office and place of business located at the city of Washington, in said District, now and for more than two years last past engaged in the sale and distribution of coffee, teas, spices, and similar products generally in commerce throughout different States of the United States and the District of Columbia, in direct trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That I. Joseph Mazo and Maurice H. Mazo are residents of the District of Columbia and copartners doing business under the firm name and style of Mazo Brothers, now and for more than two years last past engaged in the business of selling and distributing coffee; that since the year 1907 the said Mazo Bros. have sold and offered for sale to the trade and general public a certain brand of coffee for which they adopted the trade name and brand of "Mazo Coffee," which said trade name through years of sale and advertising has acquired a well defined meaning and reputation to the purchasing public, all of which is and was well known to the respondent herein.

PAR. 3. That the respondent, J. Frank Bates, doing business under the trade name and style of Malzo Coffee Co., in the year 1914, with the purpose, intent and effect of stifling and suppressing competition in interstate commerce in the sale and distribution of coffee, adopted and assumed the trade name of Malzo Coffee Co., and ever since said date has sold, offered to sell, and advertised to the trade and general public coffee under such trade name and style; that such simulation is designed and calculated to and does deceive and mislead the trade and purchasing public and causes them to believe that respondent's coffee is one and the same as that of said Mazo Brothers.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the respondent, J. Frank Bates, doing business under the trade name and style of Malzo Coffee Co.,

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has been using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered his appearance by Chapin Brown, Esq., his attorney, duly authorized to act in the premises, and having filed his answer admitting that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony and shall forthwith thereupon make its report stating its findings as to the facts, its conclusion, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument therefor, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, J. Frank Bates, is a resident of the District of Columbia, doing business under the trade name and style of Malzo Coffee Co., having its principal office and place of business located in the city of Washington, in said District, and is now and for more than two years last past has been engaged in the sale and distribution of coffee, teas, spices, and similar products generally in commerce in the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That I. Joseph Mazo, and Maurice H. Mazo are residents of the District of Columbia and copartners doing business under the firm name and style of Mazo Brothers, and are now and for more than two years last past have been

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engaged in the business of selling and distributing coffee and since the year 1907 have sold and offered for sale to the trade and general public certain brands of coffees for which was adopted and which are known by the brand name of "Mazo Coffee," which trade name through years of sale and advertising has acquired a well-defined meaning and reputation to the purchasing public and known to be the product of the aforesaid Mazo Brothers.

PAR. 3. That the respondent, J. Frank Bates, in the conduct of his business in the sale of coffee in the District of Columbia, during the past four years, has adopted and used the trade name of Malzo Coffee Co., and that the use of said trade name and the word "Malzo" displayed in certain type form and color on his wagons, packages, advertising, and printed matter tends to mislead and deceive the public into believing that the coffee is one and the same as that of Mazo Brothers.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent, J. Frank Bates, doing business under the trade name and style of Malzo Coffee Co., having entered his appearance by Chapin Brown, Esq., his attorney duly authorized and empowered to act in the premises, and having filed his answer and thereafter having made, executed, and filed an agreed statement of facts in which it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as evidence in this case and in lieu of testimony and proceed forthwith upon the same to make and enter its report, stating its findings as to the facts, its conclusion, and its order

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without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, J. Frank Bates, doing business under the trade name and style of Malzo Coffee Co., cease and desist from using the trade name "Malzo Coffee Co." or the brand name "Malzo" in connection with the sale of coffee in such way as to mislead and deceive the public into believing that the coffee of the respondent is one and the same as that of Mazo Brothers, and from using such trade name or brand name upon his wagons, packages, advertising, and printed matter, except in such type form and color, or with the addition of such other descriptive words as will clearly, definitely, and unmistakably show the purchasing public that the coffee of respondent is not one and the same as that of Mazo Brothers.

FEDERAL TRADE COMMISSION

v.

ROY C. DOWNS AND GEORGE W. LORD, DOING
BUSINESS UNDER THE NAME AND STYLE OF
THE ENGINEERING SUPPLY CO.

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

Docket 264.—September 12, 1919.

SYLLABUS.

Where a firm engaged in the manufacture and sale of boiler compounds, oils, and greases, gave and offered to give employees of its customers and prospective customers, and of its competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money, as an inducement to influence the sale of its products to their employers;

Held, That such gifts and offers to give, 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 Roy C. Downs and George W. Lord, doing business under the name and style of Engineering Supply Co., hereinafter referred to as respondents, have been for more than a year last past using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, Roy C. Downs and George W. Lord, doing business under the name and style of Engineering Supply Co., having their office and place of business in the city of Philadelphia, State of Pennsylvania, are now and for more than two years last past have been engaged in manufacturing and selling a certain boiler compound and also oils and greases throughout the States and Territories of the United States, and that at all times hereinafter mentioned respondents have carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondents, Roy C. Downs and George W. Lord, doing business under the name and style of Engineering Supply Co., are engaged in the various branches of the business of manufacturing, selling, and distributing boiler compounds, oils, and greases throughout the States and Territories of the United States, the District of Columbia, and foreign countries; that in the course of such business they purchase the raw materials used in the manufacture of same in the various States of the United States and the District of Columbia, and move and transport the same to their

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factory in the city of Philadelphia, where such raw materials are manufactured into boiler compound, oils, and greases, and that thereupon said respondents move and distribute the said boiler compound and other manufactured products so manufactured to and among the various States and Territories of the United States, the District of Columbia, and foreign countries; that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in such boiler compound, oils, and greases between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondents, in the course of their business of manufacturing, selling, and distributing boiler compound, oils, and greases throughout the States and Territories of the United States, the District of Columbia, and foreign countries, as aforesaid, for more than two years last past have been secretly paying and offering to pay to employees of their customers and prospective customers, and customers and prospective customers of competitors, without the knowledge and consent of their employers, sums of money as inducements to influence their said employers to purchase or contract to purchase from the respondents boiler compound, oils, and greases, or to influence such customers and prospective customers to refrain from dealing or contracting to deal with competitors of the respondents.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondents, Roy C. Downs and George W. Lord, doing business under the name and style of the Engineering Supply Co., have been for more than one year last past using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the

interest of the public, and fully stating its charges in that respect; and the respondents having entered their appearance by Illoway & Felix, their attorneys, and having filed their answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statements of facts which has been heretofore filed in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Roy C. Downs and George W. Lord, are doing business under the name and style of the Engineering Supply Co., having their office and principal place of business at the city of Philadelphia, State of Pennsylvania, and are now and for more than one year last past have been engaged in the manufacture and sale of boiler compounds, oils, and greases throughout the States and Territories of the United States in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondents, Roy C. Downs and George W. Lord, doing business under the name and style of the Engineering Supply Co., in the course of their business of manufacturing and selling boiler compounds, oils, and greases, have for more than a year last past given and offered to give to employees of their customers and prospective customers, and customers and prospective customers of competitors, without the knowledge and consent of their employers, sums of money, as inducements to influence the sale of their products to their employers.

Order.

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CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents having entered their appearance by Illoway & Felix, their attorneys, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondents, their agents, representatives, servants, and employees cease and desist from directly or indirectly:

Giving or offering to give employees of their customers or prospective customers or those of their competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondents boiler compounds, oils, greases, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondents, without other consideration therefor, sums or money or any other gratuity.

THE SWEATER STORE (EMIL WEST).

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Complaint.

FEDERAL TRADE COMMISSION

v.

EMIL WEST, DOING BUSINESS UNDER THE NAME
AND STYLE OF THE SWEATER STORE.