

LER, and AKRON TIRE CO., INC.

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

Docket 253.—September 25, 1919.

SYLLABUS.

Where a corporation and two individuals owning the majority of the stock thereof—

(a) advertised automobile tires rebuilt or reconstructed from partially worn and discarded tires from which the name and brand or mark of the original maker had been obliterated, and a new name or brand stamped thereon according to the agency through which such

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tires were offered for sale, with a tendency thereby to mislead the purchasing public into believing that such tires were new and manufactured in accordance with the processes generally employed by manufacturers of standard automobile tires;

- (b) failed in their advertising matter clearly to disclose that the goods were rebuilt;
- (c) sold such tires without advising purchasers that they were not new but were composed in part of used or reclaimed material; and
- (d) advertised that if a tire failed to give 4,000 miles' service such tire would be replaced at half price, thereby tending to create the impression among users that the tires could reasonably be expected to give a service of 4,000 miles:

Held, That such sales, rebranding, and advertisements, 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 William H. Batcheller, George Batcheller, and Akron Tire Co., Inc., hereinafter referred to as respondents, have been, and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Akron Tire Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located at the city of Long Island City, in said State, with branch offices in other States of the United States; that William H. Batcheller and George Batcheller control a majority of the capital stock and are the dominant and controlling factors in the aforesaid corporation; that all of the said respondents are now and at all times hereinafter mentioned have been engaged in the business of selling automobile tires of the character and in the manner hereinafter mentioned in com-

petition with manufacturers and dealers in automobile tires among the several States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 2. That in the conduct of their business respondents purchase old and discarded automobile tires in various States and Territories of the United States and transport the same through other States and Territories of the United States in and to the city of Long Island City, State of New York, and their other branch offices located in various States where they are made and manufactured into a finished product and sold and shipped to purchasers thereof; that after such products are so remade and manufactured they are continuously moved to, from, and among other States of the United States, the Territories thereof, and the District of Columbia, and there is continually and has been at all times herein mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and more particularly from other States and Territories of the United States and the District of Columbia to and through the city of Long Island City in said State, and from there to and through other States of the United States and Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondents are now and for more than a year last past have been engaged in purchasing old and discarded automobile tires and causing them to be repaired and coated with a thin coating of rubber or composition of similar appearance for the purpose of enabling said tires to be offered to the public for sale in the manner hereinafter more specifically mentioned.

PAR. 4. That the respondents for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of automobile tires in interstate commerce, as aforesaid, secured old and discarded automobile tires of various makes and bearing various trade names or brands, and in the process of having said tires repaired by said coating of rubber or composition the name of the maker of such tire and the original mark or

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brand is caused to be removed or concealed, and caused to be remarked or restamped with new names or brands, such new names or brands depending upon the medium through which the said tires are to be offered for sale; that the remarking or restamping of said new names or brands upon old and discarded or worn tires, as aforesaid, and advertising them under such new names is calculated and designed to and does mislead and deceive purchasers and prospective purchasers to believe that said tires offered for sale by respondents are new tires manufactured by or specially for respondents.

PAR. 5. That it is the common belief and impression among dealers and consumers of automobile tires and the purchasing public generally that automobile tires having the appearance of and sold as new and unused tires are manufactured from new and unused material and in accordance with the methods and processes employed generally by manufacturers of standard automobile tires, and not by the process as employed and used by respondents as described and set forth in paragraph 3 of this complaint; that for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of automobile tires, the respondents circulated and caused to be circulated advertisements through various publications and through the mails to the trade, and among consumers generally, that respondents' automobile tires are new and have not been made over as set forth in paragraph 3, which advertisements have conveyed and do convey and are calculated and designed to convey the belief and impression that the said tires manufactured by the respondents are composed of new and unused material, and that the respondents have at all times herein mentioned concealed and wholly failed to disclose that the said tires so manufactured by respondents are in fact remade as described in paragraph 3.

PAR. 6. That for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of automobile tires in interstate commerce, respondents advertised that such tires were guaranteed to give service of 4,000 miles, and that if

said tires failed to give such service respondents would furnish another tire for one-half the price quoted for such tires, thus representing and thereby creating the belief and impression among users of tires generally that said tires were calculated and expected by respondents to give service of 4,000 miles; that each of the respondents well knew that said tires had been worn and discarded before being coated with the thin film of rubber or composition, as aforesaid, and that said representations that said tires will run 4,000 miles are false, misleading, and calculated and designed to mislead and deceive purchasers and prospective purchasers.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondents, William H. Batcheller, George Batcheller, and Akron Tire Co., Inc., 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 Margaret M. Burnet, their attorney, duly authorized and empowered to act in the premises, 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 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 conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal

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Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the Akron Tire Co., Inc., is a New York corporation with its principal place of business at Long Island City, in the State of New York, and that William H. Batcheller and George Batcheller own and control the majority of the capital stock in the said Akron Tire Co., Inc.; that the respondents are engaged in the business of purchasing discarded automobile tires, rebuilding same, and selling them in turn to automobile tire brokers in competition with other firms similarly engaged.

PAR. 2. That in the conduct of their business respondents purchase discarded automobile tires in various States of the United States and have same shipped to their factory at Long Island City, where the said tires are reconstructed and rebuilt and are then sold in turn to purchasers in various States of the United States.

PAR. 3. That the said tires sold and offered for sale by respondents are rebuilt and reconstructed tires, being built from partially used and discarded tires, and are constructed substantially as follows: The fabric to a great extent used in rebuilding the tires is what is known as Egyptian duck or sea island cotton taken from carefully selected partially worn standard make tires. The carcass of the tire is buffed, washed, and thoroughly cleaned. The fabric is reexamined, and worn parts are pulled out and subsequently replaced with fabric of the same quality as that originally used in the tires. It is then given several coats of high quality vulcanized cement and allowed to dry, and later a second coat is applied, after which a breaker strip is added and the tread stocks put on. To it is then added a final coat of sheet rubber and the tire is then cured in a large hydraulic mold, and the final touch is painting the tire on the inside with soapstone.

PAR. 4. That the automobile tires manufactured and sold by respondent as aforesaid have the appearance of being composed of new material and made in accordance with the

methods and processes employed generally by manufacturers of standard automobile tires, and that respondents prior to but not since January, 1917, circulated advertisements to the trade and among customers generally wherein it was not stated the said tires sold by respondents were rebuilt or reconstructed, and by such omissions the said advertisements as used had a tendency to create the impression among the purchasing public that respondent's tires were new and made in accordance with the methods employed generally by manufacturers of standard automobile tires. That since February, 1919, every tire rebuilt for the trade by the respondents have been marked with the word "Reconstructed," which word is cast in the pneumatic molds in which the remade tires are vulcanized, and which word, by the pressure of the process, is plainly and prominently indented in the refinished tires.

PAR. 5. That the aforesaid partially used and discarded automobile tires were of various makes and bore various trade-marks or brands, and that in the process of having said tires rebuilt the name of the maker of such tires and the original mark or brand was obliterated and in place there was stamped a new name or brand, depending upon the agency through which the said tires were offered for sale; that the restamping of the said tires with new names as aforesaid, without any qualifying words or explanation, tended to cause the purchasing public to believe the said tires were new tires, manufactured in accordance with the process employed generally by manufacturers of standard automobile tires.

PAR. 6. That a circular was distributed under the name of the Akron Tire Co., Inc., containing an advertisement representing substantially that if a tire failed to give service of 4,000 miles, such tire would be replaced at one-half the price paid; that some of the tires did give this service, and that those which did not were replaced for one-half the original purchase price, but that the advertisement tended to create the belief and impression among users of automobile tires that the said tires sold by respondents could be expected to give a service of 4,000 miles.

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CONCLUSIONS.

That the methods of competition set forth in the foregoing findings, under the circumstances 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, William H. Batcheller, George Batcheller, and Akron Tire Co., Inc., having entered their appearance by Margaret M. Burnet, 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 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, and to make and enter its report stating its findings as to the facts, its conclusions, and its order 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 conclusions 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 officers, agents, representatives, servants, and employees cease and desist from directly or indirectly—

(1) Making representations by verbal statements, or statements in advertising matter, or otherwise, which are calcu-

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lated and designed to create the belief and impression among consumers of automobile tires that rebuilt and reconstructed tires, restamped with new names and brands, are new tires manufactured from new and unused material.

(2) Selling or offering for sale rebuilt and reconstructed automobile tires, unless it is plainly and prominently indicated on the said tire that it is reconstructed or rebuilt.

(3) Wording and phrasing advertisements so as to create the impression and belief that automobile tires sold and offered for sale by respondents can reasonably be expected to give a service of 4,000 miles.

FEDERAL TRADE COMMISSION

v.

SINCLAIR REFINING CO.

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

Docket 334.—October 14, 1919.

SYLLABUS.

Where a corporation competitively engaged in refining crude petroleum, buying and selling gasoline, and in transporting and marketing such products, 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 requiring a larger capital investment than many competitors possessed, 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;

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

PARAGRAPH 1. That the respondent, the Sinclair Refining Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at the city of Chicago, in the State of Illinois; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline, and the leasing and loaning of oil pumps, storage tanks, or containers and their equipments in various States of the United States and the District of Columbia in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent in the conduct of its business as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil pumps, storage tanks, or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in inter-

state commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices the same are constantly moved from one State to another by respondent and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitors of respondent to various persons, firms, corporations, and copartnerships; that in the conduct of their business as aforesaid competitors of respondent constantly move such products and devices from one State to another and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the past four years.

PAR. 3. That respondent in the conduct of its business, as aforesaid, with the effect of stifling and suppressing competition in the sale of the aforesaid products and in the sale, leasing, or loaning of the aforesaid devices and other equipments for storing and handling the same, and with the effect of injuring competitors who sell such products and devices, has within the four years last past sold, leased, or loaned and now sells, leases, or loans the said devices and their equipments for prices or considerations which do not represent reasonable returns on the investments in such devices and their equipments; that many such sales, leases, or loans of the aforesaid devices are made at prices below the

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cost of producing and vending the same; that many of such contracts for the lease or loan of such devices and their equipments provide or are entered into with the understanding that the lessee or borrower shall not place in such devices or use in connection with such devices and their equipments any refined oil or gasoline of a competitor; that only a small proportion of the dealers in gasoline and refined oil under such agreements and understandings deal also in similar products of respondent's competitors, and that only a small proportion of such dealers require or use more than a single pump outfit in the conduct of their said business; that there are numerous competitors in the sale of such products who are unable to enter into such lease agreements or understandings because of the large amount of investment required to carry out such lease agreements as a competitive method of selling refined oil and gasoline; that there are numerous other competitors of respondent engaged in the manufacture and sale of said devices and their equipments who do not deal in refined oil and gasoline, and therefore do not sell or lease said devices and their equipments for a nominal consideration on a condition or understanding that their products only are to be used therein; that the said numerous competitors who were unable to enter into such lease agreements or understandings, as aforesaid, have lost numerous customers in the sale of refined oil and gasoline to respondent because of the business practices of respondent hereinbefore set forth; that the said numerous other competitors of respondent who manufacture and sell said devices and their equipments, but do not sell refined oil and gasoline, as aforesaid, have lost numerous customers and prospective customers for the purchase of their devices and equipments because of the said business practices of respondent, as hereinbefore set forth.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sinclair Refining Co., hereinafter referred to as the respondent, has been using unfair methods of competition in in-

terstate commerce, in violation of 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," 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 Sinclair Refining Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business in the city of Chicago, in the State of Illinois; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline and the leasing of oil pumps and storage tanks and their equipments in various States of the United States and the District of Columbia, in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent in the conduct of its business, as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil pumps, storage tanks, or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that such products are sold, and such devices sold, leased, or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices, the same are constantly moved from one State to another by respondent, and there is conducted by respondent a constant current of trade in such products and devices between the various States of the United States; that there are numerous competitors of respondent who in the conduct of their businesses in competition with respondent purchase similar products and purchase and manufacture similar devices, the said devices being used

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to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that such products are sold and the aforesaid devices sold, leased, or loaned by such competitors in competition with respondent to various persons, firms, corporations, and copartnerships; that in the conduct of such business, as aforesaid, respondent's competitors constantly move such products and devices from one State to another and there is conducted by said competitors of respondent a constant current of trade in such products and devices between the various States of the United States; that respondent and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the four years last past.

PAR. 3. That the respondent, for four years last past, in the conduct of its business as aforesaid, has leased and made contracts for the lease and is now leasing and making contracts for the lease of said devices and their equipments to be used within the United States, and has fixed and is now fixing the price charged therefor on the condition, agreement, or understanding that the lessees thereof shall not purchase or deal in the products of a competitor or competitors of respondent; and that the effect of such leases or contracts for lease, and conditions, agreements, or understandings, may be and is to substantially lessen competition and tend to create a monopoly in the territories and localities where such contracts are operative.

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 the Commission, subject to its approval, an agreed statement of facts in said cause, which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and it having been agreed that as to other facts the evidence

to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the Commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the Commission having duly heard evidence on behalf of the Commission and respondent, and the respondent having filed a brief by its attorney, and the Commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the Commission and by the respondent, and being fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the city of Chicago, in the State of Illinois, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter referred to as products, and is largely engaged in refining crude petroleum, and that it is now and has been since January 25, 1917, in connection with the aforementioned business, engaged in the leasing and loaning, but not in the manufacture, of oil pumps, storage tanks, and containers, and their equipment, hereinafter referred to as devices, in various States of the United States, but not in the District of Columbia, in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged; that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Co.

PAR. 2. That the respondent, in the conduct of its business, as aforesaid, and as hereinafter more particularly described, extensively refines petroleum and its products and purchases refined oil and gasoline, all hereinafter referred to as "products," and also purchases oil pumps, storage tanks or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products

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and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices, the same are constantly moved from one State to another by respondent, and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent, who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitors of respondent to various persons, firms, corporations, and copartnerships; that in the conduct of their business, as aforesaid, competitors of respondent constantly move such products and devices from one State to another, and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent has conducted its said businesses in a similar manner to that above described since January 25, 1917.

PAR. 3. That respondent now leases and loans, and has for the period of its business existence leased and loaned, devices and equipment for storing and handling its products, and that the monetary considerations received by respondent do not represent reasonable returns upon the investment in such devices and equipment; and also that such leases and loans of said devices and equipment are made for monetary considerations below the cost of purchasing and vending the same, when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and

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sales policy of the respondent; that respondent's form of contract with the users of such devices and equipment provides in substance that the devices and equipment shall be used for the sole purpose of storing and handling gasoline supplied by respondent, and that the uniform contract used by respondent for leasing such devices and equipment is in form, tenor, and substance as follows:

SINCLAIR REFINING COMPANY.

EQUIPMENT CONTRACT.

This agreement, made and entered into this _____ day of _____, 19____, between Sinclair Refining Company of _____, party of the first part, and _____, of the city of _____, State of _____, party of the second part, witnesseth:

Whereas, party of the second part is now being supplied with gasoline by the party of the first part and desires to install on his premises situated at _____ the following equipment for the better storing and handling of such gasoline:

Now, therefore, in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part (the receipt of which is hereby acknowledged), the above-named parties do hereby agree as follows:

1. The above-described equipment shall be used by party of the second part for the sole purpose of storing and handling the gasoline supplied by party of the first part.

2. The party of the second part agrees, at his own cost, to maintain said equipment in good condition and repair so long as he shall continue to use same.

3. The party of the second part agrees that he will not encumber or remove said equipment, or do or suffer to be done anything whereby said equipment or any part thereof may be seized, taken on execution, attached, destroyed, or injured, or by which the title of the party of the first part thereto may in any way be altered, destroyed, or prejudiced.

4. In the event party of the second part should at any time use said equipment for any other purpose than the storing and handling of gasoline supplied by the party of the first part, or should cease for _____ days to handle gasoline secured from the party of the first part, the right or license of the party of the second part to said equipment shall at once terminate, and thereupon party of the first part shall have the right to enter upon said premises and remove said equipment and every part thereof.

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5. The party of the second part shall indemnify and save harmless the party of the first part of and from any liability for loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of gasoline stored in said tank or drawn through said pump.

6. This agreement shall terminate forthwith upon the sale or other disposition of said premises by party of the second part, and in any event upon the expiration ----- months from the date hereof; and in the event that by mutual consent said equipment remains in the possession of party of the second part at the expiration of said period it is agreed that the same shall be used by party of the second part subject to all of the terms and conditions of this agreement, and such may be terminated at any time after the expiration of ----- months from the date hereof by the party of the first part giving ten days' notice to that effect. Upon the termination of this license by whatever means effected, the party of the first part shall have the right to enter upon said premises and remove the said equipment and each and every part thereof: *Provided, however,* That the party of the second part shall have the right and option at such time to purchase said equipment by paying therefor the sum of -----.

This contract is executed in triplicate, and it is agreed that the contract held by the party of the first part is to be considered the original and to be the binding agreement in case the duplicate varies from it in any particular.

In witness thereof the parties hereto have caused this agreement to be executed the day and year first above written.

SINCLAIR REFINING COMPANY,

By -----

Party of First Part.

Party of Second Part.

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 the practice of leasing such devices requires a large capital investment; that many competitors of respondent do not possess sufficient capital and are not able to purchase and lease devices as respondent does as aforesaid, partly by reason of which such competitors have

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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 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 the Commission, subject to its approval, an agreed statement of facts in said cause, which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and it having been agreed that as to other facts the evidence to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the Commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the Commission having duly heard evidence on behalf of the Commission and respondent, and the respondent having filed a brief by its

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attorney, and the Commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the Commission and by the respondent and being fully advised in the premises reports and finds as follows: That having 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, Sinclair Refining Co., 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.

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Syllabus.

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 Sinclair Refining 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, herein above 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 proposed to be put in use, and also attach to such report any contracts used by the respondents in the conduct of such business.

FEDERAL TRADE COMMISSION

v.

ROYAL EASY CHAIR CO.

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

Docket 239.—November 17, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of reclining chairs, gave and offered to give to employees of customers cash bonuses as an inducement to push the sale of its products with the purchasing public:

Complaint.

2 F. T. C.

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

PARAGRAPH 1. That the respondent, the Royal Easy Chair Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, having its principal office and place of business at the city of Sturgis, in said State, now and for more than one year last past engaged in manufacturing and selling reclining chairs and kindred products throughout the States and Territories of the United States and the District of Columbia, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce, in the manufacture and sale of reclining chairs and kindred products, the respondent, for more than one year last past has given and offered to give a cash bonus on each chair sold, to salesmen of retail merchants handling the products of the respondent and those of its competitors, as an inducement to push the sales of respondent's products, in preference to the products of its competitors.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, the Royal Easy Chair Co., has 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 respondent having entered its appearance by Channing L. Sentz, its attorney, duly authorized and empowered to act in the premises, and having filed its 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 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 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 respondent, the Royal Easy Chair Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at the city of Sturgis, in said State; that the said respondent is now and for more than one year last past has been engaged in the manufacture and sale of reclining chairs among the several States of the United States, the Territories thereof,

Order.

2 F. T. C.

and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the Royal Easy Chair Co., in the conduct of its business, manufactures such reclining chairs so sold by it in its factory located at the city of Sturgis, State of Michigan; that after said products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States, and there is continuously and has been at all times a constant current of trade and commerce in the said reclining chairs between and among the various States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That in the course of its business of manufacturing and selling reclining chairs in interstate commerce, the respondent, the Royal Easy Chair Co., within the year last past has given and offered to give employees and salesmen of dealers who handle and sell the products of respondent and those of certain of its competitors cash bonuses as an inducement to push the sale of respondent's products.

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 respondent, the Royal Easy Chair Co., having entered its appearance by Channing L. Sentz, its attorney, duly authorized and empowered to act in the premises, and having filed its answer, and thereafter having made, executed, and filed an agreed statement of facts in which it 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, and to make and enter its report stating its findings as to the facts, its conclusions, and its order 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, its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly giving or offering cash bonuses or prizes to employees or salesmen of dealers who handle and sell reclining chairs of the respondent and of one or more of the respondent's competitors, as an inducement to influence such employees to push the sale of the respondent's products.

FEDERAL TRADE COMMISSION

v.

BROWN PORTABLE CONVEYING MACHINERY CO.

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

Docket 235.—November 29, 1919.

SYLLABUS.

Where an agent of a corporation engaged in the manufacture and sale of portable conveying machinery, while attempting to make sales, represented to customers and prospective customers of the corporation's competitors, without such corporation's knowledge, that—

(a) the corporation would, or was about to, institute legal proceedings for infringement of its letters patent by portable conveying machinery manufactured and sold by a competitor;

Complaint.

2 F. T. C.

- (b) a suit at law was pending which had been instituted by the corporation against one of its competitors for infringement of a patent owned and controlled by the corporation;
- (c) a certain competitor was misleading its (the corporation's) competitors and customers and prospective customers by falsely stating to them that a certain Eugene Brown was the inventor of the portable elevator manufactured and sold by said competitor; and that
- (d) said Brown was not the inventor of the machinery sold by such competitor and was not in any way connected with the manufacture of any elevator, but that he had been employed by such competitor since the corporation's patent was obtained;

Whereas, in fact—

- (a) said Brown was the inventor of a portable warehouse elevator upon which letters patent duly issued to him, and for some years had been an officer of a corporation engaged in the manufacture and sale of portable conveying machines; and
- (b) the suit referred to had been dismissed some three years before and no appeal prayed for or taken from such decision, nor any further proceedings instituted for the alleged infringement of said patent either by the corporation or its predecessor;

Held, That such false and misleading statements, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

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

PARAGRAPH 1. That the respondent, Brown Portable Conveying Machinery Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the city of Chicago, in said State, now and for

several years last past engaged in the manufacture, sale, and shipment of portable conveying machinery throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries in trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Brown Portable Conveying Machinery Co., in the conduct of its business manufactures the portable conveying machinery so sold by it in its factory located in the State of Illinois and purchases and enters into contracts of purchase for the necessary component materials needed therefor in the different States of the United States and foreign countries, transporting the same through other States of the United States in and to its factory aforesaid, where they are made and manufactured into the finished product and sold and shipped to the purchasers thereof; that after such machinery is so manufactured it is continuously moved to, from, and among other States of the United States, the Territories thereof, 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 portable conveying machinery between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and especially to and through the city of Chicago, State of Illinois, and therefrom to and through other States of the United States, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, Brown Portable Conveying Machinery Co., during the three years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of portable conveying machinery in commerce aforesaid, has threatened certain of its competitors and the customers of its competitors with suits for infringement of respondent's alleged letters patent; that such threats were not made in good faith, and when so made respondent had no intention of instituting any such suits, and in fact has not instituted any such suits, and that the same were calculated and designed to and did hinder, em-

Findings.

2 F. T. C.

barrass, and restrain competitors of respondent in the conduct of their business.

PAR. 4. That the respondent, Brown Portable Conveying Machinery Co., its agents, servants, and employees, within the three years last past with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of portable conveying machinery in commerce aforesaid has held out, stated, and represented to the customers of its competitors that—

1. There was a suit at law pending which had been instituted by the respondent against a certain competitor for infringement of a patent alleged to be owned and controlled by the respondent;

2. A certain competitor of the respondent was misleading its competitors and the customers and prospective customers of the respondent by falsely and erroneously stating to such customers and prospective customers that one Eugene Brown was the inventor of the portable elevator manufactured and sold by said competitor;

3. The said Eugene Brown was not the inventor of the machinery sold by his company and was not in any way connected with the manufacture of any elevator, but that he had been picked up by the said competitor's company since respondent's alleged patent was obtained; that such statements and representations were false and misleading and calculated and designed to and did hinder, embarrass, and restrain respondent's competitors and their customers and prospective customers in the conduct of their business.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint, wherein it is alleged that the above-named respondent, Brown Portable Conveying Machinery Co., has been and is violating section 5 of the Federal Trade Commission act, and said respondent having thereafter appeared and filed its answer admitting certain of the matters and

things as therein alleged and set forth and denying others contained therein, and thereafter having made and entered into an agreed statement of facts with Claude R. Porter, chief counsel of the said Commission, wherein it is stipulated and agreed that the Federal Trade Commission shall 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 and its conclusions without the introduction of testimony or the presentation of argument, and the Commission having considered the same, and being duly advised in the premises, now makes and enters this, its report, stating its findings as to the facts and its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Brown Portable Conveying Machinery Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the city of Chicago, in said State, now and for several years last past engaged in the manufacture, sale, and shipment of portable conveying machinery throughout the various States of the United States and foreign countries in trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Brown Portable Conveying Machinery Co., manufactures portable conveying machinery at its factory in Illinois out of materials it purchases in the different States of the United States and transports through other States of the United States in and to its factory in Illinois, and there makes and manufactures the same into finished product, and sells the machinery so manufactured to purchasers thereof; that after such machinery is so manufactured the same is continuously moved to, from, and among other States of the United States and foreign countries, and that there has been a constant current of trade and commerce in said machinery between and among the various States of the United States and foreign countries by respondent since July, 1912, and by its predecessor, the

Findings.

2 F. T. C.

Brown Portable Elevator Co. (an Oregon corporation) since 1907, and especially to and through Chicago, Ill., and therefrom to and from other States of the United States and foreign countries.

PAR. 3. That one Eugene Brown, of Colfax, State of Washington, is the inventor of a portable warehouse elevator, upon which the United States Patent Office on the 26th day of February, 1901, issued to him letters patent, the same being numbered 668971.

PAR. 4. That since the year 1912 the aforesaid Eugene Brown has been connected with, and is an officer of, the Colfax Manufacturing Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office, factory, and place of business located at the town of Colfax, in said State, engaged in the business of manufacturing and selling portable conveying machines.

PAR. 5. That in the year 1915 the Brown Portable Elevator Co., part of whose assets the respondent herein thereafter acquired, instituted a proceeding in equity in the United States District Court of the District of Oregon against Interior Warehouse Co. to enjoin the infringement of the aforesaid patent, No. 668971, and thereafter, to wit, on August 7, 1916, the court dismissed the said proceeding, from which decision the respondent, Brown Portable Elevator Co., has neither prayed for or perfected an appeal either in law or equity, and that neither said Brown Portable Elevator Co. nor the respondent herein has since said date instituted any proceeding against any person, firm, copartnership, or corporation for the alleged infringement of said patent.

PAR. 6. That one Mailler Searles was within the three years last past the representative on the Pacific coast of the respondent herein, and as such representative, while selling and offering to sell portable conveying machines of the Brown Portable Conveying Machinery Co., and while attempting to make such sales, circulated reports among customers and prospective customers of competitors of the respondent—

Order.

1. That the respondent herein would or was about to institute legal proceedings for the infringement of letters patent upon portable conveying machinery manufactured and sold by a competitor;

2. That there was a suit at law then pending which had been instituted by the respondent against a certain competitor for infringement of a patent alleged to be owned and controlled by the respondent;

3. That a certain competitor of the respondent was misleading its competitors and the customers and prospective customers of the respondent by falsely and erroneously stating to such customers and prospective customers that one Eugene Brown was the inventor of the portable elevator manufactured and sold by said competitor;

4. That said Eugene Brown was not the inventor of the machinery sold by his company and was not in any way connected with the manufacture of any elevator, but that he had been picked up by the said competitor's company since respondent's alleged patent was obtained; but that all of such representations were made without the knowledge of the respondent herein.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraph 6, 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 the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein. and the respondent, Brown Portable Conveying Machinery Co., having entered its appearance and filed its answer and thereafter made and entered into an agreed statement of facts with Claude R. Porter, chief

Order.

2 F. T. C.

counsel for the Federal Trade Commission, wherein it was stipulated and agreed that the said Commission should take such agreed statement of facts as the evidence in this proceeding and in lieu of testimony and proceed forthwith upon the same and enter its report stating its findings as to the facts and its conclusion without the introduction of testimony or the presentation of argument, and the Commission having made and filed its report containing its findings as to the facts and its 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," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Brown Portable Conveying Machinery Co., of Chicago, State of Illinois, its officers, agents, servants, representatives, and employees cease and desist from directly or indirectly making statements or circulating reports among its customers and prospective customers and the customers and prospective customers of its competitors:

(1) That the respondent, Brown Portable Conveying Machinery Co. has or is about to institute legal proceedings for the infringement of letters patent upon portable conveying machinery manufactured and sold by Colfax Manufacturing Co., of the town of Colfax, State of Washington.

(2) That there is a suit at law pending which has been instituted by the respondent, Brown Portable Conveying Machinery Co., against Colfax Manufacturing Co., of the town of Colfax, State of Washington, for the infringement of a patent alleged to be owned and controlled by the said respondent.

(3) That the Colfax Manufacturing Co., of the town of Colfax, State of Washington, is misleading its competitors and the customers and prospective customers of the respondent, Brown Portable Conveying Machinery Co., by falsely and erroneously stating to such customers and prospective customers that one Eugene Brown was the inventor of the portable elevator manufactured and sold by said Colfax Manufacturing Co.

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(4) That Eugene Brown, an officer of the Colfax Manufacturing Co., of the town of Colfax, State of Washington, is not the inventor of the machinery sold by his company and is not in any way connected with the manufacture of any elevator, but that he has been picked up by the said Colfax Manufacturing Co. since respondent's, Brown Portable Conveying Machinery Co.'s alleged patent was obtained.

FEDERAL TRADE COMMISSION*v.*

WESTERN SUGAR REFINERY ET AL.