powers and duties, and for other purposes," which said report is herein referred to and made a part hereof: Now,

It is ordered, That the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., their agents, representatives, servants, and employees cease and desist from directly or indirectly:

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

It is further ordered, That the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., shall within 60 days from the date of service of this order file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

W. G. HANSON, DOING BUSINESS UNDER THE NAME AND STYLE OF THE MERCANTILE & FINANCIAL TIMES PUBLISHING CO.

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

Docket 502.—May 20, 1920.

SYLLABUS.

Where an individual engaged in the printing and sale of a publication never offered to the public generally nor sent through the mails, but purporting to be a regular mercantile and financial periodical; with the purpose of misleading the public as to the true character of said publication;

Closely simulated the appearance of a regular mercantile and financial periodical, by the inclusion of a large number of free advertisements of reputable financial concerns, inserted without their knowledge; by the inclusion of matter purporting to be mercantile and financial news articles and editorials, but in fact solicited advertisements constituting the publication's sole source of income, and paid for by the purchase of a definite number of copies of the particular issue; and by make-up and style of printing:

Held, That such false and misleading course of conduct, 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 W. G. Hanson, hereinafter referred to as respondent, doing business under the name and style of the Mercantile & Financial Times Publishing Company, 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, W. G. Hanson, has his principal place of business in the city and State of New York, and for more than a year last past has been engaged in printing and publishing what purports to be a periodical journal dealing with mercantile and financial matters generally, as hereinafter more fully described, under the name and style of the "Mercantile and Financial Times," and in the transportation thereof from its place of publication in the city and State of New York to purchasers of copies therof in other States of the United States, in competition with other individuals, copartnerships, and corporations engaged in the publication of periodical journals dealing with mercantile and financial matters generally.

PAR. 2. That the publication issued by the respondent as aforesaid under the name of the "Mercantile and Financial Times" is essentially similar in form and make up to periodical journals dealing with mercantile and financial matters generally which are made up of paid advertisements set forth as such and bona fide news articles and editorials, and contains a large number of advertisements of reputable financial concerns together with what purport to be news

articles and editorials dealing with financial and mercantile matters, and in other ways so closely simulates bona fide periodical journals of this kind as to lead the public generally to believe that respondent's publication is in fact a bona fide periodical journal dealing with mercantile and financial matters generally, whereas in fact respondent's publication is not a bona fide periodical journal published regularly and sent through the mails to subscribers or distributed through dealers in the usual course; that what purport to be news articles and editorials contained therein are in fact advertisements, although not marked as such, of individuals referred to therein and paid for by the said individuals contracting with the respondent to buy a given number of copies of said publication containing such spurious news articles and editorials, and that the aforesaid advertisements of reputable financial concerns are published without the knowledge or consent of said concerns and without any expense on their part; and that the effect of the foregoing is, among other things, to cause advertisers to give an undue preference to respondent's publication over bona fide periodical journals in which all advertising matter is plainly set forth as such for the reason that the public are thereby deceived and misled into giving an undue credence to advertisements falsely represented and published as news articles and editorials as aforesaid.

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 above-named respondent has been and is now 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 has been for more than a year last past engaged in printing and publishing what purports to be a periodical journal dealing with mercantile and financial matters generally, under the name and style of

the "Mercantile and Financial Times," and in the transportation thereof from its place of business in New York City, in the State of New York, to purchasers of copies thereof in other States of the United States, in competition with other individuals, copartnerships, and corporations engaged in the publication of periodical journals dealing with mercantile and financial matters generally. That said Mercantile and Financial Times is made up of what purports to be editorial and news articles and contains a large number of advertisements of reputable financial concerns, and that many of said news articles and editorials are in fact advertisements and paid for as such, and such purported advertisements are not in fact paid for but are copied from other publications without the knowledge and consent of such publications and without the knowledge or consent of the advertisers; and that a proceeding by the Federal Trade Commission in respect to such charges would be to the interest of the public, and fully stating its charges in this respect, and the respondent having appeared in his own proper person and having filed his answer to the complaint of the Commission herein, and the Commission having offered testimony in support of the charges of said complaint and the respondent having offered testimony in support of his answer, and the respondent and counsel for the Commission having waived the filing of briefs and the hearing of argument on the exceptions and on the merits, and the Commission having duly considered the record and being fully advised in the premises, now makes this its report and findings as to the facts and the conclusions of law.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. For more than three years last past the respondent, W. G. Hanson, has been engaged in publishing, and has published, a paper called the "Mercantile and Financial Times," purporting to be devoted to the financial and mercantile interests in the United States, which paper was published at 409 and 416 Pearl Street, in the city of New York, State of New York.

PAR. 2. That said paper, the Mercantile and Financial Times, had no subscribers and did not solicit advertisements and was not distributed through the post office. That in size it averaged about 15 pages, consisting of reading matter having the form and appearance of editorial and news items and contained advertisements which purported to be the advertisements of reputable financial business houses.

PAR. 3. That said Mercantile and Financial Times is and was distributed to purchasers of copies thereof in States other than the State of New York and within the field reached and served by other persons and corporations engaged in the publication of periodical journals dealing with mercantile and financial matters generally, and selling advertising space at regular rates to such persons as desired to use such periodical journals for advertising purposes.

PAR. 4. That the Mercantile and Financial Times as published by respondent is similar in form and appearance to such regular periodical journals dealing with financial matters generally, and which are made up of paid advertisements set forth as such and bona fide news articles and editorials.

PAR. 5. That the advertisements appearing in said Mercantile and Financial Times were copied from other publications and appeared in said Mercantile and Financial Times without the knowledge or consent of the advertisers and without the knowledge or consent of the publications from which said advertisements were copied, except as hereinafter set forth in paragraph 6. The Mercantile and Financial Times received no compensation for such advertisements and such advertisements were placed in said Mercantile and Financial Times for the purpose of making it appear to the public that mercantile and financial houses of good repute made use of its columns for advertising purposes and to give to the Mercantile and Financial Times the appearance of a regular publication.

PAR. 6. That said Mercantile and Financial Times as published contains many articles in the form of editorials and news articles which are in fact paid "write-ups" for which

the person or corporation so given publicity contracted to purchase a definite number of copies of the issue of said Mercantile and Financial Times in which such "write-ups" appeared, paying therefor at the rate of 15 cents per copy in quantities less than 1,000 and 10 cents per copy for greater quantities.

PAR. 7. That said Mercantile and Financial Times is sold in States other than the State of New York to persons who have purchased a definite number of copies in return for the insertion in the whole issue of such paper of such "write-ups" and is delivered to such purchasers within the city of New York by messengers and to purchasers without the city of New York by means of the several express companies.

PAR. 8. The Mercantile and Financial Times is not offered for sale to the public and its sole income is derived from the sale of copies of the paper to the persons and corporations so written up. That such "write-ups" are solicited by agents of the respondent who write the articles and submit them to the prospective purchaser for correction and revision. If the person or corporation so written up agrees to purchase in return for such "write-ups" a definite number of copies of the Mercantile and Financial Times, the article is printed and published as revised.

PAR. 9. The Mercantile and Financial Times is published only when a sufficient number of paid "write ups" has been secured on contract similar to the contracts mentioned in No. 8 hereof, to make an issue of said periodical profitable.

PAR. 10. The persons and corporations given the publicity mentioned in No. 8 hereof distributed the copies of the Mercantile and Financial Times so purchased by them through the mails to prospective stock purchasers and investors.

PAR. 11. That the Mercantile and Financial Times, as printed and published by respondent, was so made and printed as to simulate closely regular periodical journals devoted to financial and mercantile matters, and designed to mislead the public into the belief that it was a regular publication.

CONCLUSIONS.

That the method of competition as set forth in the foregoing findings as to the facts under the circumstances therein set forth is an unfair method 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 having duly filed his answer admitting certain allegations of said complaint and denying certain other allegations thereof and particularly denying that respondent has ever violated the provisions of an act of Congress mentioned in said complaint, or any of the other provisions of any law; and the Commission having offered testimony in support of the charges of said complaint and the respondent having offered testimony in support of his answer and the Commission on the date hereof 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 respondent, W. G. Hanson, doing business under the name and style of the Mercantile & Financial Times Publishing Co., his agents, servants, and any and all persons acting for him, cease and desist from printing, publishing, and distributing among the several States and Territores of the United States and the District of Columbia and foreign countries, any periodical journal or other publication having the form and appearance of a regular newspaper or periodical journal and containing printed matter in the form of news items or editorials, not labeled or otherwise designated as advertisements, which are in fact paid adver-

tisements, all so made up and published as to mislead the public into the belief that it was a regular publication.

Provided, That the said respondent be, and hereby is, granted 30 days from the date of service of this order within which to adjust his business so as to conform to the terms of this order.

It is further ordered, That within the time above limited within which respondent may adjust his business to conform to this order he report to the Commission the manner in which he has complied with this order and conformed thereto.

FEDERAL TRADE COMMISSION

v.