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

Docket 273.—May 27, 1920.

SYLLABUS.

Where a corporation organized for the ostensible purpose of manufacturing and selling automobiles in large quantities, acting through its president and fiscal agent, who was also its promoter, in selling and offering for sale the stock of the corporation,

(a) advertised and circulated false, misleading, and unfair reports and statements concerning the plan of organization, the assets, resources, business, progress, good will, and financial standing and responsibility of said corporation, and suppressed and concealed from the public facts relating to and affecting the plans of organization and the financial standing and condition thereof;

(*b*) falsely stated, advertised, and published that individual subscriptions to the stock of said corporation would be limited and that a limited allotment of stock would be made to particular States, cities, and communities;

(*c*) advertised, published, and circulated false and misleading statements, circulars, etc., regarding certain automobiles and motor vehicles represented as being manufactured by said corporation;

(*d*) procured the publication of articles and reports endorsing and praising said corporation, its officers and organization, and caused said articles to be reprinted and circulated, falsely representing and advertising the same to have been written and published independently and voluntarily by disinterested parties;

(*e*) caused to be printed, advertised, and circulated certain letters purporting to be letters indorsing said individual and said corporation, after the authors thereof had withdrawn and repudiated the same and forbidden their further use and circulation;

(*f*) made, published, advertised, and circulated false and misleading statements, representations, predictions, and promises relating to the design, production, and manufacture of a certain motor tractor, described as the "Pan Tank-Tread Tractor";

(*g*) made, published, advertised, and circulated false and misleading statements, announcements, and reports regarding the value of the stock of said corporation, and false, misleading, and exaggerated statements, reports, and predictions regarding the volume and nature of the business done by said corporation for the United States Government, with the purpose of creating the impression and belief that the stock of said corporation was ratably equal in value to Liberty bonds:

Held, that such false representations, methods, practices, and course of conduct, 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 Pan Motor Co. and Samuel C. Pandolfo, hereinafter referred to as the respondents, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues

this complaint stating its charges in that respect upon information and belief as follows:

PARAGRAPH 1. That the respondent, Pan Motor Co., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of St. Cloud, State of Minnesota; that the said respondent, Pan Motor Co., was incorporated the 9th day of January, 1917, and has an authorized capital of $5,000,000 common stock divided into shares of the par value of $5 each; that the said stock has been offered and sold to the public at $10 per share under a subscription agreement of substantially the following form and tenor, to wit:

SUBSCRIPTION FOR STOCK OF THE PAN MOTOR COMPANY.

Price per share, $10.00. Par value per share, $5.00. Application by mail.

I hereby subscribe for _____ shares of the capital stock of the Pan Motor Company, incorporated under the laws of Delaware for $5,000,000.00, and agree to pay for same as follows:

$_____ with this application,

$_____ on the ____ day of _____, 191_,

$_____ on the ____ day of _____, 191_, and

$_____ on the ____ day of _____, 191_.

This stock is nonassessable and carries voting privileges.

This stock, when fully paid for in cash, to be issued to me or my order.

The legal owners of this stock shall be entitled to purchase automobiles, and other machines manufactured by the Pan Motor Co., for their own personal use, at the catalogue price, less 15 per cent, f. o. b. the factory.

I agree that the immediate value of this stock is at least $10 per share, due to the plan of organization in creating advance purchasers for the company's products wherever possible while selling the company's stock, and I expressly agree and consent that the first half of the amount of this subscription shall be construed as the excess amount over and above par and which the directors may use for any and all purposes for the benefit of the company within their discretion.

This application and the stock certificate, when issued, constitute the entire contract between the company and the subscriber. No alterations or variations hereof, and no statements, promises, or

agreements not contained herein, shall be binding on said company unless expressly approved in writing by an executive officer of said company.

(Signature of subscriber.)

(Also print name of subscriber plainly on this line above.) (Street and number.)

(Date.) (Town and State.)

PAR. 2. That the respondent, Samuel C. Pandolfo, conceived and promoted the Pan Motor Co. and caused the same to be incorporated and organized; for over two years last past has been and is now the president and fiscal agent, thereof; and has at all times since the incorporation of said company, controlled and managed said company through officers and directors selected by himself.

PAR. 3. That the respondent, Pan Motor Co., was organized and incorporated by the respondent, Samuel C. Pandolfo, ostensibly for the purpose of manufacturing passenger automobiles, and was advertised and represented to the public, both before and after incorporation, as a company which would manufacture passenger automobiles in large quantities; that said company has not manufactured automobiles or motor vehicles, but has merely assembled approximately 200 passenger automobiles.

PAR. 4. That, as of the 28th day of February, 1919, there was issued and outstanding stock of the respondent, Pan Motor Co., of the par value of $2,064,943.06, for which the subscribers severally paid the sum of $10 per share; and the said Pan Motor Co. had received additional subscriptions to its capital stock aggregating the sum of $1,042,866.94, par value, for which the subscribers severally had agreed to pay the sum of $10 per share; and, as of said date, the respondent, Pan Motor Co., had received from the sale of its stock the sum of $1,723,811.69; that said stock has been sold and distributed throughout the United States and in foreign countries, and on or about the 19th day of March, 1919, there were of record 54,000 subscribers to the stock of the said Pan Motor Co., of whom 39,000 had fully paid their subscriptions. That, as of September 30, 1918, the sum of $1,156,667.53 had been paid as commissions to salesmen and

agents for the sale of stock; the sum of $553,752.38 had been paid to Samuel C. Pandolfo, as commissions, and for alleged services; and other large sums have been paid and expended for advertising, secret service, salaries, and other matters and things.

PAR. 5. That from in or about the month of June, 1916, until the 9th day of January, 1917, the respondent Samuel C. Pandolfo solicited subscriptions to the stock of the Pan. Motor Co. throughout the United States prior to the incorporation of said company; that since the incorporation of the said company, on the 9th day of January, 1917, the respondent Pan Motor Co. and Samuel C. Pandolfo, the president and fiscal agent of the said company, have continued to solicit subscriptions for said stock throughout the United States by means of advertisements in newspapers and magazines, circular letters, pamphlets, reports and special articles, and through personal solicitation by a large force of agents.

PAR. 6. That since the 9th day of January, 1917, the stock of the Pan Motor Co. has been offered and sold in interstate commerce by respondents in competition with divers other persons, firms, copartnerships, and corporations.

PAR. 7. That in connection with the sale and offering for sale of said stock in the course of said commerce, respondents, and each of them, have practiced certain unfair methods of competition, hereinafter set forth in paragraphs 8 to 15, inclusive.

PAR. 8. That during a period of two and one-half years last past, and for the purpose of selling said stock and obtaining subscriptions therefor, and with the effect of deceiving and misleading the public, including those who might and did subscribe for said stock, the respondents and each of them at divers times have made, published, advertised, and circulated false, misleading, and unfair reports and statements concerning the plan of organization, the assets, resources, business, progress, good will, and financial standing and responsibility of the respondent Pan Motor Co., and have suppressed and concealed from the public facts relating to and affecting the plans of organization and the financial standing

and condition of the said company; and respondents continue so to do.

PAR. 9. That during said period and with like purpose and effect the respondents, and each of them, at divers times have falsely stated, represented, advertised, and published that subscriptions to the capital stock of the Pan Motor Co. would be limited to 25 shares to each subscriber and that limited allotments for stock would be made to particular States, cities, and communities, whereas in fact subscriptions and allotments were not so limited.

PAR. 10. That during said period and with like purpose and effect the respondents, and each of them, at divers times have made, advertised, published, and circulated false and misleading statements, circulars, advertisements, pamphlets, and publications regarding the design, manufacture, production, and price of certain automobiles and motor vehicles represented as being manufactured by the respondent, Pan Motor Co.; and respondents continue so to do.

PAR. 11. That during said period and with like purpose and effect respondents, and each of them, at divers times have procured the publication of articles and reports indorsing and praising the Pan Motor Co., its officers and organization; and said respondents, and each of them, have caused the said articles to be reprinted, published, and circulated, and have falsely represented and advertised the same to have been written and published independently and voluntarily by disinterested parties; and respondents continue so to do.

PAR. 12. That during said period and with like purpose and effect respondents, and each of them, at divers times have caused to be printed, published, advertised, and circulated certain letters purporting to be letters indorsing the respondent, Samuel C. Pandolfo, and the respondent, Pan Motor Co., after the respective authors of the letters had withdrawn and repudiated the same and forbidden the further use and circulation thereof; and the respondents continue so to do.

PAR. 13. That during said period and with like purpose and effect respondents, and each of them, at divers times have

made, published, advertised, and circulated false and misleading statements, representations, predictions, and promises relating to the design, production, and manufacture of a certain motor tractor, described as the "Pan Tank-Tread Tractor"; and respondents continue so to do.

PAR. 14. That during said period and with like purpose and effect respondents, and each of them, at divers times have made, published, advertised, and circulated false, misleading, unfair, and unfounded statements, charges, criticisms, and comments regarding the jurisdiction, authority, investigations, reports, findings, proceedings, and orders of various State, municipal, and governmental departments, commissions, committees, and agencies, and the personnel thereof; and respondents continue so to do.

PAR. 15. That during said period and with like purpose and effect, and with the further purpose and intent of creating the impression and belief that the stock of the Pan Motor Co. was ratably equal in value to Liberty bonds, respondents, and each of them at divers times have made, advertised, published, and circulated false and misleading statements, announcements, and reports regarding the value of the stock of the Pan Motor Co., and false and misleading and exaggerated statements, representations, reports, and predictions regarding the volume and nature of the business done by the Pan Motor Co. for the United States Government.

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 respondents, Pan Motor Co. and Samuel C. Pandolfo, have been and now are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and 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 respondents having entered their appearance and having filed their answer admitting certain allegations of said complaint and denying certain others thereof, and the Commission having offered testimony in support of the charges of said complaint, and the respondent Samuel C. Pandolfo having rested his case without introducing evidence, and the respondent Pan Motor Co. having introduced its evidence, and the matter having been duly argued before the Commission by counsel for the respondent Pan Motor Co., and the Commission having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Pan Motor Co., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of St. Cloud, Minn.; that the said respondent, Pan Motor Co., was incorporated the 9th day of January, 1917, with an authorized capital stock of $5,000,000, common stock divided into shares of the par value of $5 each; that the said stock has been offered and sold to the public at $10 per share.

PAR. 2. That the said Pan Motor Co. was conceived and promoted by the respondent, Samuel C. Pandolfo, who caused the said company to be incorporated and organized.

PAR. 3. That during the months of October, November, and December, 1916, and prior to the incorporation of the said Pan Motor Co., the respondent, Samuel C. Pandolfo, solicited and obtained subscriptions to stock of the said Pan Motor Co.

PAR. 4. That during the said months of October, November, and December, 1916, and thereafter subsequent to the incorporation of the said Pan Motor Co., the stock of the said company was offered and sold to subscribers under a subscription agreement of substantially the following form and tenor, to-wit:

413 Findings.

SUBSCRIPTION FOR STOCK OF THE PAN MOTOR COMPANY.

Price per share, $10.00. Par value per share, $5.00. Application by mail.

I hereby subscribe for _____ shares of the capital stock of the Pan Motor Company, incorporated under the laws of Delaware for $5,000,000.00, and agree to pay for same as follows:

$_____ with this application,
$_____ on the ____ day of _____ 191_,
$_____ on the ____ day of _____ 191_, and
$_____ on the ____ day of _____ 191_.

This stock is nonassessable and carries voting privileges.

This stock, when fully paid for in cash, to be issued to me or my order.

The legal owners of this stock shall be entitled to purchase automobiles and other machines manufactured by the Pan Motor Company, for their own personal use, at the catalogue price, less 15 per cent, f. o. b. the factory.

I agree that the immediate value of this stock is at least $10.00 per share, due to the plan of organization in creating advance purchasers for the company's products wherever possible while selling the company's stock, and I expressly agree and consent that the first half of the amount of this subscription shall be construed as the excess amount over and above par and which the directors may use for any and all purposes for the benefit of the company within their discretion.

This application and the stock certificate, when issued, constitute the entire contract between the company and the subscriber. No alterations or variations hereof, and no statements, promises, or agreements, not contained herein, shall be binding on said company unless expressly approved in writing by an executive officer of said company.

_____
(Signature of subscriber.)

_____ _____
(Also print name of subscriber plainly on this line above.) (Street and number.)

_____ _____
(Date.) (Town and State.)

PAR. 5. That the respondent, Samuel C. Pandolfo, caused the said Pan Motor Co. to be organized and incorporated ostensibly for the purpose of manufacturing passenger automobiles, and the said Samuel C. Pandolfo, both before and after the incorporation of said company, advertised and represented same to the public as a company which would manufacture automobiles in large quantities.

PAR. 6. That upon the incorporation of the said Pan Motor Co., the respondent Samuel C. Pandolfo, claiming to act by authority of the subscribers to the stock of said company, placed in office a board of directors selected by himself.

PAR. 7. That after the incorporation of the said Pan Motor Co., the said Samuel C. Pandolfo induced the said board of directors to enter into certain contracts wherein and whereby the said Samuel C. Pandolfo was appointed the fiscal agent of the company and was intrusted with the entire supervision of the sale of the stock of said company, and was permitted and allowed to retain the first $5 paid upon each share of stock, pursuant to the aforesaid subscription agreement; that the contracts between the said Samuel C. Pandolfo and the Pan Motor Co. were modified from time to time, in some respects, but from the time of the incorporation of the said company, up to the month of December, 1919, said Samuel C. Pandolfo had entire charge of the sale of the stock of said company and all the advertising conducted in connection therewith.

PAR. 8. That since the 9th day of January, 1917, the stock of the Pan Motor Co. has been offered and sold in interstate commerce by the respondents in competition with divers other persons, firms, copartnerships, and corporations selling stocks and other securities.

PAR. 9. That up to the commencement of this proceeding there was issued and outstanding stock of the respondent Pan Motor Co. of the par value of $2,064,913.06, for which the subscribers severally paid the sum of $10 per share; that the said Pan Motor Co. had, up to the commencement of this proceeding, received additional subscriptions to its capital stock aggregating the sum of $1,042,866.94, par value, for which the subscribers severally had agreed to pay the sum of $10 per share, and at the commencement of this proceeding the Pan Motor Co. had received from the sale of its said stock the sum of $4,723,811.69; that the said stock has been sold and distributed throughout the United States and in foreign countries, and on or about the 19th day of March, 1919, there were of record 54,000 subscribers to the stock of

the said Pan Motor Co., of whom 39,000 had fully paid their subscriptions; that as of September 30, 1918, the sum of $1,156,667.53 had been paid as commissions to salesmen and agents for the sale of stock of said company. That as of September 30, 1918, the sum of $553,752.38 had been received and retained by the respondent Samuel C. Pandolfo as alleged commissions and for alleged services as fiscal agent for said company; that other large sums aggregating over $500,000 have been paid and expended from the proceeds of the sale of said stock for advertising, salaries, and other purposes.

PAR. 10. That both before and since the incorporation of the said Pan Motor Co., the respondent Samuel C. Pandolfo, as fiscal agent of said company, solicited subscriptions to the stock of the said Pan Motor Co. throughout the United States by means of advertisements in newspapers and magazines, circular letters, pamphlets, reports, and special articles, and through personal solicitation by a large force of stock salesmen.

PAR. 11. That in connection with the sale and offering for sale of said stock in the course of interstate commerce the respondents, Samuel C. Pandolfo and Pan Motor Co., have practiced certain unfair methods of competition hereinafter set forth:

(*a*) That during a period of two and one-half years last past and for the purpose of selling said stock and obtaining subscriptions therefor, the respondent Samuel C. Pandolfo, as fiscal agent for said company, at divers times has made, published, advertised, and circulated false, misleading, and unfair reports and statements concerning the plan of organization, the assets, resources, business, progress, goodwill, and financial standing and responsibility of the respondent Pan Motor Co., and has suppressed and concealed from the public facts relating to and affecting the plans of organization and the financial standing and condition of the said company.

(*b*) That during said period, the respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers

times has falsely stated, represented, advertised, and published that subscriptions to the capital stock of the Pan Motor Co. would be limited to 25 shares to each subscriber and that limited allotments for stock would be made to particular States, cities, and communities; whereas in fact subscriptions and allotments were not so limited.

(*c*) That during said period the respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has made, advertised, published, and circulated false and misleading statements, circulars, advertisements, pamphlets, and publications regarding the design, manufacture, production, and price of certain automobiles and motor vehicles represented as being manufactured by the respondent Pan Motor Co.

(*d*) That during said period respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has procured the publication of articles and reports indorsing and praising the Pan Motor Co., its officers, and organization; and said respondent has caused the said articles to be reprinted, published, and circulated, and has falsely represented and advertised the same to have been written and published independently and voluntarily by disinterested parties.

(*e*) That during said period respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has caused to be printed, published, advertised, and circulated certain letters purporting to be letters indorsing the respondent Samuel C. Pandolfo and the respondent Pan Motor Co. after the respective authors of the letters had withdrawn and repudiated the same and forbidden the further use and circulation thereof.

(*f*) That during said period respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has made, published, advertised, and circulated false and misleading statements, representations, predictions, and promises relating to the design, production, and manufacture of a certain motor tractor, described as the "Pan Tank-Tread Tractor."

(*g*) That during said period, and with the further purpose and intent of creating the impression and belief that the stock of the Pan Motor Co. was ratably equal in value to Liberty bonds, respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has made, advertised, published, and circulated false and misleading statements, announcements, and reports regarding the value of the stock of the Pan Motor Co., and false and misleading and exaggerated statements, representations, reports, and predictions regarding the volume and nature of the business done by the Pan Motor Co. for the United States Government.

PAR. 12. That in the month of December, 1919, the board of directors requested the resignation of the respondent Samuel C. Pandolfo as director and president of the respondent Pan Motor Co., and on December 12, 1919, the respondent Samuel C. Pandolfo resigned as such president and director.

CONCLUSIONS.

That the methods and practices hereinbefore set out were devised and used by the respondent Samuel C. Pandolfo as president and fiscal agent of the respondent Pan Motor Co. for its benefit and in its behalf and were devised and used by the said Samuel C. Pandolfo individually and in his own behalf, and that as to each respondent, the methods and practices herein above set forth constituted unfair methods of competition.

ORDER TO CEASE AND DESIST.

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 respondents, Pan Motor Co. and Samuel C. Pandolfo, have been and now are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in re-

spect thereof would be to the interest of the public, and fully stating its charges in that respect, and respondents having entered their appearance and having filed their answer admitting certain allegations of said complaint and denying certain others thereof, and the Commission having offered testimony in support of the charges of said complaint, and the respondent Samuel C. Pandolfo having rested his case without introducing evidence, and the respondent Pan Motor Co. having introduced its evidence, and the matter having been duly argued before the Commission by counsel for respondent Pan Motor Co., and the Commission having duly considered the record, and being fully advised in the premises, and having made and filed its report, findings as to the facts, and conclusions, which said report, findings, and conclusion are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondents, Samuel C. Pandolfo and Pan Motor Co., forever cease and desist from directly or indirectly:

(1) Publishing, advertising, or circulating false, misleading, or unfair reports or statements concerning the plan of organization, the assets, resources, business, progress, good will, or financial standing of the Pan Motor Co.; or concerning the value of the stock thereof.

(2) Making, advertising, publishing, or circulating false or misleading statements, circulars, advertisements, pamphlets, or publications regarding the design, manufacture, production, or price of certain automobiles or motor vehicles represented as being manufactured by the Pan Motor Co.

(3) Causing to be printed, published, advertised or circulated any letters purporting to be indorsements of said Samuel C. Pandolfo or said Pan Motor Co., when the authors of such letters have withdrawn or repudiated the same or forbidden the further use or circulation thereof.

(4) Making, publishing, or circulating any false statement or advertisement for the purpose of selling the stock of the Pan Motor Co. in interstate commerce.

And it is further ordered, That said respondents, Pan Motor Co. and Samuel C. Pandolfo, 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 they have complied with the order of the Commission herein set forth.