

## Complaint.

## FEDERAL TRADE COMMISSION

v.

H. NORWOOD EWING, DOING BUSINESS UNDER THE  
FIRM NAME AND STYLE OF LIBERTY PAPER CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 350.—September 8, 1920.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of a gum paper known as "sealing tape" expended annually a substantial sum of money in advertising, and thereafter an individual engaged as a "converter" in the sale of toilet paper and paper bags,

- (a) Adopted the same name as the corporation, with resulting confusion in mails and remittances;
- (b) Advertised and represented himself as a manufacturer of toilet paper and paper bags, the facts being that (1) he owned no mill making toilet paper, (2) his interest in such mill had been very limited both in time and amount, and (3) his interest in, and representation as sales agent of, a paper-bag factory had been likewise limited; and
- (c) Advertised and represented the prices quoted by him as being f. o. b. warehouses in three cities named, in two of which he had no warehouses;

Intending by so advertising and holding himself out as a manufacturer to mislead the public into believing that by purchasing from him it would eliminate the middleman's profit:

*Held*, That such simulation, and such false and misleading advertising and representations, under the circumstances set forth, constituted unfair methods of competition.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that H. Norwood Ewing hereinafter referred to as respondent, doing business under the firm name and style of Liberty Paper Co., 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, H. Norwood Ewing, is now, and for more than one year last past has been, engaged in the business of purchasing paper in bulk in the various States and Territories

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of the United States, whence the same is and has been transported to the place of business of the respondent in the city of New York, where said paper purchased in bulk by respondent is converted by him into paper bags, toilet paper, and similar paper-products and then sold and distributed by the respondent generally in commerce through and among the various States of the United States, the Territories thereof, and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That since January 10, 1919, and for many years prior thereto a corporation of the State of Massachusetts, whose title was and is Liberty Paper Co., had a branch office in the city of New York aforesaid, and had and still has an established business in the State of New York and adjoining States in the manufacture and sale in commerce of various paper products, which it, the said Liberty Paper Co., manufactures, and such company and its products have been for many years and are now well known in the paper trade, particularly in the city of New York aforesaid.

PAR. 3. That since the month of January, 1919, the respondent, H. Norwood Ewing, has been conducting his business of purchasing paper in bulk, converting the same into paper bags, toilet paper, and other paper products, and then selling such paper bags, toilet paper, and other paper products in commerce under the firm name and style of Liberty Paper Co., with the effect of misleading the public and inducing the public to believe that the business which respondent was conducting was the business of the Liberty Paper Co., the corporation aforementioned, and with the further effect of causing embarrassment and confusion in the conduct of the business of the Liberty Paper Co., the said corporation, and with the further effect, among others, of securing to the respondent the benefit of the advertising of the said corporation, Liberty Paper Co., and the benefit of its good reputation in the trade.

PAR. 4. That respondent, since the month of January, 1919, has represented to the public and to the paper-buying trade by means of advertising and by various other means that the Liberty Paper Co., the trade name which as hereinafter mentioned he has used since the month of January, 1919, is a manufacturer of paper, when in fact said respondent is not a manufacturer of paper, but, on the other hand, a purchaser of paper in bulk, which is converted by respondent into the finished product and then sold and shipped in competition with other persons, firms, copartnerships, and corporations, similarly engaged, to various purchasers thereof throughout the States and Territories of the United States, and the District of

Columbia; that the effect thereof was and is to induce purchasers of paper products into the belief that the respondent is a manufacturer of such paper products, and thereby secure to respondent a preference over jobbers similarly engaged as respondent in the converting of bulk paper into paper products.

### 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, H. Norwood Ewing, doing business under the firm name and style of Liberty Paper Co., had 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 has been and is engaged in the business of purchasing paper in bulk in the various States and Territories of the United States and transporting it to his place of business in the city of New York, where he converts it into paper bags and toilet paper and similar paper products, and distributes the same generally in commerce through and among the several States and Territories of the United States in competition with other persons and corporations similarly engaged; and that he has been and is conducting such business under the name and title of Liberty Paper Co.; and that there is a Massachusetts corporation of the same name with an office and an established business in the city of New York, which company and its products have been for many years well known in the paper trade, particularly in the city of New York; and that respondent by the adoption of the name "Liberty Paper Company" misled the public, and induced it to believe that the business of respondent was the business of said Massachusetts corporation; and that said respondent has represented to the public and the paper-buying trade, by means of advertisements and other means, that the Liberty Paper Co., the trade name of respondent, is a paper manufacturer when in truth and in fact said respondent is not a manufacturer of paper but a purchaser of paper in bulk, which is converted by respondent into the finished product, and then sold and shipped in competition with other persons and corporations similarly engaged to purchasers throughout the States and Territories of the United States; and that a proceeding by it in respect to the allegations herein set forth would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered his appearance by Joseph S. Cohen, his at-

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torney, and a hearing having been had upon the allegations of the complaint and testimony taken, the Commission makes this report and findings as to the facts in this proceeding.

## FINDINGS AS TO FACTS.

PARAGRAPH 1. The respondent at the times mentioned in the complaint was engaged in business under the name and style of Liberty Paper Co., under which name he purchased toilet paper and paper bags of manufacturers and resold the same to wholesale dealers and shipped the same into several States and Territories of the United States and the District of Columbia; that respondent in the conduct of his business maintained an office in the city of New York and also in the city of Chicago; that the Liberty Paper Co., as used by respondent, was not incorporated.

PAR. 2. The respondent carried on such business in direct competition with many other persons and corporations similarly engaged in interstate commerce.

PAR. 3. During the time respondent was so conducting his business under the name of the Liberty Paper Co. there was and still is a Massachusetts corporation of that name maintaining its principal office at 52 Vanderbilt Avenue, New York City, which company was incorporated in 1910 and owns and operates a factory at Bellows Falls, Vt. The business of the Massachusetts corporation is the manufacture of a variety of gum paper known as sealing tape. It does not manufacture paper but does manufacture tapes. It expends about \$30,000 annually in advertising, using such methods as Saturday Evening Post, Literary Digest, System, Printer's Ink, and trade journals.

PAR. 4. Said Massachusetts corporation received a great many letters and checks intended for respondent, but has never secured any business intended for respondent, and it is not known that respondent obtained any business intended for said Massachusetts corporation.

PAR. 5. The respondent's main office is in the Woolworth Building, in the city of New York. He holds himself out to the public as a manufacturer of paper bags and toilet papers. In his circular letters sent to the trade throughout the several States of the United States, of which Exhibits 1, 2, and 5 are samples, he holds himself out to the trade as a manufacturer of toilet paper and paper towels. Exhibits 1, 2, and 5 were sent to wholesale paper dealers in every State of the United States. The printed heading of each contains the statement that respondent is a manufacturer of toilet paper and paper towels or displays the word "manufacturers" in connec-

tion with the words "paper bags" and "toilet paper." Under the word "mills," on the margin of Exhibits 1, 2, 3, and 4, are the words "New York," "Pennsylvania," and "Wisconsin." On exhibit 2 "Massachusetts" is added.

PAR. 6. Respondent does not now own and never has owned any mills in any of the States named in said circular letters, nor in any other State, which manufactures toilet paper, and respondent does not now own and never has owned any interest in any mill manufacturing toilet paper, except that from the early part of 1919 until the fall of that year respondent owned two shares of the capital stock of the Daniels Manufacturing Co., of Rhinelander, Wis., of the par value of \$100 each, which company had two machines for converting paper rolls into toilet paper.

PAR. 7. In August, 1918, respondent, with others, organized the Victory Bag & Paper Co., of Marinette, Wis., and became the owner of one-third of the authorized capital stock of that company of the par value of \$17,500, which he held until August, 1919. The Victory Bag & Paper Co. did not manufacture any paper bags to any extent until December, 1918. In August, 1919, respondent disposed of his stock in the Victory Bag & Paper Co. and has had no financial interest in that company since that time.

PAR. 8. During the years 1917 and 1918 respondent purchased practically all of the products handled by him from paper mills in which he had no financial interest, which product was sold by him to the trade throughout the United States and shipped either direct from the manufacturer to the purchaser or from divers places where it was stored in public warehouses.

PAR. 9. Respondent represented to the trade that the prices quoted by him were "f. o. b. our warehouse, Springfield, Mass., Atlanta, Ga., and Chicago, Ill." Respondent neither owns nor maintains a warehouse at Springfield, Mass., or at Atlanta, Ga., but did own one at Chicago, Ill. The warehouses referred to in Springfield, Mass., and Atlanta, Ga., are public warehouses in which respondent stored stocks of paper bags and toilet paper purchased from manufacturers.

PAR. 10. In the year 1919 respondent purchased about six-elevenths of all paper bags sold by him from mills other than that of the Victory Bag & Paper Co., in which he was a stockholder prior to August 1, 1919.

PAR. 11. During the time respondent was a stockholder in the Victory Bag & Paper Co. he handled about one-third of its output, disposing of the same in the States of Illinois, Wisconsin, Indiana, Missouri, and Iowa as sales agent. He also had the privilege of selling in St. Paul and Minneapolis. During the time respondent acted as

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sales agent for the Victory Bag & Paper Co. the president of that company had an interest in the agency to the extent of 25 per cent of its profits.

PAR. 12. Respondent does not now and never has represented any mill manufacturing toilet paper, and does not now and never has manufactured toilet paper, and has never had any interest in any mill manufacturing toilet paper except that during a part of the year 1919 he owned two shares of capital stock in the Daniels Manufacturing Co., of Rhinelander, Wis., of the par value of \$100 each.

PAR. 13. The product handled by respondent was labeled and branded with various brands and labels, which labels were manufactured for him and furnished by him to the mills from which he purchased the paper products to be attached to such products. He was not selling agent for any mills of either the States of Pennsylvania or New York.

PAR. 14. About one-fourth of the toilet paper handled by respondent was made from so-called Jumbo rolls, purchased by him and delivered to mills to be converted into toilet paper; the remaining three-fourths was purchased direct from the mills and branded with respondent's brands and marked with his labels.

PAR. 15. A converter in the paper trade is one who purchases "Jumbo rolls" of the manufacturer and converts it into commercial articles. A manufacturer is one who makes paper from raw material or who makes pulp and makes paper from the pulp.

PAR. 16. In so advertising and holding itself out to the public as a manufacturer of paper bags and toilet paper, the respondent intended to mislead the public into believing that by purchasing such products from him it was eliminating the profit of the middle man.

#### CONCLUSIONS.

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

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent, H. Norwood Ewing, doing business under the firm name and style of Liberty Paper Co., having entered

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its appearance by Joseph G. Cohen, his attorney, and the said respondent by his attorney having served and filed his answer to said complaint, and testimony having been taken in support of said complaint and on behalf of said respondent in support of said answer, and the Commission having made its findings as to the facts and its conclusions in this proceeding, and on the date hereof having made and filed a 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: Therefore,

*It is hereby ordered,* That the respondent, H. Norwood Ewing, his agents, servants, and employees, desist from:

(1) Transacting business under the name and style of Liberty Paper Co., and from using the name Liberty Paper Co. as a trade name.

(2) From holding himself out or advertising himself as a manufacturer of paper bags, toilet paper, and paper towels, or any or either of said paper products or as a manufacturer of any paper product.

(3) From advertising to the trade and the public that he owns or controls any mill or mills for the manufacture of paper bags, toilet paper, paper towels, or other paper products in the States of New York, Pennsylvania, and Wisconsin, or elsewhere.

(4) That within 60 days from the date of the service of this order upon you, you report to the Commission how and in what manner you have complied with the terms of this order.

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**FEDERAL TRADE COMMISSION DECISIONS.**

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