

Complaint.

FEDERAL TRADE COMMISSION

v.

THE L. B. SILVER COMPANY.

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

Docket 581—September 12, 1921.

SYLLABUS.

Where a corporation engaged in the purchase, breeding and sale of thoroughbred hogs,

- (a) Falsely advertised and otherwise stated to the public that the pigs bred for, named, and sold by it as Ohio Improved Chester or O. I. C. pigs are a separate and distinct breed from that known as Chester Whites;
- (b) For the purpose of securing trade made such statements in its advertisements, circulars, and otherwise, as O. I. C. hogs are "not liable to cholera"; "Are not liable to cholera and other diseases as are the black or dark hogs"; "This has been demonstrated many times, especially throughout the western states," the facts being that no one breed is less susceptible to such scourge than any other, white hogs being if anything a little more susceptible than the black, and that the O. I. C. hogs have not become popular on account of any alleged hog cholera or disease-resisting qualities;
- (c) For the purpose of securing trade falsely advertised and otherwise publicly stated that owing to its extensive shipments of live stock it enjoyed special express rates;
- (d) Advertised and otherwise publicly stated that two of its O. I. C. hogs weighed 2,800 pounds, and that it would ship to any purchaser a sample pair of such famous hogs on time and give the agency to the first applicant, the facts being that the largest hogs used by it for breeding purposes do not weigh more than 500 or 600 pounds, though there was some evidence that over 50 years ago two sold by the founder of the so-called O. I. C. breed reached such weight;
- (e) Advertised and otherwise generally offered what it called Chester Whites at 50 per cent less than the price at which it contemporaneously offered O. I. C. pigs, declining on one pretext or another to fill orders secured for the former, but endeavoring, sometimes successfully, to persuade those so ordering to accept O. I. C. pigs in lieu thereof; and
- (f) Falsely advertised continuously, and otherwise publicly stated that there had been "no cholera, foot and mouth, or any other contagious disease in our locality for over 50 years":

Held, That such false and misleading advertising and such misrepresentations and course of conduct, 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 The L. B. Silver Co., hereinafter referred to as the respondent, has been and is using un-

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fair 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 L. B. Silver Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, and having its principal office and place of business in the City of Cleveland in the State of Ohio.

PAR. 2. That the respondent is, and for more than six years last past has been engaged in the business of buying hogs of various ages and of both sexes, and selling and shipping them to purchasers located in the various states of the United States, and in so doing has been and is competing with others engaged in breeding, dealing in, and selling thoroughbred hogs in interstate commerce.

PAR. 3. That in the course of conducting its business, as mentioned in Paragraph 2 hereof, respondent has represented and asserted from time to time during the period aforesaid and still does represent and assert by means of various advertisements, articles and printed communications published in newspapers, journals, and periodicals circulated in and among the various states, and by means of circulars, letters and other means of communication sent through the United States mails or otherwise distributed or published to, in and among the several states of the United States, that it is a breeder and shipper of thoroughbred hogs, and sometimes that it is the most extensive breeder and shipper of thoroughbred hogs in the world, when, as a matter of fact the respondent is not a breeder but buys its pigs and hogs from farmers with whom it claims to have contracts for the raising and breeding of pigs, particularly of the Chester White breed which the respondent characterizes as Ohio Improved Chesters or O. I. C., or Famous O. I. C., which pigs and hogs when so purchased respondent sells and ships to various purchasers located in the several states of the United States.

PAR. 4. That by means of [the methods] and during the times alleged in Paragraph 3 hereof, respondent has represented, asserted, and published, and still does so represent, assert and publish that said alleged breed known as Ohio Improved Chesters or O. I. C.'s, or Famous O. I. C.'s is a breed of hogs separate and distinct from Chester White Hogs, and that said alleged breed is superior to the Chester White breed; that to lend color to said representation respondent has from time to time during the times aforesaid, among other things, advertised by the means aforesaid that it would sell Chester White

Pigs at a price substantially less, to wit: about 25 per cent less per pair than that for which it advertises to sell O. I. C.'s, that respondent usually endeavored to induce those ordering Chester White pigs at such less price to reconsider and accept O. I. C.'s at the increased price, that when such prospective customer insisted on receiving Chester White pigs as advertised, respondent would either refuse to deliver, usually assigning some pretext such as that it had discontinued breeding Chester White pigs, or would sell and ship pigs of inferior type but of the same breed and many times from the same litter from which respondent was selling alleged O. I. C.'s.

PAR. 5. That by means of [the methods] and during the times alleged in Paragraph 3 hereof, respondent has represented, asserted and published that said alleged breed of O. I. C.'s is not susceptible to cholera and other diseases; that there has been no cholera, foot and mouth, or any other contagious disease in respondent's locality for over 50 years; that the O. I. C. hog escapes cholera, pneumonia and other diseases where others are swept away; that the genuine O. I. C. possesses a power to repel disease in a degree unknown to other breeds; that the respondent has bred O. I. C. hogs for 53 years and has never lost a pig with cholera or any other contagious disease, and many other statements of like or similar character and import, while as a matter of fact the said Ohio Improved Chester hogs or O. I. C.'s are no other than, or different from Chester White pigs, and are not peculiarly immune to or exempt from disease.

PAR. 6. That during the times aforesaid, respondent has by means of printed circulars, letters, and other communications falsely represented that it had secured greatly reduced express rates on its live stock; that the express companies had agreed to give stock shipped by respondent special rates.

PAR. 7. That respondent, by the means and during the times alleged in Paragraph 3 hereof, represented and asserted that two of respondent's alleged breed of O. I. C. hogs weighed 2,806 pounds, such representations being so made and asserted as to mislead a prospective purchaser to believe that two O. I. C. hogs were then in existence or recently had been in existence weighing 2,806 pounds, whereas said representations referred to hogs which are alleged to have existed in the year 1868.

PAR. 8. That the representations, assertions and advertising matter referred to in Paragraphs 3, 4, 5 and 6 hereof were and are false, and made by respondent knowing them to be false, and with the intent that prospective purchasers of thoroughbred hogs should be misled and thereby induced to purchase stock from respondent instead of from its competitors.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions 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," the Federal Trade Commission issued and served a complaint upon the respondent, The L. B. Silver Co., charging it with the use of unfair methods of competition in commerce in violation of the provision of the said Act.

The respondent, The L. B. Silver Co., having entered its appearance by its attorneys, Messrs. White, Johnson, Cannon and Speith, and having filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint, and on behalf of the respondent in support of its answer before George McCorkle, an Examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The L. B. Silver Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio. For some years previous to and at the time of the issuance of the complaint in this action it had its office and principal place of business in the City of Cleveland, State of Ohio. That since the said issuance of said complaint it removed its office and principal place of business and it is now located in the city of Salem, in the State of Ohio.

PAR. 2. That the respondent advertises itself as a breeder of hogs. In a strict sense, this is not true. A breeder of hogs is a person who owns the sow at the time of conception regardless of the ownership of the sire. A broker of hogs is one who buys and sells hogs which are bred by others. The respondent buys sows and boars at large prices. The sows, and sometimes the boars, are sold at pork prices to farmers for the purposes of raising the young for the respondent. The respondent directs the mating of the sows and boars. When the young are six weeks old, the respondent buys such of the young it selects at Pittsburgh pork prices, plus an additional amount per pound up to a certain weight. These young the respondent uses to fill its customers' orders. As the respondent controls the mating and the sows and boars are sold to the farmers for breeding purposes

only, and not to convey all title, right and interest in them, the respondent may properly be called a breeder.

PAR. 3. That the respondent advertises and otherwise states to the public that the pigs bred for it and named and sold by it as O. I. C. pigs are a breed separate and distinct from the breed of pigs known as Chester Whites. The fact is that the O. I. C. pigs and the Chester White pigs are one and the same breed. The word breed refers to a class of animals derived from a proved foundation stock that reproduces from generation to generation its special characteristics whereby it may be distinguished from other breeds of live stock. This definition of breed in its essential elements is thought to be correct by all hog breeders, including the respondent itself. If two so-called different breeds of hogs are so near alike that a person could not tell the difference between the animals of one breed and the animals of the other breed, alleged to be different, the two breeds must be regarded as the same breed. If two so-called breeds of hogs were so near alike that if any one animal of one breed was compared with any one of the other so-called breed and no difference could be seen between the two animals, it would not be possible to maintain that the two so-called breeds were different breeds. It is the general consensus of opinion by disinterested persons, including experts, eminent raisers of pure-bred hogs, veterinarians, stock buyers, men long engaged in the practice of hog raising, and Carl Silver himself, the respondent's president, that hogs which fairly represent true types of O. I. C. and Chester White have such sameness of characteristics that they can not be distinguished.

PAR. 4. That the Chester White pigs and the so-called Ohio Improved Chester pigs, or O. I. C. pigs, are one and the same breed, and are not, as claimed by the respondent, separate and distinct breeds of hogs, is also shown by the following facts found: The foundation stock and the breed history of the Chester White and the so-called O. I. C. pigs are the same. The Chester White breed originated about 1820 by crossing native white pigs of Chester County, Pa., with an imported boar of a breed known as Bedfordshire and some white Chinese pigs obtained from England about that time. L. B. Silver, the founder of the so-called O. I. C. pigs, obtained about 1863, in New York, a herd of these Chester Whites which had been taken from Pennsylvania. These pigs Silver took to Ohio and, as he says, by careful selection and breeding within the breed and without the introduction of any animals of any other breed, he improved the type of these Chester Whites and called them the Ohio Improved Chesters, or O. I. C.'s. Other breeders of Chester Whites,

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for instance, Mr. Todd, also improved the breed by careful selection and breeding within the breed and without the introduction of any animals of any other breed. These breeders did not claim they originated any new breed, but considered their types as Chester Whites.

PAR. 5. That all authors of any national reputation of books on breeds of farm animals and on breeds of swine, who have themselves made any personal investigations into the origin and history of the Chester White breed and the so-called O. I. C. swine, and who have not relied wholly upon the literature and advertising matter of the respondent, are convinced, and so state in their publications, that the O. I. C. is only a strain or type of Chester Whites and belongs wholly and entirely to the Chester White breed. That authors who once stated that the O. I. C.'s are a different and distinct breed from the Chester White relied upon and were misled by the literature of the L. B. Silver Co., the respondent. That further investigation and research have convinced these authors that such literature of the respondent was not correct and that the O. I. C. and Chester White are one and the same breed. That the works of these authors were not written with a view to any litigation nor to any litigable affair; that they were published primarily for their profession and in the interests of swine industry; that it was their understanding that every conclusion made in their writings would be subject to careful professional criticism, and that the statements made therein would be ultimately open to certain refutation and denial, if not well founded; that this thought was always in their mind in everything they have written; that they understood that their reputation depended upon the correctness of their data and the validity of their conclusions drawn therefrom; that they might better not have written their articles and books than put forth statements in which might be detected a lack of sincerity of method and accuracy of results; that no criticism or comment or further investigation or data gathered by any of them save witness Ewing, and he corrected his erroneous statements, have been made since the publication of their articles that lead them to believe the statements made therein as inaccurate.

PAR. 6. That at all the important state, national and international fairs, expositions and live-stock shows, the O. I. C. pigs are classified as Chester White pigs, or as belonging to the Chester White breed. At some of the fairs, induced to do so for financial considerations, fair directors have given to O. I. C. show animals a *special*, but not a *separate*, classification. This special classification is not given because the O. I. C. is thought by these directors to be a breed separate and distinct from the Chester Whites. All this is true in Ohio, the home state of the O. I. C. pigs. Carl Silver, the president of the respondent,

stated that the fairs and expositions throughout the United States are not recognizing the O. I. C. pigs as anything else than Chester Whites.

PAR. 7. That each individual thoroughbred animal of a particular breed has a pedigree. This pedigree gives the ancestral history of the individual animal back to the foundation stock of its breed. These pedigrees are all kept in a record. Each separate breed of swine has an association whose principal function is to keep an accurate record of the pedigrees of the individual animals belonging to the breed. The pedigree of an animal belonging to another breed is not permitted to be recorded in the record of any other breed, nor are crossbred or mongrel bred animals. These different record associations have an association known as The National Association of Swine Records. The O. I. C. Swine Breeders' Association applied for membership in The National Association of Swine Records upon the ground that it was an association recording a breed separate and distinct from the Chester White pigs. The National Association of Swine Records, after a careful investigation into the facts, and after due deliberation, refused to admit the O. I. C. Association as an association recording a breed separate and distinct from the Chester White. This National Association of Swine Records regarded the O. I. C. Association as one recording only Chester White Records and as such offered it membership.

PAR. 8. That each association recording pedigrees of thoroughbred animals has rules and regulations for recording these pedigrees. They serve to preserve the purity of the breed by preventing registration of crossbred and mongrel bred animals. The rules and regulations for recording the pedigrees of the O. I. C. pigs are found in volume 10 of the O. I. C. Swine Breeders' Association Record. The rules for recording in the O. I. C. Swine Breeders' Association state that a pedigree to be eligible to record in this Association shall be:

First. The direct offspring of O. I. C. sire and dam recorded in the Record of the O. I. C. Swine Breeders' Association, or some existing reputable record of Chester White Swine. The International O. I. C. Record Association, since date receiver was appointed (January, 1899), is not recognized as a reputable record.

Second. The Secretary may, at his discretion, record animals the sire or dam of which is an O. I. C., recorded as above, the other direct ancestor of which is recorded in some reputable C. W. Record or in the International Record previous to the appointment of the receiver.

Third. All applications for record not in first or second clause of these rules shall be referred to the Board of Trustees, and, if approved by a majority of said Board, shall be admitted to record.

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PAR. 9. Eminent professors of swine breeding teach their classes that these rules prove that the O. I. C. pigs and Chester White pigs belong to the same breed. Practical prominent hog growers of National reputation state that under these rules both the O. I. C. pigs and the Chester White pigs and crosses of O. I. C. pigs with Chester White pigs may be and are recorded in the O. I. C. Swine Breeders' Association Record, and that this proves that the O. I. C. pigs and the Chester White pigs are one and the same breed. Frost, a witness for the respondent, official in the O. I. C. Swine Breeders' Association, and a winner of many prizes at the St. Louis Exposition, showed his pigs as Chester Whites at that show and advertises as Chester Whites the O. I. C. pigs he showed there and which won the prizes. The Canadian Government, the head of the Swine Department, Bureau of Animal Industry, Department of Agriculture for the United States Government, the Ohio State authorities on swine, buyers of stock and swine in and around Salem, Ohio, the local veterinarians and the general public in and around Salem, Ohio, all consider the O. I. C. pigs and the Chester Whites as one and the same breed, and that the two names mean and refer to them as animals of the same breed.

PAR. 10. That, as stated above, each different breed of pigs has its own records of the pedigrees of the animals belonging to the breed. The pedigree of an animal of one breed can not be registered in the record of pedigree of another breed. In 1884 the first record of pedigree of the Chester White breed was established. Previous to this only private records of Chester Whites were kept. The Association keeping these records was then and is now called The National Chester White Swine Record Association. For seven years the pedigrees of all the so-called O. I. C. pigs were registered as Chester Whites in the records of this Chester White Association. From 1891 to 1895 an attempt was made by L. B. Silver and H. A. Jones to create a record for Silver's O. I. C. pigs as a new breed. These men established in those years The International O. I. C. Record Association. This was unsuccessful because Silver could not show he had a new breed in the O. I. C. pigs. In 1897 L. B. Silver started a new record association for his pigs. This is now in existence and is known as the O. I. C. Swine Breeders' Association. All the pedigrees of all the hogs recorded in the International O. I. C. and in the O. I. C. Swine Breeders' Association trace back into The National Chester White Swine Record, or some other record of Chester White Swine records. In Volume 10 of the O. I. C. Swine Breeders' Association Record their record is called a "Chester White Record."

PAR. 11. That from the very beginning of L. B. Silver's business and down to the present time the respondent and its predecessor in business, L. B. Silver, have purchased and used pure-bred Chester White boars for mating to their own animals to produce pigs they sold to their customers as pure-bred O. I. C. pigs. Neither the respondent nor its predecessor have ever used boars of any other breed. From time to time the respondent has bought numbers of famous pure-bred Chester White boars, reregistered them in the O. I. C. Swine Breeders Association Record, mated them to O. I. C. sows used for its breeding purposes and sold the progeny as pure-bred O. I. C. pigs, and gave to the purchasers pedigrees of the progeny sold, and registered these pedigrees in the O. I. C. Swine Breeders Association Record as pedigrees of pure-bred O. I. C. pigs,

PAR. 12. That for the purpose of judging the merits of the characteristics of the individual hogs belonging to it, each breed of hogs has its own score card or standard of excellence. The official score card for any particular breed describes the outstanding characteristics of that breed as a whole. When two breeds of hogs, alleged to be different, have the same score card the two are not different breeds, but are one and the same breed. No two different breeds use the same score card. The score card for the O. I. C.s has been, since their earliest days, identical with that of the Chester Whites. Previous to the formation of The International O. I. C. Record Association in 1895, the score card for the O. I. C. was identical with that of the Chester White. When that association was formed it continued to use the Chester White score card. The O. I. C. Swine Breeders Association organized in 1897, adopted and used until 1905 the Chester White score card. From that year until 1913, the O. I. C.s used a very slightly different score card. In 1913 the O. I. C. Swine Breeders Association adopted the Chester White score card and has used it ever since. The fact that the score card for the O. I. C. and the Chester Whites are the same is indisputable evidence offered by each association they are handling the same breed.

PAR. 13. That for the purpose of securing trade, the respondent, in its advertisements, circulars, booklets, pamphlets, letters and other matter sent through the mail, stated that the O. I. C. hogs are "not liable to cholera"; that "they are not liable to cholera and other diseases as are the black or dark hogs"; that "this has been demonstrated many times especially throughout the western states"; that "while we do not guarantee that the O. I. C. hog might not contract cholera under unfavorable conditions, yet we do claim that the genuine O. I. C.'s do possess a power to repel disease in a degree

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unknown to other breeds"; that "in sections where the black hogs are swept off by thousands these were unaffected"; and, finally, that "since it is becoming extensively known that the O. I. C.s are not prone to contract cholera and other diseases as are other breeds, the demand is wonderfully on the increase, and their popularity is no longer confined to the United States, but is becoming almost world-wide."

These statements mean and are meant to convey to the purchasing public that the O. I. C. pigs are immune from and resistant to such devastating diseases as hog cholera, foot-and-mouth disease, tuberculosis and other contagious diseases. Hog cholera is the worst scourge in the hog-raising world. It causes more damage and kills more hogs than all other hog diseases put together. No one breed of hogs is less susceptible and more disease resistant than any other breed. White hogs are just as susceptible and perhaps a little more so to hog cholera than black hogs. The United States Government has continuously for the past 26 years been trying to produce a type of hogs immune to hog cholera. It has had no success. Individual pigs sometimes show immunity, but the progeny of immune pigs will not produce cholera-immune pigs. In carrying out experiments to produce a cholera-immune type of pig the United States Government "used hogs of all colors, kinds and descriptions." No matter how healthy an animal may be, no matter how healthy the stock may be from which he is descended, the animal, if put where there is a contagious disease, especially after it is weaned, is just as apt to be affected by contagious disease, such as hog cholera, tuberculosis, foot-and-mouth disease, such as hogs may have, as any animal that has not had careful bringing up, and has not had the ancestral history of the others. During the year 1920, the chief of the division of hog-cholera control, Bureau of Animal Industry, Department of Agriculture, and director of field work, has had 143 men engaged in 43 States on hog-cholera control. It was not found that the O. I. C. pigs were less liable to contract hog cholera than any other breed. The O. I. C. hogs have not become popular on account of any alleged hog cholera or disease-resisting qualities. A breeder for many years in the Middle West of O. I. C. pigs for L. B. Silver lost 2,000 O. I. C. pigs from hog cholera.

PAR. 14. That the respondent for the purpose of securing trade, advertised and otherwise made public the following statement: "Owing to our extensive shipping of live stock the express companies have agreed to give stock shipped by us special rates." See Commission's Exhibit No. 504.¹ The facts are:

¹ Not printed.

That at the time such statement was so published by the respondent, and at the present time, all shipments of pigs by express companies, were and now are by express companies charged under Official Express Classification first-class rates when crated and no exceptions were made from Cleveland or any other point. That all shippers of live stock on all the Express Companies' lines have the same relative rates and that there was then and now is no discrimination whatever against any particular point, and in favor of any other point. That all shippers at that time and ever since have, paid the regular first-class rate prescribed by the Interstate Commerce Act. That the respondent admits in its answer the truth of the charge of the complaint in this particular; and, by paragraph 7 on page 45 of its brief, that it had not and does not now have any right to make the said statement.

PAR. 15. That the respondent for the purpose of securing trade, advertised and otherwise made public the following statement: "Two of our O. I. C. Hogs weigh 2,806 pounds," and that it would ship to any purchaser a sample pair of these famous hogs on time and give the agency to the first applicant. That there is no proof in this case that any O. I. C. hog ever weighed at any time one-fourth of that weight. The largest hogs used by the L. B. Silver Co. for breeding purposes are not more than 500 or 600 pounds in weight. There was hearsay evidence only to the effect that, in 1867, 54 years ago, L. B. Silver sold two very small pigs, that these were afterwards castrated, and that they grew to weigh 2,806 pounds. The pedigrees of these pigs were never recorded.

PAR. 16. That the respondent has from time to time by advertising and other means offered to sell to the public throughout the United States, what it called Chester White pigs, at a price about 50 per cent less than the price at which, at the same time, it offered to the same public to sell O. I. C. pigs. When acceptances of these offers to sell what it called Chester White pigs came to the respondent it endeavored and sometimes successfully to persuade those ordering Chester White pigs at said less price to reconsider and to accept in lieu thereof O. I. C. pigs at the greater price. When such prospective purchasers insisted upon receiving Chester White pigs upon the terms offered, and refused to purchase O. I. C. pigs, the respondent would refuse to deliver at all its so-called Chester White pigs upon the ground either that it had no Chester White pigs or that it had discontinued breeding them. The respondent admits in its answer, paragraph 4 thereof and in its brief, paragraph 4 on page 35 thereof, that it has done all these things and that its action in doing so is indefensible, and that since one of the United States Post Office Department in-

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vestigations into this same subject matter it no longer does do these things. There is nothing in the evidence in this case contrary to this claim of discontinuance.

PAR. 17. That the respondent has continuously advertised and made public and transmitted through the mails the statement that there has been "No cholera, foot-and-mouth or any other contagious disease in our locality for over 50 years." See Commission's Exhibit Nos. 30 and 8, postmarked May 23, 1920, and June 1, 1920.¹ This statement is not true. The locality referred to by said statement, and the one within which persons breed the so-called O. I. C. hogs for the respondent, is a stretch of territory 30 miles long and 20 miles wide, situated partly in Columbiana County and partly in Mahoning County, Ohio. Salem, where the office and principal place of business of the respondent is, and Leetonia, the respondent's shipping point, are both in Columbiana County and within the said territory. The official duties of the State Veterinarian of Ohio require him to keep a record of all cases of hog cholera, tuberculosis and foot-and-mouth diseases. The State of Ohio, by regulations, requires its field veterinarians to report to the State Veterinarian all outbreaks of such diseases. The State's field veterinarians in obedience to those regulations have sent to the State Veterinarian official reports of hog cholera and tuberculosis occurring in and around Columbiana County. Tuberculosis is a contagious disease. It is transmissible from cattle to hogs. From November 21, 1919, to May 1, 1920, one field veterinarian alone sent in to the State Veterinarian reports of 142 cases of tuberculosis of cattle in Salem, Columbiana County, Ohio. Salem is in the "locality" mentioned in the said statement and within the territory above described. The present State Veterinarian for Ohio is Dr. Burnett. He has had this office since 1916. During his term of office he has had cases of hog cholera in and around Columbiana County. Dr. D. J. Frame, deputy state veterinarian for Ohio, in active practice in Ohio since 1909, has treated hogs in Columbiana County for hog cholera. He cited several cases among which were cases of O. I. C. hogs. On January 22, 1920, there was an outbreak of hog cholera on the farm of the C. E. Trotter Estate, Salem, Columbiana County, Ohio, which caused the death of 35 hogs. Post-mortem examination by two veterinarians showed the death of these 35 hogs was due to hog cholera. As field veterinarian for the State of Ohio, Dr. Maxwell reported this case to his chief, Dr. Burnett. In 1916, Dr. Shipman, local veterinarian in Salem, Columbiana County, Ohio, reported to Dr. H. H. George, United States Veterinarian at Cleveland, Ohio, the deaths of swine from hog

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cholera in and around Salem, Ohio. Dr. McCandless, a graduate in 1915 of Chicago Veterinary College, has practiced since 1915 in and around Salem, Ohio. From 1915 to the middle of 1920 he has had from 12 to 15 cases of hog cholera every year around Salem, Ohio. He sends to the State Veterinarian of Ohio for antihog cholera serum. Between 40 and 60 hogs died of hog cholera in 1920 at one time in Leetonia, Ohio, a place within the territory in which respondent has its breeders and which is the shipping point of the respondent.

CONCLUSIONS.

That the methods of competition set forth in all but the first and second paragraphs of the foregoing findings of fact, under the circumstances therein set forth, are unfair methods of competition in interstate commerce, and 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 wherein it alleged that it had reason to believe that the respondent, The L. B. Silver Co., had been, and was at the time of the issuance of the said complaint, 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 this respect, and the respondent having entered its appearance by White, Johnson, Cannon and Speith, its attorneys, and having filed its answer to said complaint, and the issues so raised having, pursuant to due notice given respondent, come on for hearing before a duly authorized Examiner of the Commission, and testimony having been introduced in support of the charges alleged in the complaint, and the respondent having appeared in person and by attorney and introduced its evidence in denial thereof, and the attorney for the Commission, and the attorneys for the respondent having submitted briefs and oral arguments herein, and the Commission being duly advised in the premises, and upon its consideration thereof having made its report in writing wherein it stated its findings as to the facts and its conclusion that the respondent has violated the provisions of Section 5 of the Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Com-

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mission, etc.," which said report is hereby referred to and made a part hereof:

Now, therefore, it is ordered, That the respondent, the L. B. Silver Co., its officers, directors, agents and employees cease and desist from representing, in interstate commerce, to the public, by circulars, pamphlets, catalogues, trade journals, periodicals, newspapers or otherwise;

1. That the so-called Ohio Improved Chesters, or O. I. C.'s, or Famous O. I. C.'s are a breed of hogs separate and distinct from the Chester White breed of hogs;

2. That it has no Chester White pigs when, in fact, it has Chester White pigs, though called by it O. I. C. pigs; or that it has Chester White pigs and O. I. C. pigs, as if the latter were a different and more valuable breed, when, in fact, they are one and the same breed; or that it has no Chester White pigs with which to fill orders for Chester White pigs at its quoted prices or otherwise, when, in fact, it has Chester White pigs, though called by it O. I. C. pigs; or that it has discontinued to breed Chester White pigs, when, in fact, it is continuing to breed them, though designated by it O. I. C. pigs;¹

3. That the so-called O. I. C. pigs, as a breed, or otherwise, are not liable to cholera, foot and mouth disease, tuberculosis, and other contagious diseases; that there has been no cholera, foot and mouth disease, tuberculosis nor other contagious diseases in respondent's locality; that the O. I. C. pigs possess a power to resist disease in a degree unknown to other breeds; that in localities where contagious diseases have swept off the dark and black hogs the O. I. C.'s were unaffected; from in any way representing to the public that the O. I. C. pigs are more resistant to disease than are other breeds of hogs;

4. That in the shipment of live stock the respondent enjoys or has enjoyed, either or both, from express companies rates of transportation lower than the rates granted to other shippers of live stock by the said express companies;

5. That two of its hogs weigh 2,806 pounds, that such hogs are in existence, that their progeny is for sale by the respondent.

And it is further ordered, That the respondent, the L. B. Silver Co., shall, within 60 days of the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set out.

¹ The paragraph is printed as modified by the Commission, December 5, 1921.

THE CHECK WRITER MANUFACTURERS, INC., ET AL.

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Complaint.

FEDERAL TRADE COMMISSION

v.

THE CHECK WRITER MANUFACTURERS, INC., AND
WILLIAM HUTTER.