

Complaint.

FEDERAL TRADE COMMISSION

v.

THE CHECK WRITER MANUFACTURERS, INC., AND
WILLIAM HUTTER.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 602—September 12, 1921.

SYLLABUS.

Where a corporation and an individual, engaged in the business of buying, rebuilding, repairing and selling used check writers in competition with manufacturers of new machines sold by them to the ultimate users only,

- (a) Advertised and sold used machines as new;
- (b) Widely advertised, offered and sold used machines of a certain make to the trade as new machines, at lower prices than the manufacturer's;
- (c) Falsely advertised and otherwise represented that they were authorized to deal in and sell said manufacturer's new machines;
- (d) In order to mislead buyers into believing they were purchasing new machines manufactured by the corporation, substituted plates bearing its name and serial numbers to correspond with those on machines being currently marketed, for the original name plate and serial number of the manufacturer; and
- (e) Used the word "manufacturers" in its corporate name, notwithstanding the fact that it did no manufacturing;

With the effect of discrediting the manufacturer and its prices, and of embarrassing it in its relations with its salesmen, who considered said corporation a bogus independent operated in direct competition with them:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation by it that Check Writer Manufacturers, Inc., and William Hutter, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges, in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Check Writer Manufacturers, Inc., is a corporation organized under the laws of the State of New York, and maintains its principal place of business at No. 200 Broadway, New York City. Respondent, William Hutter, is an individual, a stockholder in respondent just above named, and its secretary and

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manager, and also maintains his office and principal place of business at No. 200 Broadway, New York City.

PAR. 2. That said respondents now and for more than two years last past were engaged in the business of rebuilding check protecting machines of various makes, and selling the same, and in buying and selling new check protecting machines in interstate commerce among the several States of the United States, territories thereof, and the District of Columbia, in direct competition with other persons, firms copartnerships and corporations similarly engaged.

PAR. 3. That for more than one year last past the respondent in the distribution and sale of check protecting machines as aforesaid (1) falsely and fraudulently represented themselves to be distributors and sales agents for the Todd Protectograph Co. of Rochester, N. Y., which corporation was and is engaged in the business of manufacturing and selling in interstate commerce various types of check protecting machines; (2) sold second hand and re-built check protecting machines representing them to be new machines; (3) mutilated trade marks and patent notices on check protecting machines and substituted therefor fictitious numbers; (4) falsely and fraudulently advertised in newspapers, circulars, letters and other forms of advertising, that they carried in stock new machines manufactured by the said Todd Protectograph Co.; (5) advertised and offered to sell new machines manufactured by the said Todd Protectograph Co., and when they have received orders for such machines have filled them in many instances with second hand machines.

PAR. 4. That by reason of the facts set out in the foregoing paragraphs of this complaint the respondents have been guilty of unfair methods of competition in commerce as defined and prohibited by 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."

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 respondents, The Check Writer Manufacturers, Inc., and William Hutter, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents, The Check Writer Manufacturers, Inc., and William Hutter, having entered their appearance by their attorneys, Messrs. Kornbleuh and Hutter, and having filed their answer herein,

hearings were had and evidence was thereupon introduced in support of their 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 applicant, The Todd Protectograph Co., is a New York Corporation with its office, principal place of business and factory in Rochester, N. Y. It has been engaged for twenty years, next preceding the issuance of this complaint on May 4, 1920, in manufacturing various kinds of patented check protecting machines and selling them in interstate and foreign commerce.

PAR. 2. That the respondent, The Check Writer Manufacturers, Inc., is a corporation organized in New York State in June, 1919, and has its office and principal place of business at 200 Broadway, New York City. It does business in other States and sells and ships check writers and check protecting machines from New York State into other States. It has a capital stock of \$10,000, consisting of 100 shares at a par value of \$100 each. William Hutter, the other respondent, owns one share, his sister-in-law owns another share, and his wife owns the remaining 98 shares. Hutter is the Secretary and General Manager of the corporation.

PAR. 3. The respondents, since the incorporation of The Check Writer Manufacturers, Inc., have been and now are competitors in interstate commerce of the said The Todd Protectograph Co. and for more than two years next preceding said date were and now are engaged almost wholly—90 per cent—in the business of rebuilding second-hand and used check writing and check protecting machines of various makes and selling the same, and in buying and selling to a limited extent—10 per cent—new check protecting machines, in interstate commerce among the several 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. 4. That The Todd Protectograph Co. sell their machines direct to the ultimate user. They distribute them through their own salesmen to whom only they give rights to sell their machines. No machines are sold by the Company or its salesmen to dealers. To insure the carrying out of this policy the Company uses the following system of distribution:

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Each general agent or branch manager has a defined territory, and has guaranteed to him by The Todd Co. an exclusive sales right within that territory. No machines are sold in any other manner. This practice is followed by manufacturers of other check writing machines. The Todd Protectograph Co. keep a very careful record in Rochester, N. Y., of the disposition of each machine from the day it is manufactured until delivered to a customer. Each branch office of The Todd Protectograph Co. receiving the machines from the factory, receives from the company a green slip. This slip is made out in Rochester, N. Y., with the following information: The date on which machines were filed by the company and the branch office, the name of the model, and the particular number of the machines in that series which the slip represents. That is all the information the green slip contains at the time it is sent from Rochester to the branch office. Subsequently, the branch office puts on this green slip the name and address of the purchaser, the salesman's order number, the date the machine was paid for by the customer, and the notation as to the allowance which may have been made for a machine taken in trade or part payment. Every salesman who takes out a machine from a branch office gives a receipt to the company for that machine. Before a salesman may get another machine he must account to the company for the one taken out. When the machine is sold the salesman must bring to the company an order for it signed by the purchaser, together with the customer's check payable to The Todd Protectograph Co. He is not allowed to accept cash or to make collections. By this method the company is able to trace to the ultimate customer every machine sold. The method of distribution thus adopted prevents The Check Writer Manufacturers, Inc., William Hutter and others from dealing in new machines.

PAR. 5. That the business of the respondents consists in buying, rebuilding, and repairing second-hand and used check writers. They manufacture no machines. They do business all through the United States and export to Canada and to South America. They have no salesmen. All local and out-of-town business is solicited by advertisements, circular letters, price lists, and catalogues sent to stationers and office-fixture dealers throughout the country. Through these advertising agencies they represent to the public that they sell new and rebuilt machines.

PAR. 6. That manufacturers have upon their machines plates designating the name of the manufacturer and the name and serial number of the machine. The respondents take off these name plates from the machines which come into their possession and substitute in place thereof new name plates of The Check Writer Manu-

facturers, Inc., bearing new serial numbers. These new name plates respondents use as an advertisement to get further orders and to make buyers believe the machines are new machines made by Check Writer Manufacturers, Inc. When respondents first started to make the present name plates, they began with an arbitrary serial number of 750,000 which agreed with the serial numbers of The Todd machines then manufactured.

PAR. 7. Since respondents do not sell as many machines as the Todd Co., the respondents' serial numbers fell behind the serial numbers [of] Todd machines. Respondents' practice then was arbitrarily to advance respondents' serial numbers to keep them a little above the serial numbers on the Todd Co. machines. They also follow this practice with reference to machines of other manufacturers.

PAR. 8. That sometimes a manufacturer's salesman will sell to respondents a new machine. The salesman then detaches and takes with him the name and number plate thereon. After respondents sell the machine the manufacturer's salesman goes to the buyer, restores the manufacturer's name and number plate and reports the sale to the company. This is the way respondents get new machines to sell.

PAR. 9. That The Todd Protectograph Co. and other manufacturers of check writers and check protecting machines maintain, for the benefit of their purchasers and no others, service or repair departments in different cities to give for one year free repair and upkeep service. If during that time the machines do not operate satisfactorily, or if they need repairs, the manufacturers, upon proper notice, make the necessary adjustments and repairs. Purchasers of used, second-hand, or rebuilt machines are not entitled to this service. The customer who calls on the telephone or writes a letter and asks for service on his machine is required to give the number to enable the manufacturer to identify the particular model or kind of machine in question, and therefore the manufacturer is in a position to supply the proper parts and proper color of ink, and so on. This information required of the person requesting service, together with the company's record, enables the company to determine whether the machine is in the hands of the person authorized to possess it.

PAR. 10. That purchasers of second-hand or used machines from The Check Writer Manufacturers, Inc., and from William Hutter believe their machines are new, that they are entitled to this free service from the Todd Protectograph Co. or other manufacturers, and they demand it. The manufacturers then are either obliged to repair the machine at their own expense or to allow the purchaser to continue

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to use a machine that is not giving good service. These purchasers then become dissatisfied, and disparage the machines.

PAR. 11. That there is another way in which the methods and practices of the two respondents injuriously affect the business of manufacturers. The practice of the Check Writer Manufacturers, Inc., in selling second-hand and rebuilt machines as new machines destroys the public's confidence in the salesmen of the Todd Protectograph Co. and discredits that company. Salesmen throughout the country find advertisements, circulars and advertising matter sent to dealers by the Check Writer Manufacturers, Inc., offering Todd machines at lower prices than the manufacturer sells them.

PAR. 12. That magazine advertisements of the Check Writer Manufacturers, Inc., are published with great regularity in the principal magazines that go to the stationery trade, and hundreds of thousands of copies of them distributed in the last year or two (i. e., 1919, 1920), were coming to the attention of all dealers in the country, and to Todd salesmen and all others interested in the specialty business. Where people are led to believe, as they are, that they can get new Todd machines for less than the regular Todd catalogue prices they will not buy from the Todd Co. Some of the salesmen have openly told the Todd Co. they believe the company is conducting the Check Writer Manufacturers, Inc., in direct competition with the salesmen. The practice supplants the sales of new machines by manufacturers.

PAR. 13. That on January 13, 1919, the Check Writer Manufacturers, Inc., sold Protectograph Check Writer No. 624,146, a second-hand machine, as a new Todd machine to Durel & Dodge, New York City, for \$50, whereas the market price for new Todd machines of that make was only \$45. In January or February, 1920, a Todd agent called to give service to this machine. It had a Todd label on it. The serial number on this label showed the machine was two years old. It was sold originally to R. Krause, New York City, January 4, 1917; it had on its original number 624,146.

PAR. 14. That the Check Writer Manufacturers, Inc., sold to Norwich Indemnity Co. a second-hand machine, at least a year and a half old as and for a new Todd Protectograph Check Writer and charged the company \$45 for it, which was the price of a new machine. On this machine the original Todd Protectograph Co.'s label was removed and the Check Writer Manufacturers, Inc., had substituted therefor their own label No. 750,205 in its place.

PAR. 15. That H. B. Ferguson Co., New York City, in 1920, sent in a call for service by a letter to the Todd Protectograph Co., addressed No. 200 Broadway, instead of to the correct street address, No. 15

Park Row. The Check Writer Manufacturers, Inc., are at 200 Broadway. However, the letter came to the Todd Protectograph Co., and their agent Fitzgerald called. He found that the machine, which was a Todd machine bearing a label No. 500,552, was a second-hand one. A new Todd machine of that type at that time should have a label numbered about 850,000. The Ferguson Co. was under the belief when it bought the machine from the Check Writer Manufacturers, Inc., that it was buying a new machine. The machine was from three to four years old.

PAR. 16. That Garrett Miller & Co., of Wilmington, Del., on September 23, 1919, sent to R. K. Carter, of New York City, purchasing agent for jobbing houses throughout the country, an order to buy for them one Todd Protectograph machine at \$45 less 10 per cent discount. R. K. Carter, on September 25, 1919, sent to Louis Landsberg, New York City, to have this order filled and asked that the machine be sent by Louis Landsberg direct to Garrett Miller & Co., Wilmington, Del. Louis Landsberg by telephone called up the Check Writer Manufacturers, Inc., that is, William Hutter, 200 Broadway, New York City, and asked for a new Todd Protectograph machine. The Check Writer Manufacturers, Inc., offered such a new machine to Louis Landsberg at \$45 less 30 per cent discount for cash. The machine delivered was received by Landsberg from the Check Writer Manufacturers, Inc., and sent down by Landsberg direct to Garrett Miller & Co. Soon thereafter R. K. Carter, by letter, notified Landsberg that the machine sold and shipped to Garrett Miller & Co. was not a new machine. Mr. Hutter himself assured Landsberg the machine sold him was a new machine, that it was the latest model. Landsberg asked William Hutter to write a letter confirming Hutter's statement that the machine was a new one. That he did. This letter Louis Landsberg sent to R. K. Carter. That company then sent the letter, together with one of their own, assuring Garrett Miller & Co. they were imposed upon. The machine, however, was an old one. William Hutter admitted this sale of their machine to Landsberg for Carter and that it was the one shipped to Delaware.

PAR. 17. That about October 1, 1919, William Hutter himself offered to sell to Macy & Co. absolutely new and perfect Standard \$40 Model Todd Protectograph Co.'s check writing machines. In order to make absolutely sure that Macy & Co. would get from William Hutter new machines, Macy & Co. required Hutter to write Macy & Co. a letter stating that they were new machines. This Hutter did. After the machines were delivered, advertised and placed on sale at Macy's, the New York City agent, Raymond Fink,

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of the Todd Protectograph Co., came to Macy & Co.'s, bought one of the machines, and insisted upon having it noted on the sales slip that the machine was new. The matter was then taken up with the President of R. H. Macy & Co., Jesse Isidor Strauss, who interviewed William Hutter in reference to the case and received assurances from Hutter that the machines were new. The Todd Protectograph Co. by letter again asserted that the machines were not new. After an outside and disinterested expert, consulted by Macy & Co. assured Macy & Co. that the machines were not new, Macy & Co. wrote a letter to Todd Protectograph Co. admitting the correctness of that company's contention that the machines were not new. Macy & Co. then required William Hutter to take back the machines he sold it. The fact that Macy & Co. were advertising Standard \$40 new machines for \$32.24 caused a great deal of trouble for the Todd Protectograph Co. because people would not believe the Todd Co. when told by it that the machines were not new. They thought that the mere fact that Macy & Co. were advertising them as new machines proved that they were new machines. The serial numbers appearing on the machines sold to R. H. Macy & Co. were fictitious serial numbers. Todd machines bearing rightfully those serial numbers were sold long before by the Todd Co. to western buyers.

PAR. 18. That the New York City agency of the Todd Protectograph Co. on March 1, 1918, sold to Arnstaedt & Co. a Todd check writer. On April 8, 1919, Oscar Birnbaum, a New York City salesman for the Weig Sales Corporation, sold an F & E check writer and accepted a pink top Todd check writer as a \$14 part payment. This machine Birnbaum sold for \$20. It was about a year old. The Emerson engineers, New York City, during the last of April, 1919, bought through their manager Charles R. Jenks, a Todd check writer from William Hutter, who called personally at the office and represented it to be a new machine. The price paid was \$30 cash, and a Todd Peerless Junior machine, No. 40,331, valued in the exchange at \$15. Then Mr. Mentzel, salesman for the Todd Protectograph Co., called and proved to the Emerson engineers that the machine bought by them from William Hutter was a second-hand machine. The Emerson engineers then caused William Hutter to call at their office, charged him there with untruthfully stating the Todd machine was a new one, and required him to take back the machine and return what they had paid him. This was done. William Hutter admitted he sold a Todd machine to Emerson engineers and had to take it back because they insisted it was not new.

PAR. 19. That on January 7, 1920, the Todd Protectograph Co. received at Rochester, N. Y., a letter dated January 3, 1920, from The Elizabeth Novelty Co., Elizabeth, N. J., stating they wanted the Todd Protectograph Co. to repair a machine recently bought from the Check Writer Manufacturers, Inc., of New York City, as a new machine. At the time the letter was received the Todd Protectograph Co. received the machine referred to in the letter. Witness Given, attorney for the Todd Protectograph Co., saw the machine himself and it bore the Check Writer Manufacturers' name plate similar to those introduced in evidence. The machine's serial number was 750,185. A machine bearing this number was shipped to J. Rittman, February 2, 1917, and returned afterwards to the factory by Mr. Rittman.

PAR. 20. That the Check Writer Manufacturers, Inc., has sent out check writing machines from its offices in New York into various States of the Union. For example, Page & Brown, dealers in office supplies, Charlotte, N. C., bought from the Check Writer Manufacturers, Inc., a Todd Protectograph machine, under the impression it was a new machine. Correspondence signed by William Hutter and the corporation's literature represented to Brown & Page that they were dealing with some one authorized to deal in and sell new Todd Protectograph machines. The machine, however, was a second-hand machine. This machine bore on its name plate "PEERLESS Junior Sold and Guaranteed by Check Writer Manufacturers, 200 Broadway, New York City," and bore serial number 66090. The machine was manufactured by the Peerless Check Protecting Co., which is a part of the Todd Protectograph Co. In the office of Pound & Moore, the largest stationery dealers in Charlotte, N. C., there were letters and circulars sent to Pound & Moore by the Check Writer Manufacturers, Inc. These letters and circulars represented to Pound & Moore that the respondents were authorized to deal in and sell new Todd Protectograph machines. Basing their action upon these letters and circulars, Pound & Moore sent orders to the Check Writer Manufacturers, Inc., for new Todd Protectograph machines. These orders from Pound & Moore distinctly specified that these machines were to be new. Pound & Moore made it a point never to handle anything but new machines.

PAR. 21. That the charge that the respondents mutilated trademarks and patent notices on machines manufactured by the Todd Protectograph Co. is not sustained by the evidence.

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CONCLUSIONS.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation 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 issues in this action having been regularly brought on for trial before the Federal Trade Commission and the Commission and the respondents appearing by Kornbleuh and Hutter, their duly authorized attorneys, and the Commission having heard the allegations and proofs of the parties, and, after due deliberation, having duly made and filed its decision containing a statement of the facts found and the conclusions of law thereon,

It is hereby adjudged and hereby ordered, That The Check Writer Manufacturers, Inc., its officers, directors, agents, employees and servants, and William Hutter, an individual, cease and desist from:

1. Representing themselves individually or together to be the distributors and sales agents, either or both, for The Todd Protectograph Co.

2. Selling used, second-hand and rebuilt check-protecting machines representing them to be new machines.

3. Advertising or stating, by newspapers, circulars, letters, magazines, periodicals or otherwise, that they or either of them carry in stock new machines manufactured by the said The Todd Protectograph Co.

4. Representing, or advertising, or holding out themselves, either individually or together as manufacturers of check writers or check-protecting machines.

5. Using the word "manufacturers" in the corporate name of The Check Writer Manufacturers, Inc., or any other word, term, or phrase signifying to the trade or public that the said corporation is a manufacturer of check writers or check-protecting machines until such be the fact.

6. That each of you within 60 days from the date of the service of this order upon you report to the Commission how and in what manner you have complied with this order.

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FEDERAL TRADE COMMISSION

v.

WILLIAM ROBINSON, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF SOUTHERN MACHINE
WORKS.