

Complaint.

FEDERAL TRADE COMMISSION

v.

HALL-MARVIN COMPANY AND THE REYNOLDS-THOMPSON CORPORATION.

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

Docket 713—March 6, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of safes and vaults under the style of Herring-Hall-Marvin Safe Co., carried on its business under said name under which its products had become well and favorably known to the trade and to the purchasing public; and thereafter (1) a competing concern dealing in new and second-hand iron safes, vaults, and allied metal products, incorporated by a former employee of the Herring-Hall-Marvin Safe Co. and by a grandson and a son of the Marvin and Hall respectively, represented therein, and (2) a corporation organized and controlled by two former employees of said Herring-Hall-Marvin Safe Co., who also controlled said competing concern,

(a) Adopted the name Hall-Marvin Co.; and

(b) Advertised and sold safes, vaults, etc., under said name in a store opposite the office long used by said Herring-Hall-Marvin Safe Co., prominently displaying said name on the windows thereof and elsewhere, together with the name Reynolds-Thompson Co., Distributors;

With a tendency thereby to mislead the public into believing the safes, vaults, etc., sold by them to be those of the original concern:

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 made by it that the Hall-Marvin Co. and the Reynolds-Thompson Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition 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 each of the respondents is a corporation organized and existing under the laws of the State of New York, with principal place of business in the city of New York, N. Y.

PAR. 2. That respondent Hall-Marvin Co. is engaged in the business of dealing in new and second-hand iron safes, vaults, banking-

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house equipment, and allied products, and causes such products sold by it to be transported to the purchasers thereof from the State of New York through and into other states of the United States and to foreign countries, in direct, active competition with other persons, partnerships and corporations similarly engaged. That said respondent Hall-Marvin Co. carries on a portion of its said business through the respondent Reynolds-Thompson Co., its subsidiary.

PAR. 3. That for a number of years prior to 1892 there were four separate corporations, viz: Herring & Co., Farrell & Co., Marvin Safe Co., and Hall Safe & Lock Co., which manufactured and sold iron safes and vaults suitable for banking-house equipment, which corporations were consolidated in 1892 into the Herring-Hall-Marvin Safe Co., a New Jersey Corporation, which corporation was later reorganized, in 1905, and which corporation succeeded to the business and property, including the good will of said constituent companies, and has at all times since said consolidation carried on the business of manufacturing and selling safes and vaults suitable for equipment of banking houses, and its products have become, were and are, well known to the trade and purchasing public.

PAR. 4. That in 1911, respondent Hall-Marvin Co. was organized, but for a number of years it did not engage in any business, but afterwards, in about the year 1914, respondent began business on a small scale and the original incorporators died, whereupon the capital stock of respondent was purchased by James A. Reynolds and Fred A. Thompson, who still own said stock except 20 per cent of same, which has been transferred to E. C. Kline, of the Victor Safe Co., of Cincinnati, Ohio, with which company respondent now has a working arrangement for the installation of Bank equipment and other purposes. That for a number of years prior to 1914 said James A. Reynolds and Fred A. Thompson were employed by the Herring-Hall-Marvin Safe Co., and in the course of such employment became possessed of numerous business and trade secrets and other confidential information of and concerning the said Herring-Hall-Marvin Safe Co. That said James A. Reynolds and Fred A. Thompson are the president and treasurer, respectively, of said respondent, Reynolds-Thompson Co., and own all of its capital stock.

PAR. 5. That respondent Hall-Marvin Co., in the course of its business as described in Paragraph Two hereof, has carried on its said business in such a manner as to mislead and deceive the purchasing public so as to pass off its business and goods as and for the business and goods of the Herring-Hall-Marvin Safe Co., and customers have been induced to buy safes and banking-house equipment from respondent, believing same to be the product of said Herring-

Hall-Marvin Safe Co. As a means of assisting respondent to pass its business and goods off as the business and product of the Herring-Hall-Marvin Safe Co., respondent established its office at 393 Broadway, in New York City, directly opposite the principal office of said Herring-Hall-Marvin Safe Co., and has had published in telephone directories and other directories, advertisements which were displayed in such a manner as to create the false impression that respondent and the Herring-Hall-Marvin Safe Co. was one and the same business organization.

PAR. 6. That by reason of the facts recited, the respondents are using unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Hall-Marvin Company and Reynolds-Thompson Corporation (named in the complaint as the Reynolds-Thompson Company), charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed their answer, admitting certain allegations of the complaint, and denying others, and having executed and filed an agreed statement of facts, in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case, and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts, and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. For a number of years prior to 1892, there were four separate corporations, viz: Herring & Co.; Farrell & Co.; Marvin Safe Co.; and Hall Safe & Lock Co., which manufactured and sold iron safes and vaults suitable for banking-house equipment; in 1892 these corporations were consolidated into the Herring-Hall-Marvin Co., a New Jersey corporation which was in 1905 reorganized

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into the Herring-Hall-Marvin Safe Co., a New York corporation, which company succeeded to the business and property, including the good will, of the said constituent companies and has at all times since its consolidation carried on the business of manufacturing and selling safes and vaults suitable for equipment of banking houses, and its products have been and are well known to the trade and purchasing public under the corporate name of Herring-Hall-Marvin Safe Co.; for more than five years prior to the 26th day of January, 1921, its principal place of business has been at No. 400 Broadway, New York City; said corporation, in the conduct of its business, has caused its products to be transported to purchasers thereof from the State of New York through and into other states of the United States, and to foreign countries in competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The respondent, Hall-Marvin Co., for a period of more than two years prior to the 26th day of January, 1921, has been engaged in the business of dealing in and selling new and second-hand iron safes, vaults, banking-house equipment and allied metal products for the protection of valuables, and in the conduct of this business as aforesaid has caused such wares sold by it to be transported to the purchasers thereof from the State of New York through and into other states of the United States and to foreign countries, in competition with other persons, partnerships and corporations similarly engaged, including the Herring-Hall-Marvin Safe Co., a New York corporation with its principal place of business in the city of New York.

PAR. 3. The respondent, Hall-Marvin Co., was incorporated under the laws of the State of New York, in or about the month of October, 1911, its incorporators being Ezra Marvin, Charles O. Hall and Frederick A. Thomson; its capitalization consisting of one hundred shares at \$10 each, of which at the time of said incorporation said Marvin held 50 shares, said Hall 25 shares, and said Thomson 25 shares. Ezra Marvin, one of the incorporators, was a grandson of Walter K. Marvin, who gave his name to the Marvin Safe Co., one of the constituents of the Herring-Hall-Marvin Safe Co.; Charles O. Hall was a son of Joseph Hall, president of the Hall Safe & Lock Co., and had been connected with Hall's Safe Co., a separate corporation from those heretofore named. Frederick A. Thomson was the Thomson associated with James A. Reynolds in the Reynolds-Thomson Corporation, sued herein as Reynolds-Thomson Co., one of the respondents herein. On or about the year 1914 the said James A. Reynolds purchased 20 shares of the Hall-Marvin Co. from Ezra Marvin; about the year 1914 said Marvin died and thereafter his re-

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maining 30 shares of stock in the Hall-Marvin Co. were sold, 15 shares to Frederick A. Thomson and 15 shares to James A. Reynolds, above named. On or about January, 1918, said Charles O. Hall died and the 25 shares of stock in the Hall-Marvin Co., owned by him, were sold thereafter, 20 shares to Everett C. Kline, Cincinnati, Ohio, 2 shares to Frederick A. Thomson, 2 shares to James A. Reynolds and 1 share to Charles R. Larson. The stock of said company is now held as follows:

Frederick A. Thomson, 42 shares.

James A. Reynolds, 37 shares.

Everett C. Kline, 20 shares.

Charles R. Larson, 1 share.

PAR. 4. Prior to 1914, said James A. Reynolds and Frederick A. Thomson were employed by the Herring-Hall-Marvin Safe Co., named above, as salesmen, and the said James A. Reynolds was employed by said company as city sales manager. In or about the year 1914 the said James A. Reynolds and Frederick A. Thomson caused to be incorporated under the laws of the State of New York, the Reynolds-Thomson Corporation, sued herein as Reynolds-Thomson Co., one of the respondents, with a capitalization of 600 shares of \$50 each, which stock is now owned as follows:

Issued	\$15,900.00
Treasury stock	14,100.00
Total	30,000.00
James A. Reynolds.....	150 shares.
Frederick A. Thomson.....	150 shares.
Joseph H. Richter.....	6 shares.
Ray Powers.....	6 shares.
James A. Reynolds, jr.....	6 shares.
	818
	\$15,900.00

Soon after said incorporation they rented and occupied the store No. 393 Broadway, New York City, opposite the office of the Herring-Hall-Marvin Safe Co., and at said place of business, No. 393 Broadway, they advertised and sold safes, vaults, etc., under the name of Hall-Marvin Co., and said name was prominently displayed on the window of said office and elsewhere, together with the name Reynolds-Thomson Co., distributors. In the conduct of said business the Reynolds-Thomson Corporation caused safes and similar equipment sold by it under the name of Hall-Marvin Co. to be

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transported from the State of New York through and into other states of the United States and foreign countries.

PAR. 5. The use of the name Hall-Marvin by the Hall-Marvin Co. and the Reynolds-Thomson Corporation, as set forth in the previous paragraphs, in marking, advertising and selling safes, vaults, etc., in the facts and circumstances set forth therein, tended to lead the public to believe that goods offered for sale and sold by them were the product of the Herring-Hall-Marvin Safe Co.

CONCLUSION.

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 constituted 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.

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission and the answer of the respondents and the agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated 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,"

It is now ordered, That the respondent Hall-Marvin Co., its officers, directors, members, representatives, agents and servants, cease and desist from—

Using as its corporate name, or displaying upon its letterheads, stationery, circulars or advertising or other printed matter, and in its trade-marks, trade names, labels or designs used in connection with the offering or advertising for sale and sales in interstate commerce, of safes, vaults or other articles of a similar nature for the protection of valuables, or displaying on such merchandise or packages or containers thereof, the words "Hall-Marvin," with or without the hyphen, alone or in combination with other word or words, unless accompanied in juxtaposition and in equally large and legible lettering as the words "Hall-Marvin," or conspicuously in red ink, by a statement to the effect that it has no connection with the Herring-Hall-Marvin Safe Co.; and

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That the respondent, Reynolds-Thomson Co. cease and desist from so displaying the words "Hall-Marvin" with or without the hyphen, alone, or in combination with other word or words, in any manner above described unless accompanied by a statement, in the form and manner as above prescribed, that the Hall-Marvin Co. has no connection with the Herring-Hall-Marvin Safe Co.; and

That the respondents Hall-Marvin Co. and Reynolds-Thomson Corporation, their officers, directors, members, representatives, agents and servants, cease and desist from in any manner indicated heretofore in this order, or otherwise, representing, or knowingly permitting the representation by their agents or employees, that the Hall-Marvin Co. is the same as, or has any connection with the Herring-Hall-Marvin Safe Co., or from in any way representing that the merchandise handled by the former is the same as the product of the latter company.

And it is further ordered, That said respondents shall within thirty (30) 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.

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FEDERAL TRADE COMMISSION

v.

F. G. McFARLANE.

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

Docket 739—March 6, 1922.

SYLLABUS.

Where an individual engaged in the sale, chiefly pursuant to contracts secured abroad, of ship chandlery supplies mainly to coastwise and ocean-going ships of foreign registry, for the purpose of securing and retaining the business of vessels not under contract, and of taking an unlawful advantage of such of his competitors as did not adopt the same method,

(a) Lavishly entertained, at an annual expense of thousands of dollars, the captains and other purchasing officers, with automobile parties, theater and dinner parties, etc.; and

(b) Paid to said officers secret commissions amounting to five per cent of the invoices, and aggregating thousands of dollars annually;

With the effect of increasing the price of his products to his customers, and of taking an unfair advantage of the owners or employers who received no consideration in return for such expenditures:

Held, That such entertainments and payments, 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 F. G. McFarlane, hereinafter referred to as the respondent, has been and is using unfair methods of competition 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 this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is engaged in the business of selling ship chandlery, including steward's supplies, deck, engine and cabin supplies, for ships engaged in coastwise and foreign commerce, at the city of New Orleans, State of Louisiana, causing said commodities to be delivered to ships reaching ports in the State of Louisiana, while engaged in transporting passengers and commodities between ports in various States of the United States bordering upon the southern and southeastern coast thereof, and in transport-

ing passengers and commodities from American ports to foreign countries in due course of commerce among the several States of the United States and with foreign countries; such supplies, so sold by respondent, being for consumption and use by the purchasers thereof, upon the high seas, in and beyond the territorial jurisdiction of the United States. Said business is and has been conducted by respondent in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the respondent in the course of his business as set out in paragraph one hereof, gives and has given to captains, engineers, stewards, and other officers of vessels to which he furnished ship chandlery supplies and to agents of the owners of such vessels, without the knowledge or consent of their employers or principals and without other consideration therefor, valuable gifts, cash gratuities in the form of large sums of money, and lavish entertainment consisting of automobile parties and joy rides, dinner and theater parties, tickets for prize fights, meals, lodging accommodations, and other forms of entertainment and amusement to induce such officers and agents to recommend or purchase ship chandlery supplies from the respondent for consumption and use upon the vessels operated by such officers for the owners thereof. That the valuable gifts, cash gratuities and entertainments so given by the respondent aggregate in value approximately 8 per cent of his entire volume of business, which volume of business averages approximately \$300,000 per year. That as a result of the giving of such valuable gifts, cash gratuities and entertainment respondent adds to his annual cost of doing business approximately \$24,000, and is compelled to and does add to the selling price of the commodities sold by him an amount approximating 8 per cent of the fair market value of such commodities, which is in addition to the fair market price of such commodities, and which additional amount the customers of the respondent, and eventually the public, must pay. That as a further result of the respondent's said practices all of his competitors are affected, and the giving of valuable gifts, cash gratuities, and entertainment by the respondent as aforesaid has tended to cause competitors of the respondent, who in many instances had not engaged in such practices, to give captains, engineers, stewards and other officers of vessels and agents of the owners of such vessels, valuable gifts, cash gratuities, and entertainment of substantially like value and amount to those given by respondent as aforesaid, for the same purposes and with the same effect, as a means of protecting their trade and as a means of preventing respondent from obtaining the business enjoyed by them.

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PAR. 3. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, F. G. McFarlane, charging him with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent having entered his appearance and filed his answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the said complaint before Warren R. Choate, an Examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing and counsel for the Commission and the respondent having waived the filing of briefs and the hearing of oral argument herein, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. F. G. McFarlane is engaged in the business of ship chandlery at 730 Camp Street, New Orleans, La., and supplies ships engaged in transporting cargoes in commerce from that port to ports in other States in the United States and between ports of the United States and ports in foreign countries, with goods, wares, and merchandise, commonly called ship chandlery stores, and is in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. He deals with British ships principally and most of his business is carried on under contracts secured by his agent in Great Britain. His agent is L. H. Bahmer and he is located in London and also has an office in Liverpool, and works on a commission basis.

PAR. 3. Respondent has been in the ship chandlery business from 1907 until 1918 as an employee of his father. From and including 1918 to March 23, 1921, respondent was in business for himself. The complaint in this case was served on the respondent March 3, 1921, when respondent conducted the business for himself and in his own name. On March 23, 1921, the respondent incorporated the said private business with a capital stock of \$100,000. The said respondent

and his wife own a controlling interest in said corporation. The other officials are Mr. Suarez, Mrs. Hesslin and Mr. Nix.

PAR. 4. The method of doing business was for the respondent to visit vessels in the harbor at New Orleans and if the vessel was under contract to do business with the respondent, the captain would be so advised. If the vessel was one known as a free ship, the captain's business would be solicited by the respondent. Upon securing the captain's business, the respondent would convey him ashore in a launch which was part of the equipment of the ship chandlery owned by respondent. The captain would be taken to respondent's place of business where headquarters would be provided for him. A room being furnished, known as the captain's room, for the captain's convenience, was used. Many times lavish entertainment was provided, consisting of automobile parties, joy rides, theater and dinner parties, tickets for a prize fight, meals, lodging accommodations, and other forms of entertainment and amusement as well as cash gratuities.

PAR. 5. During the year 1918, \$7,281.41 was spent for the entertainment of captains and other officers of vessels in entertainment such as above described. During this year there was also paid, as gratuities, to captains and other officers of ships, the sum of \$10,976.84.

PAR. 6. The purpose of the lavish entertainment was "to take good care of the men—make them like you so that they will continue to do business with you, but principally to keep them away from the opposition."

PAR. 7. Most of the owners of vessels to which the respondent furnishes supplies leave the purchasing or ordering of the supplies for their ships to the captain, steward, or chief engineer, particularly the captain, and the practice of giving gratuities to such officers by the respondent and his competitors is followed to such an extent that the captain or other purchasing officer of the vessel will patronize the ship Chandler who will pay the gratuity. Many captains of these vessels get small salaries and this custom of receiving gratuities enables them to increase their compensation to the extent of the gratuity paid. The gratuity is not accounted for to the owners of the vessel. The amount of the gratuity differs among different chandlers—the minimum is 5 per cent and the maximum 10 per cent of the amount of the invoice. The respondent pays 5 per cent in addition to the cost of the entertainment furnished, and he adds to his cost of doing business the amount or value of all gratuities given by him as shown by these findings, and the price to his customer is his cost of doing business plus his profit.

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CONCLUSION.

That in this method of selling goods and supplies, etc., to coastwise and foreign ships, the respondent was engaged in commerce as defined by Section 4 of the Act of Congress approved September 26, 1914, creating a Federal Trade Commission and defining its powers and duties.

That this method of paying gratuities and providing unusual and extravagant entertainment is in violation of the provisions of Section 5 of the above recited Act; that in the payment of these gratuities and providing unusual and extravagant entertainment to captains, an unfair method was adopted because it created an unlawful advantage as against ship chandlers who would not pay such gratuities and provide such entertainment; that in the payment of gratuities and providing entertainment in this manner to captains, an unfair advantage was taken of the owners of the vessels and that there was no valuable consideration moving from the captain to the respondent that would support the giving of the same.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence submitted, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions 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,"

It is now ordered, That the respondent, F. G. McFarlane personally, or through any corporate agency in which he may own a controlling interest, and his agent, representative, servant or employee do cease and desist from directly or indirectly giving or offering to give to the captains or other officers or employees of vessels, without the knowledge and consent of their employers, lavish entertainment, money, cash bonuses, commissions, or loans of money or other things of value without an expectation of repayment, as an inducement to purchase, or as a reward for having purchased from respondent, or his agents, or any corporate agency controlled by him, for the owners of the vessels, provisions, merchandise or other supplies for such vessels.

It is further ordered, That respondent, F. G. McFarlane, shall within sixty (60) days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

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