

Complaint.

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FEDERAL TRADE COMMISSION

v.

C. H. KORB AND W. M. DWYER, TRADING AND DOING
BUSINESS UNDER THE FIRM NAME AND STYLE OF
KORB & DWYER.

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

Docket 725—May 8, 1922.

SYLLABUS.

Where a firm and an individual, engaged in the business of buying, overhauling, and selling second-hand adding machines of various makes; for the purpose of misleading and deceiving the public, advertised "SEVERAL HUNDRED THOROUGHLY REBUILT DALTON ADDING AND LISTING MACHINES AVAILABLE AT HALF AMERICA'S LIST PRICES. CABLE OR WRITE FOR PRICES * * * KORB & DWYER, REBUILT TYPEWRITERS AND ADDING MACHINES, 31 Walker St., New York City, U. S. A.," notwithstanding the fact that they were never in possession of any appreciable number of such rebuilt machines in the common acceptance of the term, nor in a position to supply them:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that C. H. Korb and W. M. Dwyer, a partnership doing business under the firm name and style of Korb & Dwyer, located at 31 Walker Street, New York City, 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 amended complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, C. H. Korb and W. M. Dwyer, are now and were at all times hereinafter mentioned, a partnership organized, existing and doing business in the State of New York under the firm name and style of Korb & Dwyer, having their principal place of business located at 31 Walker Street, New York City.

PAR. 2. That the respondents now and for more than two years last past have been engaged in the business of buying and selling second-hand adding machines, which machines have been overhauled,

but not rebuilt, among the several States of the United States, the Territories thereof and the District of Columbia, in competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 3. That during the year last past the respondents advertised and caused to be inserted in a magazine in general circulation among the trade, called "Office Appliances," an advertisement in and by which they offered for sale several hundred thoroughly rebuilt, first class Dalton Adding and Listing machines. This advertisement appeared in the publication named at least three times.

PAR. 4. That the advertisements so appearing and which the said respondents caused to be published and circulated were untrue in that the respondents did not have in their possession or otherwise for sale any rebuilt Dalton Adding machines and did not have any arrangements made by which they would be able to procure any such machines. Respondents did not have on hand but a small number of machines at the time the advertisements so appeared and did not have and could not procure several hundred such machines as advertised. The only machines which the respondents had on hand at the time the advertisements so appeared were overhauled but not rebuilt Dalton Adding Machines.

PAR. 5. That the machines which respondents had on hand and which they were undertaking to sell by the aid of the advertisement before referred to were not rebuilt Dalton Machines in that they had not been taken down and worn and defective parts replaced by new parts, which is necessary to be done in order that a machine be properly termed as understood by the trade, a rebuilt machine. That respondents knew at the time that they caused said advertisement to be published and circulated that they did not have on hand and could not procure the number or character of machines so advertised and that the advertisement inserted and published was known by them to be false at the time of its publication and circulation.

PAR. 6. That by reason of the facts set out in the foregoing paragraphs of this amended 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, the Federal Trade Commission issued and served a complaint upon the respondents, C. H. Korb and W. M. Dwyer,

Findings.

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trading as Korb & Dwyer, charging them with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearance in person and filed their answer herein, and formal hearings having been had before an examiner of the Commission, and testimony having been introduced in support of the allegations of the complaint and no testimony having been offered by the respondents, and the Commission having duly considered the record, and it being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondents, C. H. Korb and W. M. Dwyer are and were at all times hereinafter mentioned, a partnership, organized, existing and doing business under the firm name and style of Korb & Dwyer in the State of New York, and having their office and principal place of business at 28 Walker Street, New York City; that on or about May, 1920, the said firm was dissolved and C. H. Korb succeeded to the said firm business and now conducts the same under his own name.

PAR. 2. That C. H. Korb and W. M. Dwyer, partners aforesaid, and C. H. Korb, individually, now and for more than two years last past have been engaged in the business of buying, overhauling, selling and shipping secondhand adding machines of various makes to purchasers in the various States of the United States and the District of Columbia in competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 3. That the said respondents during the year 1920, advertised and caused to be inserted in a newspaper or magazine called "Office Appliances" issuing monthly and circulating throughout the various States of the United States, in fact "all over the world." the following advertisement:

"SEVERAL HUNDRED THOROUGHLY REBUILT DALTON ADDING AND LISTING MACHINES AVAILABLE AT HALF AMERICA'S LIST PRICES. CABLE OR WRITE FOR PRICES."

[Here follows a picture of adding machine.]

"KORB & DWYER

**REBUILT TYPEWRITERS AND ADDING MACHINES,
31 Walker Street, New York City,
U. S. A."**

PAR. 4. That the respondents had not at the time the said advertisement appeared in said magazine nor had they at any other time

had in their possession, for sale or otherwise, one hundred or two hundred or as many as a dozen rebuilt Dalton Adding Machines and no arrangement had been made or contract entered into whereby the said Korb & Dwyer or either of them individually, could or were to receive for sale rebuilt Dalton Adding Machines as advertised; that while the respondents were equipped with facilities to overhaul Dalton and other adding machines they were not equipped and did not have the facilities to rebuild Dalton Adding Machines; that the respondents could not obtain the new parts necessary to rebuild said machines nor the skilled labor required; that the word "rebuilt" as applied to secondhand adding machines has a well-known meaning, especially to the adding machine and typewriter trade, so that an adding machine may properly be said to be a rebuilt machine when after several years' use it is stripped down to its base and then built up, replacing parts that have been worn by new parts, and building into the machine at the same time any refinement and improvements made since it was manufactured.

PAR. 5. That it is a policy maintained by all of the large manufacturers of adding machines as the Burroughs, Wales, Dalton and Monroe to refuse to sell new parts for machines made by them to anyone and hence the only manufacturer who can rebuild the Dalton machine or Burroughs machine or machines of the other large manufacturers is the manufacturer of the particular adding machine to be rebuilt, and this fact is well known to the adding machine trade and especially to the dealers in secondhand adding machines and the respondents knew this policy when they were advertising for sale several hundred rebuilt Dalton Adding Machines; that the General Exchange Adding Machine Company, from whom the said machines were expected to be purchased by respondents, did not rebuild, and could not have rebuilt, the said Dalton Adding Machines as said Company, while dealing in adding machines, overhauling and selling them, does not rebuild any adding machines except the Burroughs Adding Machine, which it manufactures.

PAR. 6. That respondents, for the purpose of misleading and deceiving the purchasing public concerning the machines advertised by them for sale "at half American list prices," falsely advertised that the said machines were "rebuilt Dalton Adding Machines" and in furtherance of this deception respondents signed said advertisement in such a manner as to mislead the public into the belief that the respondents are dealers in rebuilt Dalton Adding Machines as well as other makes of adding machines.

Order.

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CONCLUSION.

That the acts of the respondents as set forth in the foregoing finding as to the facts are unfair methods of competition in commerce and in 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 pleadings and the testimony and evidence received by an examiner of the Commission, 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," which said report is hereby referred to and made a part hereof,

Now, therefore, it is ordered, That the respondents C. H. Korb and W. M. Dwyer, individually, or under the firm name of Korb & Dwyer, and each of their agents, representatives and employees cease and desist from:

Directly or indirectly, selling, or offering for sale, or advertising for sale in newspapers, magazines, circulars, or otherwise, in interstate commerce, overhauled Dalton Adding Machines, upon the representation that they are rebuilt adding machines.

Directly or indirectly representing through advertisements in magazines, newspapers or otherwise in interstate commerce, that respondents are or either of them is engaged in buying, rebuilding and selling Dalton Adding Machines, or buying, rebuilding and selling adding machines of any other manufacturer of adding machines which exclusively rebuilds machines of its own manufacture, unless and until the facts truthfully warrant such representation.

It is further ordered, That the said respondents, C. H. Korb and W. M. Dwyer, shall within sixty (60) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

LOUIS K. LIGGETT CO.

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LOUIS K. LIGGETT COMPANY.