

Complaint.

5 F. T. C.

FEDERAL TRADE COMMISSION

v.

THE IMPERIAL PRODUCTION COMPANY, J. T. CRAIG,
S. F. TUBBS, AND J. B. BRIGHT.

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

Docket 867—November 1, 1922.

SYLLABUS.

Where a concern, and individuals instrumental in, and responsible for its organization, in promoting the sale of said concern's stock,

- (a) Made false and misleading representations in their advertisements with reference to its plan of organization, resources, business progress, good will and future, and with reference to the standing, ability, and integrity of said individuals;
- (b) Misrepresented in their advertisements alleged nearby or surrounding production and operations, misrepresented the prospects of the concern as reflected by alleged declarations of geologists, and as reflected by its nearness to localities or sections to which large interests were alleged to be giving attention, or to certain famous fields, and misrepresented its own operations and output, alleged earnings, and general financial situation with reference to dividend possibilities; and were thereby enabled to sell large amounts of its stock; and
- (c) Widely advertised in connection with their solicitation of stock the payment of alleged dividends, the fact being that at no time did earnings warrant the payment of any dividends, and that such payments were made from the proceeds from stock sales, and were made for the particular purpose of promoting such sales:

Held, That such false and misleading advertising, 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 Imperial Production Company, J. T. Craig, S. F. Tubbs, and J. B. Bright, hereinafter referred to as respondents, have been and are using unfair methods of competition in 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 thereto would be to the interest of the public, issues its complaint, stating its charges in this respect upon information and belief as follows:

PARAGRAPH 1. The respondents, J. T. Craig and S. F. Tubbs, are residents of the State of Texas, each having his principal office and place of business in the City of Dallas, in said State, and the respondent, J. B. Bright, is a resident of the State of Oklahoma, having his principal office and place of business at Kiowa, in said State.

That J. T. Craig, S. F. Tubbs, and J. B. Bright, respondents above mentioned, caused to be organized under a declaration of trust, on or about September 25, 1919, the respondent, Imperial Production Company, with an authorized capitalization of one million shares with a par value of \$1.00 each and thereafter engaged in its promotion and the sale of stock therein;

That in the course of such promotion and organization of said company, the respondents, J. T. Craig, S. F. Tubbs and J. B. Bright, transferred to it certain oil leases in the State of Texas and elsewhere and in return therefor received its entire capital stock; that subsequently they donated to the treasury of the respondent company five hundred thousand shares of said stock, it being understood and agreed by and between them as trustees thereof that another two hundred and fifty thousand shares would be used from time to time as the occasion or the necessities of the situation might require for the purchase of further and additional leases or other holdings for and on behalf of respondent, Imperial Production Company.

PAR. 2. That the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, in conducting the business of promoting and organizing the said respondent, Imperial Production Company, transported or caused to be transported through the mails and otherwise large quantities of letters, circulars, and advertising matter, into and through the various States and Territories of the United States, and have procured subscriptions for and sold stock in said company to many persons, copartnerships, and corporations throughout the United States, and have each and all transported or caused to be transported the said stock sold as aforesaid, from the City of Dallas, in the said State of Texas, to purchasers thereof in and through the various States of the United States, in direct competition with other persons, copartnerships, and corporations engaged in the sale and distribution of stock and securities.

PAR. 3. That the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, each for himself and in conjunction with each other, have deceived and defrauded the public, particularly that part thereof who have purchased or contracted to purchase stock in the said respondent, Imperial Production Company, by means of false and misleading advertisements, false representations and false publications, and by making, publishing, advertising, and circulating false

Complaint.

5 F. T. C.

and misleading reports, false statements and false representations regarding the plan of organization, resources, business progress, good will, and prospects of the Imperial Production Company, and the standing, ability, and integrity of the respondents associated therewith in the promotion thereof, and have represented, advertised, published, and circulated particularly the following statements and representations, all of which, in whole or in part, were false and misleading, and known to be such by respondents, by means of which they, and each of them, have sold much of the stock of the said company, to wit:

That the tract of land described by respondents in their literature as Tract No. 1 was surrounded by production;

That there were producing wells on all sides of Tract No. 2;

That Tract No. 4 was a short distance southeast of the town of Duval, Cotton County, Oklahoma, which was across Red River north of the Burkwaggoner Pool and near several wells, and that geologists declared that the Burkwaggoner Pool crosses the Red River at this place and that there was no doubt that said tract was in this pool, meaning Burkwaggoner Pool;

That Tracts Nos. 6 and 7 in Hardemann and Foard Counties, in the State of Texas, were surrounded by wells in process of drilling;

That Tract No. 8, consisting of 120 acres, was near wells in process of drilling;

That Tract No. 9, in Fisher County, Texas, was surrounded by deep tests in process of drilling;

That Tract No. 10 was located on splendid geological structure and that there was drilling near this tract on two sides of it;

That Tract No. 16 was located in New Mexico, a State which was getting "a big play by the big oil companies";

That Tract No. 17, situated in Robertson County, Texas, was "near the big gas fields";

That a number of deep tests were drilling near the 800 acres in Maverick County, Texas;

That Tract No. 20, consisting of 10 acres in Tillman County, Oklahoma, was "only a short distance across the Red River from the big wells on the Northwest Burkburnett Extension";

That Tract No. 23, in Haskell County, Oklahoma, was located on splendid geological structure and that big gas had been found in that county and that "It lies right to catch the Henrietta sand where they are getting some big wells";

That in Jones County, Texas, where Tract No. 24 of respondents' was located there were "Many deep tests going down by the big companies";

That there were deep tests going down on all sides of Tract No. 26;

That there was a lot of activity by the big oil companies in Terrell County, Texas, where Tract No. 28 of Imperial Production Company was situated;

That Tract No. 31, consisting of 10 acres in Claiborne, Louisiana, was "near the famous Homer Oil Fields, where wells come in at 1,150 to 2,250 feet, making as high as 20,000 barrels" and that this tract lay between Homer and Bull Bayou Fields;

That Imperial Production Company owned two producing wells with settled production of 80 barrels per day, then pumping and fully equipped;

That the respondent, Imperial Production Company, was a real producing oil company with several thousand acres of good oil leases, several of which were in the famous Burkburnett oil fields, and surrounded by producing wells, and also had two producing wells in Musgraves' addition to the town of Burkburnett, making at least 80 barrels per day which would afford plenty of oil to take care of dividends for several months;

That the earnings of the company averaged \$5,000.00 per month;

That with present production the respondent, Imperial Production Company, would be able to pay a dividend of 2% monthly;

That in December, 1919, respondents had closed an option on one thousand barrels daily production in the Burkwaggoner Fields. Wichita County;

That the earnings of the Imperial Production Company were far in excess of dividend requirements.

Whereas, in truth and in fact, there was no production in the vicinity of Tract No. 1 and wells sunk near it produced no oil;

There were no producing wells on all sides of Tract No. 2, there being some production to the north of said tract and small production to the south;

There were no oil wells near Tract No. 4 and geological maps do not indicate that the so-called Burkwaggoner Pool crosses the Red River at any point;

There were no drilling operations in the neighborhood either of Tract No. 6 or Tract No. 7, in Hardemann and Foard Counties, Texas;

There were no drilling operations within many miles of Tract No. 8 or of Tract No. 9, and only one test well drilled in the vicinity of the latter;

There were no drilling operations in the vicinity of Tract No. 10;

There were no drilling operations in the vicinity of Tract No. 16, in New Mexico, and none of the big oil companies were then giving New Mexico serious attention as oil-producing territory;

Complaint.

5 F. T. C.

There were no gas fields in Robertson County, Texas, nor in the vicinity of Tract No. 17;

The only drilling operations of any character in the neighborhood of Tract No. 19 consisted of a gas well four miles to the north of it;

Tillman County, Oklahoma, is considered strictly wildcat territory and no production has ever been secured within it;

Haskell County, Oklahoma, is classed as wildcat territory, and contains no gas wells;

None of the so-called big companies are operating in Jones County, Texas;

There are no test wells within many miles of Tract No. 26, in Mills County, Texas;

None of the big oil companies were engaging in a "lot of activity" in Terrell County, Texas, as advertised, or in any activity in such county, nor were any of them conducting any testing operation for oil therein;

Tract No. 31 is neither in or near the so-called Homer nor Bull Bayou Fields, but is situated nine miles southwest of the latter field, in a district where there has never been any production;

That the respondent company averaged from its two alleged wells upon the tract known as No. 37 no more than 14 barrels of oil per day;

That the respondent company never owned in Burkwaggoner field or elsewhere any well or wells of any character or description of one thousand barrels daily production or any production in excess of 14 barrels per day; and at no time during the period when its literature, consisting of circulars, letters, and other advertising matter, was distributed in and through the various States of the United States, in the promotion and sale of its stock, did the respondent earn directly or indirectly from production or otherwise, enough money to justify or pay a dividend of 2% or any dividend whatever, and that such dividend or dividends as were from time to time paid by the respondent, Imperial Production Company, were falsely so called and were declared and made in order to promote the sale of its stock.

PAR. 4. That the probable and natural tendency of each and all of the representations so made to the public by respondent in procuring subscriptions for and selling stock in said company was, and they and each of them had the capacity and were calculated, to induce subscriptions for and purchase of said stock, and many persons in various States of the United States, to whom such false and misleading representations were so made by the respondent, believed them to be true, or some one or more of them, and relying thereon

and because thereof purchased a considerable amount of stock in the said Imperial Production Company.

PAR. 5. That by reason of the facts recited the respondents, and each and all of them, have been and 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, the Imperial Production Company, J. T. Craig, S. F. Tubbs, and J. B. Bright, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the said Act.

The respondents having entered their appearance by their attorney, and filed their answer herein, and having entered into a stipulation with counsel for the Commission that, subject to the Commission's approval, the matters and facts contained therein and introduced of record before a duly authorized Examiner of the Commission, shall constitute the facts in this proceeding and shall be taken and considered in lieu of testimony and that the Commission may proceed upon such stipulation and agreement of facts to make and enter its report stating its findings as to the facts and its conclusions thereon, and issue its order disposing of this proceeding without the introduction of testimony, and thereupon the Federal Trade Commission having duly considered the record and being now fully advised in the premises, make this its report, stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, J. T. Craig and S. F. Tubbs, are residents of the State of Texas having their principal office and place of business in the City of Dallas, in said State; that the respondent J. B. Bright is a resident of the State of Oklahoma with his residence and principal place of business at Kiowa in said State; that the said respondents, Craig, Tubbs, and Bright, caused to be organized under a declaration of trust, on or about December 25, 1919, the respondent, Imperial Production Company, with an authorized capitalization of 1,000,000 shares of the par value of \$1.00

Findings.

5 F. T. C.

each, and thereafter engaged in its promotion, and in the sale of stock therein.

PAR. 2. That in the course of the promotion and organization of said company the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, transferred to the respondent, Imperial Production Company, certain oil leases in the State of Texas and elsewhere, and in return therefor received its entire capital stock; subsequently they donated to the trustees of the respondent company 500,000 shares of said stock, it being understood and agreed by and between them as trustees thereof that an additional block of 250,000 shares was to be used from time to time as occasion or the necessity of the situation might require for the purchase of further and additional leases or other holdings for and on behalf of the respondent, Imperial Production Company.

PAR. 3. That the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, in conducting the business of promoting and organizing the said respondent, Imperial Production Company, circulated and distributed, or caused to be circulated and distributed through the mails or otherwise, large quantities of letters, circulars, and advertising matter into and through the various States and Territories of the United States, and procured subscriptions for and sold stock in said company to many persons, copartnerships, and corporations throughout the United States by means of such letters, circulars, and advertising matter, and transported or caused to be transported the stock so sold from their office and place of business, in the City of Dallas, in the State of Texas, to the purchasers thereof in and through the various States and Territories of the United States in direct competition with other persons, copartnerships, and corporations engaged in the sale and distribution of stocks and securities.

PAR. 4. That the respondents, Craig, Tubbs, and Bright, each for himself, and in conjunction with each other, deceived the public, particularly that part thereof who purchased or contracted to purchase stock in the said respondent, Imperial Production Company, by means of false and misleading advertisements, false representations, and false publications mentioned in paragraph 2 of the complaint, and by making, publishing, and advertising and circulating through the literature or advertising matter mentioned in said paragraph false and misleading reports, false statements, and false representations regarding the plan of organization, resources, business progress, good will, and prospects of the Imperial Production Company, and the standing, ability, and integrity also of respondents associated therewith in the promotion thereof, and represented, adver-

tised, published, and circulated, particularly the following statements and representations, which in whole or in part were false and misleading, and that they and each of them have sold large amounts of the stock of the said company by means thereof, to wit: That the tract of land described by respondents in their said literature as tract No. 1 was surrounded by production; that there were producing wells on all sides of tract No. 2; that tract No. 4 was a short distance southeast of Duvall, Cotton County, Oklahoma, which was across Red River north of the Burke-Waggoner pool and near several wells, and that geologists declared that the Burke-Waggoner pool crosses the Red River at this place and that there was no doubt that said tract was in this pool, meaning Burke-Waggoner pool; that tracts Nos. 6 and 7, in Hardeman and Foard Counties, in the State of Texas, were surrounded by wells in the process of drilling; that tract No. 8, consisting of 120 acres, was near wells in process of drilling; that tract No. 9, in Fisher County, Texas, was surrounded by deep tests in the process of drilling; that tract No. 16 was located in New Mexico, a State which was getting "a big play by the big oil companies"; that tract No. 20, consisting of 10 acres in Tillman County, Okla., was only a short distance across the Red River from the big wells on the northwest Burkburnette extension; that tract No. 31, consisting of 10 acres in Claiborne Parish, La., was near the famous Homer oil fields, where wells come in at 1,150 to 2,250 feet, making as high as 20,000 barrels, and that this tract lay between Homer and Bull Bayou fields; that the Imperial Production Company owned two producing wells with a settled production of 80 barrels per day, then pumping and fully equipped; that the respondent Imperial Production Company was a real producing oil company with several thousand acres of good oil leases, several of which were in the famous Burkburnette oil fields and surrounded by producing wells, and also had two producing wells in Musgraves addition to the town of Burkburnette, making at least 80 barrels per day, which would afford plenty of oil to take care of dividends for several months; that the earnings of the company averaged \$5,000 per month; that with present production the respondent Imperial Production Company would be able to pay a dividend of 2% monthly; that the earnings of the Imperial Production Company were far in excess of dividend requirements: Whereas, in truth and in fact, there was no production in the vicinity of tract No. 1 and the wells sunk near said tract produced no oil; there were no producing wells on all sides of tract No. 2, and only some production to the north of said tract and small production to the south. There were no oil wells near tract No. 4, and

Conclusion.

5 F. T. C.

geological maps do not indicate that the so-called Burke-Waggoner pool crosses the Red River at any point. Likewise there were no drilling operations in the neighborhood either of tract No. 6 or of tract No. 7 in Hardeman or Foard Counties, Texas. There were no drilling operations in many miles of tract No. 8 or of tract No. 9, and only one test well drilled in the vicinity of the latter tract. There were no drilling operations in the vicinity of tract No. 16, in New Mexico, and none of the large oil companies were then giving New Mexico any particular attention as an oil producing territory. That Tillman County is considered strictly wildcat territory and no production has ever been secured within it; that tract No. 31 is neither in or near the so-called Homer or Bull Bayou field, but is situated nine miles southwest of the latter field in a district where there has never been any production; that respondent company averaged in its two alleged wells on the tract known as No. 37 not more than 14 barrels of oil per day; that the said company never owned in the Burke-Waggoner field or elsewhere any well or wells of any character or description of 1,000 barrels daily production or any production in excess of 14 barrels per day.

PAR. 5. That at no period during the time when respondents' literature, consisting of circulars, letters, and other advertising matter as aforesaid, was circulated and distributed in and through the various States of the United States in the promotion and sale of its stock, did the respondents earn directly or indirectly from production or otherwise sufficient money to justify or pay a dividend of 2% or any dividend whatever, and that such dividend or dividends as were from time to time paid by the respondent, Imperial Production Company, was falsely so called and falsely declared and the same was paid for the particular purpose of promoting the sale of stock of the said Imperial Production Company, and the so-called dividend payments were widely advertised in the soliciting of subscriptions for the stock of said company and were declared and paid out of the proceeds from the sales of such stock.

CONCLUSION.

The practices of the 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 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."

274

Order.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the testimony and evidence, argument of counsel having been waived, and the Commission having made its findings as to the facts, and its conclusions as to the law to the effect that the respondents, Imperial Production Company, J. T. Craig, S. F. Tubbs, and J. B. Bright have 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 respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, individually, or as officers, shareholders, trustees, or agents of the respondent, Imperial Production Company, or as officers, shareholders, trustees, or agents of any other company, corporation, association, or copartnership, and the Imperial Production Company, its officers, agents, and trustees do cease and desist from

Publishing, circulating, or distributing or causing to be published, circulated, or distributed, any newspaper, pamphlet, circular, letter, or magazine advertisement, or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statements or representations to the effect that the property of such company, corporation, association, or copartnership is in the vicinity of, or surrounded by, producing oil wells, or any other false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress, or prospects of any such company, corporation, association, or partnership, and

It is further ordered, That the respondents, J. T. Craig, S. F. Tubbs, and J. B. Bright, within sixty (60) days from the date of the service of this order file with the Commission a report setting forth in detail the manner and form in which they have complied with this order of the Commission herein set forth.

284

FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

5 F. T. C.