FEDERAL TRADE COMMISSION

v.

UNITED STATES HOFFMAN MACHINERY CORPORATION ET AL.

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

Docket 923—February 6, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of 85 per cent of the garment-pressing machines made in the United States; in continuing through the same officers the competitive methods of its predecessor,

(*a*) Caused its employees to keep a check upon salesmen and employees of competitors in order to secure the names of concerns to whom said competitors had sold machines; and

(*b*) For the purpose of inducing purchasers of competitors' machines on the installment plan to violate their contracts and to install and use its own machines in place of said competitors';

(1) Offered to, and did, allow purchasers to apply on the purchase price of its machines such sums as had theretofore been paid by them on such competing machines;

(2) Agreed to, and did, furnish purchasers with the services of attorneys to defend suits brought or anticipated on account of breaches of contract which it induced;

(3) Offered to, and did, furnish legal advice to purchasers as to ways in which their contracts might be rescinded or evaded; and

(4) Offered to, and did, frame for purchasers letters to competitors rescinding their installment contracts;

Held, That such spying on the business of competitors, and such inducing of the breach of contract, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

Acting in the public interest pursuant to 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," the Federal Trade Commission charges that the United States Hoffman Machinery Corporation, hereinafter referred to as the respondent corporation, B. A. Brennan, William M. Talbott, Eugene D. Stocker, William H. North, James B. Spencer, Michael J. White, L. Frankel, F. M. Kling, A. N. Haas, S. S. Lesser, F. W. Hart, A. Bellinger, hereinafter referred to as the respondent individuals, have been and are using unfair methods of competition

in commerce in violation of the provisions of Section 5 of the said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent corporation is a corporation organized January 19, 1922, under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 105 Fourth Avenue in the City of New York, New York. It was organized for the purpose, among others, of acquiring or taking over by merger, purchase or otherwise as a going concern the business then carried on by the United States Hoffman Machinery Company, a Delaware corporation organized in 1913, from which time, until its merger with the respondent corporation, it was engaged in the business of manufacturing and selling garment-pressing machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, New York, to purchasers thereof in the various States and Territories of the United States and the District of Columbia. At the time its business was taken over by the respondent corporation, as hereinafter described, the said United States Hoffman Machinery Company had a substantial monopoly in the United States in the business of manufacturing and selling garment-pressing machines, the volume of its business being approximately 85 per cent of the total business then done in the United States in the manufacture and sale of such machines. It marketed its machines by means of orders therefor secured by its salesmen, transmitted to its executive offices at Syracuse, New York, and there accepted or rejected. Upon the acceptance of orders the machines were shipped from Syracuse, New York, to purchasers thereof located in the various States and Territories of the United States and the District of Columbia, who paid for the same in cash or by means of promissory notes, agreeing by written contracts with the said United States Hoffman Machinery Company that title and ownership of said machines would remain in the United States Hoffman Machinery Company until the full purchase price represented by the notes would be paid in cash.

PAR. 2. In the period from May 11, 1921, until the business of the said United States Hoffman Machinery Company was taken over by the United States Hoffman Machinery Corporation, as hereinafter described, the following-named respondent individuals held the following respective offices in the said United States Hoffman Machinery Company, viz:

B. A. Brennan, Chairman Board of Directors.
William M. Talbott, Vice Chairman Board of Directors and Treasurer.
Eugene D. Stocker, President.
James B. Spencer, Vice President.

Michael J. White, Assistant Treasurer.
L. Frankel, Assistant Treasurer.
F. M. Kling, Assistant Treasurer.
S. S. Lesser, Assistant Secretary.
A. N. Haas, Assistant Secretary.
William H. North, Comptroller.
A. Bellinger, Assistant Comptroller.
F. W. Hart, Assistant Comptroller.

The said respondent individuals adopted and carried out in behalf of the said United States Hoffman Machinery Company the following methods of competition used by the said company from May 11, 1921, to and until the acquisition of the business of that company by the respondent corporation as hereinafter described, which said methods of competition had, however, been used by the said United States Hoffman Machinery Company for several years prior to May 11, 1921:

(1) Caused the salesmen and other employees of the United States Hoffman Machinery Company to spy upon the salesmen and employees of its competitors for the purpose of securing the names of persons, firms and individuals to whom such competitors had sold either for cash or on installment payment contracts, garment-pressing machines.

(2) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said company, which machines were known by the officers, salesmen and employees of the said company to have been purchased from such competitors, installed and in use in the places of business of such purchasers on installment payment contracts, wrongfully and unlawfully to breach their contracts, with such competitors and to install and use in the place and stead of such machines purchased from the competitors of said company machines purchased from said The United States Hoffman Machinery Company:

(*a*) Offered to allow, and did allow such purchasers under contract with such competitors as part payment of the purchase price of its own machines such sums as had been paid on contracts for the purchase of such competing machines.

(*b*) Agreed to furnish, and did furnish such purchasers under contract with such competitors, the services of attorneys to defend suits brought, or expected to be brought by such competitors for the purchase price of such competing machines.

(*c*) Furnished, and offered to furnish legal advice to such purchasers under contract with such competitors as to ways in which such contracts might be rescinded and/or evaded.

(*d*) Offered to frame, and did frame letters for such purchasers under contract with such competitors, letters to be addressed to such competitors for the purpose of rescinding such installment contracts.

PAR. 3. On or about January 27, 1922, the respondent corporation and the United States Hoffman Machinery Company entered into an agreement by which the United States Hoffman Machinery Company was consolidated and merged into and with the respondent corporation, the corporate existence of the respondent corporation as a single corporation continuing as theretofore, the separate existence of the said United States Hoffman Machinery Company by the said agreement ceasing, and the said respondent corporation by the said agreement acquiring all the rights, privileges, powers and franchises and becoming subject to all the restrictions, disabilities and duties of the said United States Hoffman Machinery Company. On January 25, 1922, the respondent individuals were elected to, and have since held the following offices in respondent corporation, which offices are the same offices held by the said individual respondents respectively in the United States Hoffman Machinery Company:

B. A. Brennan, Chairman Board of Directors.
William M. Talbott, Vice Chairman Board of Directors and Treasurer.
Eugene D. Stocker, President.
James B. Spencer, Vice President.
Michael J. White, Assistant Treasurer.
L. Frankel, Assistant Treasurer.
F. M. Kling, Assistant Treasurer.
S. S. Lesser, Assistant Secretary.
A. N. Haas, Assistant Secretary.
William H. North, Comptroller.
A. Bellinger, Assistant Comptroller.
F. W. Hart, Assistant Comptroller.

PAR. 4. The respondent corporation since the merger, consolidation and acquisition aforesaid, has been engaged in the business of manufacturing and selling garment-pressing machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, New York, to the purchasers thereof in the various States of the United States and the District of Columbia. At the time it commenced business it had, and still has a substantial monopoly in the United States in the business of manufacturing and selling garment-pressing machines, the volume of its business being approximately 85 per cent of the total business done in the manufacture and sale of such machines in the United States. It has at all times since its organization marketed its machines by means of orders therefor secured by its salesmen and transmitted

to its executive offices in the City of New York, and there accepted or rejected. Upon the acceptance of orders, the machines called for by such orders are and have been shipped from Syracuse, New York, to the purchasers thereof located in the various States and Territories of the United States and the District of Columbia who have paid, and who do pay for the same in cash, or by means of promissory notes, agreeing by written contracts with the respondent corporation that the title and ownership of said machines shall remain in respondent corporation until the whole purchase price represented by the notes is paid in full.

PAR. 5. Since the respondent corporation commenced business it has continued to use the methods of competition pursued by the United States Hoffman Machinery Company described in Paragraph 2 hereof, which methods of competition used by respondent corporation were put into operation and have since been continued by the officers of the respondent corporation named in Paragraph 3 hereof, who respectively held similar offices as described in Paragraph 2 hereof in the United States Hoffman Machinery Company, and now and since the merger, consolidation and acquisition, hereinbefore mentioned, the said respondent corporation has used the following methods of competition, to wit:

(1) Causes the salesmen and other employees of the respondent corporation to spy upon the salesmen and employees of its competitors for the purpose of securing the names of persons, firms and individuals to whom such competitors had sold either for cash or on installment payment contracts, garment-pressing machines.

(2) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said respondent corporation, which machines were known by the officers, salesmen and employees of the said respondent corporation to have been purchased from such competitors, installed and in use in the places of business of such purchasers on installment payment contracts, wrongfully and unlawfully to breach their contracts with such competitors and to install and use in the place and stead of such machines purchased from the competitors of said respondent corporation machines purchased from said respondent corporation:

(*a*) Offers to allow, and does allow such purchasers under contract with such competitors as part payment of the purchase price of its own machines such sums as have been paid on contracts for the purchase of such competing machines.

(*b*) Agrees to furnish, and does furnish such purchasers under contract with such competitors, the services of attorneys to defend

suits brought, or expected to be brought by such competitors for the purchase price of such competing machines.

(*c*) Furnishes, and offers to furnish legal advice to such purchasers under contract with such competitors as to ways in which such contracts might be rescinded and/or evaded.

(*d*) Offers to frame, and does frame letters for such purchasers under contract with such competitors, letters to be addressed to such competitors for the purpose of rescinding such installment contracts.

PAR. 6. The above-alleged acts and things done by respondents are all to the prejudice of the public and competitors of the respondent corporation, and constitute unfair methods of competition in commerce, within the intent and meaning 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."

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 its complaint upon the respondents, U. S. Hoffman Machinery Corporation, B. A. Brennan, William M. Talbott, Eugene D. Stocker, William H. North, James B. Spencer, Michael J. White, L. Frankel, F. M. Kling, A. N. Haas, S. S. Lesser, F. W. Hart, A. Bellinger, charging them with the use of unfair methods of competition in violation of the provisions of said Act.

The respondents having entered their appearance and filed their answer herein, a statement of facts was agreed upon by counsel for the Commission and counsel for respondent, to be taken in lieu of evidence.

And thereupon this proceeding came on for final hearing, 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. Respondent corporation is a corporation organized January 19, 1922, under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 105 Fourth Avenue in the City of New York, New York. It was organized for the purpose, among others, of acquiring or taking over by merger, purchase or otherwise as a going concern the business then carried on by the United States Hoffman Machinery

Company, a Delaware corporation organized in 1913, from which time, until its merger with the respondent corporation, it was engaged in the business of manufacturing and selling garment-pressing machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, New York, to purchasers thereof in the various States and Territories of the United States and the District of Columbia. At the time its business was taken over by the respondent corporation, as hereinafter described, the said United States Hoffman Machinery Company did approximately 85 per cent of the total business then done in the United States in the manufacture and sale of such machines. It marketed its machines by means of orders therefor secured by its salesmen, transmitted to its executive offices at Syracuse, New York, and there accepted or rejected. Upon the acceptance of orders the machines were shipped from Syracuse, New York, to purchasers thereof located in the various States and Territories of the United States and the District of Columbia, who paid for the same in cash or by means of promissory notes, agreeing by written contracts with the said United States Hoffman Machinery Company that title and ownership of said machines would remain in the United States Hoffman Machinery Company until the full purchase price represented by the notes would be paid in cash.

PAR. 2. In the period from May 11, 1921, until the business of the said United States Hoffman Machinery Company was taken over by the United States Hoffman Machinery Corporation, as hereinafter described, the following-named respondent individuals held the following respective offices in the said United States Hoffman Machinery Company, viz:

B. A. Brennan, Chairman Board of Directors.
William M. Talbott, Vice chairman Board of Directors and Treasurer.
Eugene D. Stocker, President.
James B. Spencer, Vice President.
Michael J. White, Assistant Treasurer.
L. Frankel, Assistant Treasurer.
F. M. Kling, Assistant Treasurer.
S. S. Lesser, Assistant Secretary.
A. N. Haas, Assistant Secretary.
William H. North, Comptroller.
A. Bellinger, Assistant Comptroller.
F. W. Hart, Assistant Comptroller.

The said respondent corporation adopted and carried out in behalf of the said United States Hoffman Machinery Company the following methods of competition used by the said company from May 11, 1921, to and until the acquisition of the business of that company

by the respondent corporation as hereinafter described, which said methods of competition had, however, been used by the said United States Hoffman Machinery Company for several years prior to May 11, 1921:

(1) Caused the salesmen and other employees of the United States Hoffman Machinery Company to watch and keep a close check upon the salesmen and employees of its competitors for the purpose of securing the names of persons, firms, and individuals to whom such competitors had sold either for cash or on installment payment contracts, garment-pressing machines.

(2) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said company, which machines were known by the officers, salesmen and employees of the said company to have been purchased from such competitors, installed and in use in the places of business of such purchasers on installment payment contracts, to breach their contracts with such competitors and to install and use in the place and stead of such machines purchased from the competitors of said company machines purchased from said The United States Hoffman Machinery Company:

(*a*) Offered to allow, and did allow certain purchasers under contract with such competitors as part payment of the purchase price of its own machines such sums as had been paid on contracts for the purchase of such competing machines.

(*b*) Agreed to furnish and did furnish certain purchasers under contract with such competitors, the services of attorneys to defend suits brought, or expected to be brought, by such competitors for the purchase price of such competing machines.

(*c*) Furnished, and offered to furnish legal advice to certain purchasers under contract with such competitors as to ways in which such contracts might be rescinded and/or evaded.

(*d*) Offered to frame, and did frame letters for certain purchasers under contract with such competitors, letters to be addressed to such competitors for the purpose of rescinding such installment contracts.

PAR. 3. On or about January 27, 1922, the respondent corporation and the United States Hoffman Machinery Company entered into an agreement by which the United States Hoffman Machinery Company was consolidated and merged into and with the respondent corporation, the corporate existence of the respondent corporation as a single corporation continuing as theretofore, the separate existence of the said United States Hoffman Machinery Company by the said

agreement ceasing, and the said respondent corporation by the said agreement acquiring all the rights, privileges, powers and franchises and becoming subject to all the restrictions, disabilities and duties of the said United States Hoffman Machinery Company. On January 25, 1922, the respondent individuals were elected to, and have since held the following offices in respondent corporation, which offices are the same offices held by the said individual respondents respectively in the United States Hoffman Machinery Company:

B. A. Brennan, Chairman Board of Directors.
William M. Talbott, Vice Chairman Board of Directors and Treasurer.
Eugene D. Stocker, President.
James B. Spencer, Vice President.
Michael J. White, Assistant Treasurer.
L. Frankel, Assistant Treasurer.
F. M. Kling, Assistant Treasurer.
S. S. Lesser, Assistant Secretary.
A. N. Haas, Assistant Secretary.
William H. North, Comptroller.
A. Bellinger, Assistant Comptroller.
F. W. Hart, Assistant Comptroller.

Since June 25, 1922, respondent William M. Talbott has severed his connection with the respondent corporation and a partial reorganization has taken place, so that the Board of Directors as of August 17, 1922, is as follows:

DIRECTORS.

B. A. Brennan, Chairman Board of Directors.
Henry W. Williams, Secretary and General Counsel.
Eugene D. Stocker, President.
Richard D. Morris, of F. B. Keech & Co., New York City.
John F. B. Mitchell, of Redmond & Co., New York City.
Charles H. Hampton, of Hanover National Bank, New York City.

PAR. 4. The respondent corporation since the merger, consolidation and acquisition, aforesaid, has been engaged in the business of manufacturing and selling garment-pressing machines throughout the United States, shipping such machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, New York, to the purchasers thereof in the various States of the United States and the District of Columbia. At the time it commenced business it did, and still does approximately 85 per cent of the total business done in the manufacture and sale of such machines in the United States. It has at all times since its organization marketed its machines by means of orders therefor secured by its salesmen and transmitted to its executive offices in the City of New

York, and there accepted or rejected. Upon the acceptance of orders, the machines called for by such orders are and have been shipped from Syracuse, New York, to the purchasers thereof located in the various States and Territories of the United States and the District of Columbia who have paid, and who do pay for the same in cash, or by means of promissory notes, agreeing by written contracts with the respondent corporation that the title and ownership of said machines shall remain in respondent corporation until the whole purchase price represented by the notes is paid in full.

PAR. 5. Since the respondent corporation commenced business it has continued to use the methods of competition pursued by the United States Hoffman Machinery Company described in Paragraph 2 hereof, which methods of competition used by respondent corporation were put into operation and have since been continued by the officers of the respondent corporation named in Paragraph 3 hereof, who respectively held similar offices as described in Paragraph 2 hereof in the United States Hoffman Machinery Company, and now and since the merger, consolidation and acquisition, hereinbefore mentioned, the said respondent corporation has used the following methods of competition, to wit:

(1) Causes the salesmen and other employees of the respondent corporation to watch and keep a close check upon the salesmen and employees of its competitors for the purpose of securing the names of persons, firms and individuals to whom such competitors had sold either for cash or on installment payment contracts, garment-pressing machines.

(2) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said respondent corporation, which machines were known by the officers, salesmen, and employees of the said respondent corporation to have been purchased from such competitors, installed and in use in the places of business of such purchasers on installment payment contracts, to breach their contracts with such competitors and to install and use in the place and stead of such machines purchased from the competitors of said respondent corporation machines purchased from said respondent corporation:

(*a*) Offered to allow, and did allow certain purchasers under contract with such competitors as part payment of the purchase price of its own machines such sums as had been paid on contracts for the purchase of such competing machines.

(*b*) Agreed to furnish, and did furnish certain purchasers under contract with such competitors, the services of attorneys to defend

suits brought, or expected to be brought by such competitors for the purchase price of such competing machines.

(*c*) Furnished, and offered to furnish legal advice to certain purchasers under contract with such competitors as to ways in which such contracts might be rescinded and / or evaded.

(*d*) Offered to frame, and did frame letters for certain purchasers under contract with such competitors, letters to be addressed to such competitors for the purpose of rescinding such installment contracts.

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 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.

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answers of the respondents, and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion, that the respondents 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,"

Now, therefore, it is ordered, That the respondent corporation, United States Hoffman Machinery Corporation, its agents and employees, and the respondent individuals, B. A. Brennan, William M. Talbott, Eugene D. Stocker, Wm. H. North, James B. Spencer, Michael J. White, L. Frankel, F. M. Kling, A. N. Haas, S. S. Lesser, F. W. Hart and A. Bellinger, their agents and employees, cease and desist from directly or indirectly:

1. Employing or using any system of espionage whereby salesmen or other employees of respondent corporation obtain or seek to obtain the names of persons, firms, or corporations to whom competitors have sold, either for cash or on installment contracts, garment-pressing machines.

2. Inducing, or attempting to induce purchasers of garment-pressing machines of competitors to breach their contracts with such com-

petitors and to install and use machines purchased from said respondent corporation, by any of the following means:

(*a*) Allowing or offering to allow such purchasers as part payment of the purchase price of its own machines, such sums as have been paid on contracts for the purchase of such competing machines.

(*b*) Framing, or offering to frame for such purchasers letters to be addressed to such competitors for the purpose of rescinding such contracts.

(*c*) Furnishing, offering to furnish, or agreeing to furnish legal advice to such purchasers as to ways in which such contracts may be evaded or rescinded.

(*d*) Furnishing, offering to furnish, or agreeing to furnish such purchasers the services of attorneys to defend suits brought by such competitors for the purchase price of such competing machines.

(*e*) Giving or offering to give to such purchasers special terms of payment, or other considerations, as an inducement to secure a breach of such contracts with competitors.

And it is further ordered, That the respondent corporation, United States Hoffman Machinery Corporation, shall file with the Federal Trade Commission within thirty (30) days from the date of the service of this order its report in writing setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION