

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

Docket 776—July 24, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture of paints and varnishes neither made for the Army or Navy nor made in accordance with government specifications or requirements, and in the sale thereof to purchasers, including so-called Army and Navy Stores dealing in Army and Navy surplus supplies,

- (a) Used the words "United States," or the abbreviation "U. S.," together with a picture of "Uncle Sam," in labels and advertising matter prepared by it at the request of its customers for their use in marketing the aforesaid products; and
- (b) Used, at the request of customers, such legends as "U. S. House Paint," "U. S. Flat Wall Finish," etc., together with a picture of "Uncle Sam," in labeling its products; and

Where a customer of said corporation, a merchandising concern owning no factory and also engaged in the sale to so-called Army and Navy Stores of roofing papers not made for the government or in accordance with its specifications, and of paints and varnishes usually made for it by said corporation as aforesaid,

- (c) Sold said products, similarly advertised and labeled (in the case of said paints and varnishes) by the aforesaid corporation at its direction; and
- (d) Used the words "United States" and "factory" as a part of its corporate name, and used said name in the labels prepared by said corporation at its request for said products, and in the advertisement and sale thereof, and stated on its letterheads and in its advertisements that it was its policy to sell entirely direct, "cut out two or three profits and give the savings to its customers"; with the capacity and tendency thereby to deceive and mislead the public as to the advantages of dealing with it; and

Where a firm engaged as Army and Navy Stores, or Army and Navy Goods Stores, in the sale to the public in various cities of surplus Army and Navy supplies and also of ordinary commercial merchandise,

- (e) Sold products procured from said concern and from said corporation, labeled as above set forth at its direction; and
- (f) Falsely advertised and represented such products as government surplus;

All with a capacity and tendency thereby to mislead and deceive the public into believing that the aforesaid products were goods made for the government or in accordance with its specifications, of high grade but sold at a low price, due to the necessity of liquidating the large quantities of supplies ordered for the Army and Navy:

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 Armstrong Paint & Varnish Works, United States Roofing Paper and Paint Factories, Inc., and Abe Hochman and Harry Goldfish, partners, doing business under the trade name of Army & Navy Stores, 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 thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Armstrong Paint & Varnish Works, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, in the State of Illinois, and is engaged in the business of manufacturing, labeling, and selling paints and varnishes, and of causing the paints and varnishes so sold to be transported from the State of Illinois through and into other States of the United States to the purchasers thereof, and in the conduct of such business is in direct and active competition with other corporations, copartnerships, and individuals similarly engaged. That respondent, United States Roofing Paper and Paint Factories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Dakota, with its principal place of business in the cities of Minneapolis and St. Paul, in the State of Minnesota, and is engaged in the business of selling paints, varnishes, roofing paper, and kindred products throughout many States of the United States, and of causing its products so sold to be transported from the State of Minnesota through and into other States of the United States to the purchasers thereof, and in the conduct of such business is in direct and active competition with other corporations, copartnerships, and individuals similarly engaged. That the respondent, Abe Hochman and Harry

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Goldfish, constitute a partnership and carry on business under the name of Army & Navy Stores, with places of business in the cities of Minneapolis, Minn.; St. Louis, Mo.; Springfield, Ill., and Peoria, Ill., and have been and are engaged in the sale of Army and Navy surplus supplies purchased by them, and general commercial supplies among which are paints, varnishes, roofing paper, and kindred products, throughout many of the States of the United States, and in causing the merchandise and commodities so sold to be transported from their places of business in Minnesota, Missouri, and Illinois through and into other States of the United States to the purchasers thereof, and in the conduct of such business are in direct and active competition with other corporations, copartnerships, and individuals similarly engaged.

PAR. 2. That respondent Armstrong Paint & Varnish Works, in the course of its business as described in paragraph 1 hereof, labels certain paints and varnishes, manufactured and sold by it, as "U. S. Paint" and "U. S. Varnish"; that it reproduces upon these labels a picture of the figure known as Uncle Sam and symbolic of the United States. That it sells paint and varnish so labeled to purchasers, including stores designated as Army and Navy Stores in various States in the United States, and which it knows deal in, and are held out generally as dealing in, Army and Navy supplies and supplies made for, and according to specifications of, the Government of the United States, and which it knows offer to sell and sell the said paints and varnishes under the above described labels to the general purchasing public. That said paint and varnish are not made for the Army or Navy or for, or according to specifications of, the Government of the United States or any department or branch thereof. That such labels are false and misleading and are calculated to, and actually do, deceive and mislead the public into the belief that the Government of the United States has, or has had, some connection with the manufacture of the said paints and varnishes. That said respondent places on certain of said labels at the request of respondent, United States Roofing Paper and Paint Factories, Inc., the words "United States Roofing Paper and Paint Factories, Inc." thus indicating that said last named respondent manufactured the paints and varnishes carrying said labels, whereas in truth and in fact, said paint and varnish were manufactured by respondent, Armstrong Paint & Varnish Works.

PAR. 3. That respondent, United States Roofing Paper and Paint Factories, Inc., in the conduct of its business as described in paragraph 1 hereof, sells paint, varnish, roofing paper, and kindred products which it labels, or causes to be labeled, "U. S." and on

which labels it reproduces a picture of the figure known as Uncle Sam and symbolic of the United States; that respondent advertises said paint, varnish, and roofing paper as "U. S. Paint," "U. S. Varnish," and "U. S. Roofing Paper," and by means of the reproduction of a picture of the figure known as Uncle Sam and symbolic of the United States, in newspapers, magazines, and other advertising mediums having a circulation in various States of the United States, and in circulars sent by it from its places of business in the State of Minnesota through and into other States of the United States to prospective customers. That said paint, varnish, and roofing paper, labeled and advertised as described above, are not made for the Army or Navy or for, or according to specifications of, the Government of the United States or any department or branch thereof. That said paint and varnish is usually made for respondent, United States Roofing Paper and Paint Factories, Inc., and thus labeled at said respondent's directions by respondent, Armstrong Paint & Varnish Works; that such labeling and advertising of said paint, varnish and roofing paper, especially when used in connection with respondent's corporate name which appears on all the labels and in all of the advertisements, have a tendency to, and are calculated to, and actually do, deceive and mislead the public into the belief that the Government of the United States has, or has had, some connections with the commodities.

PAR. 4. That respondent, United States Roofing Paper and Paint Factories, Inc., in the conduct of its business as described in paragraph 1 hereof, sells at wholesale to stores designated as Army & Navy Stores, and which it knows deal in, and are held out generally as dealing in, Army and Navy surplus supplies, paint, varnish, and roofing paper which it labels or causes to be labeled "U. S." and on which labels is reproduced a picture of the figure known as Uncle Sam and symbolic of the United States; that respondent's corporate name, United States Roofing Paper and Paint Factories, Inc., appears on all said labels; that the paint, varnish, and roofing paper, labeled as described above, are not Army or Navy surplus supplies, or made for, or according to specifications of, the Government of the United States or any department or branch thereof. That respondent knows that said paint, varnish, and roofing paper are sold by and from these so-called Army & Navy Stores to the general public. That said labels are calculated to, and actually do, deceive and mislead the public into the belief that such supplies were made for the Army or Navy or for, or according to specifications of, the Government of the United States, and are of a high grade, but sold

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at a low price on account of the necessity for liquidating the large supply of said materials ordered for the Army and Navy.

PAR. 5. That respondent, United States Roofing Paper and Paint Factories, Inc., represents by means of its corporate name, and by statements and representations made on its letterheads, and in advertisements which it causes to be inserted in newspapers, magazines and other advertising mediums which have a circulation in various States of the United States, and in circulars sent by it from its places of business in the State of Minnesota through and into other States of the United States to prospective customers, that it is the manufacturer of the article sold by it; that among such statements and representations are those to the effect that it is respondent's policy to sell entirely direct, cut out two or three profits and give the saving to its customers, and that in formulating "U. S. Paint" respondent had aimed to produce a paint that will insure maximum durability and wear away gradually; that such statements and representations are false and misleading and are calculated to, and actually do, mislead and deceive purchasers into the belief that when they buy from respondent, they are buying directly from the manufacturer and thus eliminating the middleman's profit.

PAR. 6. That respondents, Abe Hochman and Harry Goldfish, partners, doing business under the trade name of Army & Navy Stores, in the conduct of their business as described in paragraph 1 hereof, sell varnish, paint, and roofing paper, which are labeled, and which they caused to be labeled, "U. S." and on which labels is reproduced a picture of a figure known as Uncle Sam and symbolic of the United States; that said respondents advertise said varnish, paint and roofing paper, in newspapers, magazines and other advertising mediums having a large circulation in various States of the United States, and in circulars sent by them from their places of business in Minnesota, Missouri, and Illinois through and into other States of the United States to prospective customers, as Army and Navy surplus varnish, paint, and roofing paper and as varnish, paint, and roofing paper made for, and according to specifications of, the Government of the United States; that said respondents represent directly to customers that said varnish, paint and roofing paper are Army and Navy surplus varnish, paint, and roofing paper, and made for, and according to specifications of, the Government of the United States. That said respondents obtain said varnish, paint, and roofing paper thus labeled from the respondent, United States Roofing Paper and Paint Factories, Inc., and also from respondent, Armstrong Paint & Varnish Works, which makes and thus labels it at the direction of respondents, Abe

Hochman and Harry Goldfish, and respondents, Abe Hochman and Harry Goldfish, know that it is not Army or Navy surplus paint or varnish or roofing paper or paint or varnish or roofing paper made for, or according to specifications of, the Government of the United States. That said respondents, Abe Hochman and Harry Goldfish, do not sell and never have sold Army and Navy surplus varnish, paint and roofing paper or varnish or paint or roofing paper made for, or according to specifications of, the Government of the United States or any department or branch thereof. That said labels, advertisements, and representations, especially when taken in connection with the name under which respondents, Abe Hochman and Harry Goldfish, operate, and the fact that they so sell some Army and Navy surplus supplies, are false and misleading and are calculated to, and actually do, deceive and mislead the public into the belief that such varnish, paint and roofing paper were made for the Army or Navy or for, or according to specifications of, the Government of the United States, and are of a high grade, but sold at a low price because of the necessity for liquidating the large supply of said materials ordered for the Army and Navy of the United States.

PAR. 7. That since respondents, Abe Hochman and Harry Goldfish, hold themselves out to the public generally as dealers in such merchandise, commodities, and supplies, and do business under the name of Army & Navy Stores, the sale by them from such stores of ordinary commercial merchandise, commodities, and supplies without disclosing to the purchaser that such merchandise, commodities, and supplies are not Army or Navy surplus supplies and were not made for, or according to specifications of, the Government of the United States or any department or branch thereof, amounts to a fraudulent representation, which is calculated to, and actually does, deceive and mislead the public into the belief that such supplies were made for the Army or Navy or for, or according to specifications of, the Government of the United States, and are of a high grade, but sold at a low price because of the necessity for liquidating the large supply of said materials ordered for the Army and Navy of the United States.

PAR. 8. That by reason of the facts set out in the foregoing paragraphs of this complaint, the respondents, each and all of them, have been and are using unfair methods of competition in commerce within the intent and meaning 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 an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, Armstrong Paint and Varnish Works, United States Roofing Paper and Paint Factories, Incorporated, Abe Hochman and Harry Goldfish, copartners, doing business under the trade name of the Army and Navy Stores, charging them and each of them with unfair methods of competition in commerce in violation of said Act.

Respondents having entered their appearance by their attorneys or officers, and having filed their answers herein, hearings were had before J. W. Bennett, an examiner of the Federal Trade Commission theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of the said complaint and in support of the allegations of said answers of respondents, which evidence was duly recorded and duly certified, 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. Respondent Armstrong Paint and Varnish Works is a corporation organized under and existing by virtue of the laws of the State of Illinois, incorporated about 1910, with its principal place of business in the city of Chicago, in said State, and is engaged in the business of manufacturing, labeling, and selling paints and varnish, and causing the paints and varnish so sold to be transported from the State of Illinois through and into other States of the United States to the purchasers thereof, and in the conduct of such business is in direct and active competition with other corporations, copartnerships, and individuals similarly engaged.

PAR. 2. Respondent United States Roofing Paper and Paint Factories, Incorporated, is a corporation organized under and existing by virtue of the laws of the State of South Dakota, incorporated in December, 1918, or December, 1919, with its principal place of business in the city of Minneapolis, State of Minnesota, and a branch office and place of business in the city of St. Paul, in the State of Minnesota, and said respondent is engaged in the business of selling paints, varnish, roofing paper, and kindred products in many States of the United States and of causing its products so sold to be transported from the State of Minnesota through and into other States of the United States to the purchasers thereof, and in the conduct of such business is in direct and active competition with other corporations, copartnerships, and individuals similarly engaged.

(a) Subsequent to the incorporation of respondent, United States Roofing Paper and Paint Factories, Incorporated, as hereinabove set forth, said corporation, without reorganization, and without changing its identity, caused its name to be changed to United States Roofing & Paint Company, Incorporated, which latter company is a corporation organized under and existing by virtue of the laws of the State of South Dakota, in every way identical with said respondent, United States Roofing Paper and Paint Factories, Incorporated, except in the matter of name, and under the name of United States Roofing and Paint Company, Incorporated, said respondent, United States Roofing Paper and Paint Factories, Incorporated, continued said business of selling paints, varnishes, roofing papers, and kindred products throughout many States of the United States, as hereinabove set forth.

PAR. 3. Respondents, Abe Hochman and Harry Goldfish, constitute a copartnership and carry on business under the name of Army and Navy Stores, or Army and Navy Goods Store, to which is prefixed the name of the city in which said store is located, for instance: "St. Louis Army and Navy Goods Store" is the name under which said Abe Hochman and said Harry Goldfish have done business in the city of St. Louis, State of Missouri. Said Abe Hochman and Harry Goldfish, copartners, as hereinabove stated, have or have had similar places of business, with similar names, in the cities of Minneapolis, Minn., St. Louis, Mo., St. Joseph, Mo., Springfield, Ill., Peoria, Ill., and Buffalo, N. Y., and have been or are engaged in the sale of Army and Navy surplus supplies purchased by them, and in the sale of general commercial supplies, among which are paints, varnishes, roofing papers, and kindred products, throughout many of the States of the United States, and in causing the merchandise and commodities so sold to be transported from their places of business in Minnesota and Missouri through and into other States of the United States to purchasers thereof, and in the conduct of such business are in direct and active competition with other corporations, copartnerships, and individuals similarly engaged.

PAR. 4. Respondent, Armstrong Paint and Varnish Works, in the course of its business as described in paragraph 1 hereof, has labeled certain paints and varnishes manufactured and sold by it "U. S. House Paints," "U. S. Ready-Mixed House Paints," "U. S. Shingle Stain," "U. S. Barn Paint," "U. S. Flat Wall Finish," etc.

(a) In connection with said names or designations mentioned in this paragraph, respondent Armstrong Paint & Varnish Works, has reproduced and reproduces upon said labels a picture of the figure known as "Uncle Sam," which is popularly symbolic of the United States.

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(b) Respondent, Armstrong Paint and Varnish Works, has sold and sells its paints and varnishes so labeled to purchasers, including stores designated as Army and Navy Stores, in various States of the United States, which stores it knows as having dealt in and having been generally held out as dealing in Army and Navy supplies and supplies made for or according to specifications of the Government of the United States, which Army and Navy Stores or Army and Navy Goods Stores it knows offer to sell and do sell said paints and varnishes under the above-described labels to the general purchasing public.

(c) Said paints and varnishes so made and sold by respondent, Armstrong Paint & Varnish Works, are not made for the Army, nor Navy, nor for nor according to the specifications of the United States nor of any department or branch thereof.

(d) Such labels so used upon goods so sold are false and misleading and have a tendency and capacity to deceive and mislead the public into the belief that the Government of the United States has or has had some connection with the manufacture of said paints and varnishes.

(e) Said respondent, Armstrong Paint and Varnish Works, has placed and places said labels described in this paragraph upon paints and other similar goods manufactured and sold by it at the request of respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), and upon such labels, in pursuance of said request, respondent, Armstrong Paint & Varnish Works has placed and places the words "United States Roofing Paper and Paint Factories, Incorporated," thus indicating that said last named respondent has manufactured the paints and varnishes carrying said labels, when in truth and in fact, said paints and varnishes were manufactured by respondent, Armstrong Paint & Varnish Works.

(f) Respondent, Armstrong Paint and Varnish Works, maintains in connection with its manufacturing plant, a printing plant in which it prints said labels mentioned in this paragraph, whether said labels are to be used at the request of respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), or at the request of other customers. Respondent, Armstrong Paint and Varnish Works also prints at the request of respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), circulars advertising the goods sold by said last named respondent and containing names or designations identical with or similar to those placed upon the labels mentioned in this paragraph, together with the figure of "Uncle Sam," symbolic of the United States.

PAR. 5. Respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing & Paint Company, Incorporated), in the conduct of its business as described in

paragraph 2 hereof, sells paints, varnishes, roofing papers, and kindred products which it labels or causes to be labeled "U. S. House Paint," "U. S. Rubber Roofing," "U. S. Slate Surface Roofing," "U. S. Shingle Pattern Slate Roofing," "U. S. Shingle Slabs," "U. S. Building Papers," "U. S. Deadening Felt," "U. S. Creosote Shingle Stain," "U. S. Asbestos Cement," "U. S. Floor & Utility Varnish," "U. S. Brand Barn Paint," "U. S. Ready-Mixed House Paint," "U. S. Inside Floor Paint," "U. S. Flat Wall Finish," "U. S. Shingle Stain," "U. S. Barn Paint," et cetera, on which labels it reproduces a picture of the figure known as "Uncle Sam" and symbolic of the United States.

(a) Respondent advertises said paints, varnishes, and roofing papers so labeled under the names and designations mentioned in this paragraph (and in such advertisements appear the reproduction of a picture of the figure known as "Uncle Sam" and symbolic of the United States), and in the newspapers, magazines, and other advertising mediums of general circulation in several States of the United States and in circulars sent by it from its place of business in the State of Minnesota through and into other States of the United States, to customers and prospective customers.

(b) Said paints, varnishes, and roofing papers labeled and advertised as described in this paragraph are not made for the Army, nor Navy, nor for nor according to specifications of the Government of the United States, nor of any department or branch thereof. Said paints and varnishes are usually made for respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), and thus labeled at said respondent's direction, by respondent, Armstrong Paint and Varnish Works.

(c) Such labeling and advertising of said paints, varnishes, and roofing papers, especially when used in connection with respondent's corporate name, which appears on all such labels and in all such advertisements, have a tendency and capacity to deceive and mislead the public into the belief that the Government of the United States has or has had some connection with such commodities.

PAR. 6. Respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), in the conduct of its business as described in paragraphs 2 and 5 hereof, sells at wholesale to stores designated as Army and Navy Stores, or Army and Navy Goods Stores, as more fully set forth in paragraph 3 hereof, which stores it knows deal in and are held out generally as dealing in Army and Navy surplus supplies, paints, varnishes, and roofing papers.

(a) Said paints, varnishes, and roofing papers so sold to said Army and Navy Stores, or Army and Navy Goods Stores,

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by respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), are labeled with names or designations bearing the letters "U. S.," on which labels is reproduced a picture of the figure known as "Uncle Sam" and symbolic of the United States. Respondent's corporate name, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), appears on all said labels.

(b) Said paints, varnishes, and roofing papers so labeled and sold as described in this paragraph, are not Army nor Navy supplies, nor made for nor in accordance with specifications of the Government of the United States, nor of any department or branch thereof.

(c) Respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), knows that said paints, varnishes, and roofing papers are sold by and from these so-called Army and Navy Stores, or Army and Navy Goods Stores, to the general public.

(d) Said labels used as set forth in this paragraph are false and misleading and have the capacity and tendency to mislead and deceive the public into the belief that such supplies were made for the Army or Navy, or for or according to the specifications of the Government of the United States and are of a high grade.

PAR. 7. Respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), has represented by means of its corporate name and by statements and representations made on its letterheads and advertisements which it causes to be placed in newspapers, magazines, and other advertising mediums in general circulation in several States of the United States and in circulars sent by it from its places of business in the State of Minnesota through and into other States of the United States to customers and prospective customers, that it is the manufacturer of the article sold by it.

(a) Among such statements of respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), are statements and representations to the effect that it is respondent's policy to sell entirely direct, "cut out two or three profits and give the savings to its customers."

(b) In truth and in fact respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paper Company, Incorporated), is a merchandising concern only and had no factory whatever.

(c) Such statements and representations as are made by respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Com-

pany, Incorporated), as set forth in this paragraph, are false and misleading and have the capacity and tendency to deceive and mislead the public into the belief that when they are buying from respondent they are buying directly from the manufacturer and thus eliminating the middleman's profit.

PAR. 8. Respondents, Abe Hochman and Harry Goldfish, copartners, doing business under the trade name of Army and Navy Stores, or Army and Navy Goods Stores, in the conduct of their business, as described in paragraph 3 hereof, sell varnishes, paints, and roofing papers which are labeled with names or designations bearing the symbol or abbreviation "U. S.," and on which labels is reproduced a picture of the figure known as "Uncle Sam" and symbolic of the United States, and more particularly described in paragraphs 4 and 5 hereof.

(a) Said respondents advertise said varnishes, paints and roofing papers in newspapers, magazines, and other advertising mediums having a large circulation in several States of the United States as Army and Navy surplus varnishes, paints, and roofing papers.

(b) Said respondents, Abe Hochman and Harry Goldfish, doing business as Army and Navy Stores, or Army and Navy Goods Stores, represent to customers or visitors to said stores, that said varnishes, paints, and roofing papers are Army surplus goods.

(c) Said respondents, Abe Hochman and Harry Goldfish, doing business as Army and Navy Stores, or Army and Navy Goods Stores, obtain said varnishes, paints, and roofing papers so labeled from respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise known as United States Roofing and Paint Company, Incorporated) and also from respondent, Armstrong Paint and Varnish Works, which latter respondent makes and thus labels said goods at the direction of respondents, Abe Hochman and Harry Goldfish, in business as Army and Navy Stores, or Army and Navy Goods Stores, and said last named respondents know that it is not Army nor Navy surplus paint, varnish, or roofing paper, nor paint, varnish, or roofing paper made for, nor according to specifications of the Government of the United States. Said respondents, Abe Hochman and Harry Goldfish, do not sell and have never sold Army and Navy surplus varnish, paint or roofing paper, nor varnish, paint, nor roofing paper made for the Government of the United States, nor any department or branch thereof.

(d) Said labels, advertisements and representations, especially when taken in connection with the firm name under which respondents, Abe Hochman and Harry Goldfish operate, and the fact that they do sell some army and navy surplus supplies, are false and misleading and have the capacity and tendency to deceive and mislead the public into the belief that such var-

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nishes, paints, and roofing papers were made for the Army or Navy or for or according to the specifications of the Government of the United States and are of a high grade.

PAR. 9. During the period in which respondents, Abe Hochman and Harry Goldfish, copartners, doing business under the name of Army and Navy Stores, or Army and Navy Goods Stores, and United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), have been engaged in business, and more especially since the close of the Great War in November, 1918, the Government of the United States, as is well known by said respondents, and by the public generally, has been disposing of large quantities of surplus Army and Navy stores, and portions of such surplus have been offered for sale in several cities of the United States in stores doing business under the name and style of "Army and Navy Stores," or "Army and Navy Goods Stores," so that the public may be led to believe from its knowledge of such circumstances and conditions and from the name or names under which such stores are doing business that such stores actually do sell exclusively Army and Navy surplus goods or goods made for the Government of the United States, and/or in accordance with specifications prepared by the Government or some department or bureau thereof.

(a) In such circumstances and under such conditions the sale by respondents, Abe Hochman and Harry Goldfish, in stores or from stores known as Army and Navy Stores, or Army and Navy Goods Stores, of ordinary commercial merchandise, not Army or Navy supplies, nor Government commodities, without disclosing to the purchasers that such goods, supplies, or commodities are not Army nor Navy surplus supplies and were not made for nor according to specifications of the Government of the United States or any department or branch thereof amounts to a fraudulent and misleading representation, which has the capacity and tendency to mislead and deceive the public into the belief that said supplies were made for the Army or Navy or for and in accordance with the specifications of the United States and are of a high grade, but are sold at a low price because of the necessity of liquidating the large supply of such materials ordered for the Army and Navy of the United States.

PAR. 10. During the period in which respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), has been in business as a corporation, as well as during the period in which respondent, Armstrong Paint and Varnish Works, has been manufacturing and labeling paints, varnishes, and like commodities offered for sale and sold in interstate commerce by respondents herein, with the names, designations, or descriptions "United States"

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or the symbols or abbreviations "U. S."; all in connection with a picture of the figure known as "Uncle Sam" and symbolic of the United States, the Government of the United States, as is well known by respondents and by the public generally, has been disposing of large quantities of surplus Army and Navy stores, and portions of such surplus have been offered for sale in several cities of the United States in stores doing business under the name and style of Army and Navy Stores or Army and Navy Goods Stores.

(a) In such circumstances and under such conditions such labels have and have had the capacity and tendency to mislead and deceive customers and consumers into the belief that said words and symbols in connection with such figure upon said labels indicate that all such commodities so labeled have been and are actually Army and Navy surplus goods, or goods made for the Government of the United States and/or in accordance with specifications prepared by the Government, or some department or bureau thereof, more especially when such goods have been and are sold through or from stores known as Army and Navy Stores or Army and Navy Goods Stores.

CONCLUSION.

The practices of said respondents and each of them under the conditions and circumstances described in the foregoing findings are unfair methods of competition in 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 respondents, the testimony and documentary evidence offered and received, and the briefs and arguments of counsel for the respective parties hereto, and the Commission having made its findings and conclusion that the respondents have and each of them has 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,"

Therefore it is now ordered, That respondent Armstrong Paint & Varnish Works, a corporation organized under and existing by virtue of the laws of the State of Illinois, its officers, directors, agents, servants, and employees do cease and desist:

(1) From using the words "United States" or the symbol or abbreviation thereof "U. S." or a picture of the figure known as "Uncle Sam" which by custom and general usage has be-

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come well-known as symbolic of the United States either in combination or alone, in advertising matter or labels or otherwise, as describing commodities as having been purchased from or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating, or otherwise describing or advertising a commodity as "U. S. House Paint," "U. S. Floor or Utility Varnish," or by using words of similar import, as having been purchased from or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

It is further ordered, That respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing Paper Company, Incorporated), a corporation organized under and doing business by virtue of the laws of the State of South Dakota, its officers, directors, agents, servants, and employees do cease and desist:

(1) From using the words "United States" or the symbol or abbreviation thereof "U. S.," or a picture of the figure known as "Uncle Sam" which by custom and general usage has become well known as symbolic of the United States either in combination or alone, in advertising matter or labels or otherwise, as describing commodities as having been purchased from, or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating, or otherwise describing or advertising a commodity as "U. S. House Paint," "U. S. Floor or Utility Varnish," or by using words of similar import, as having been purchased from or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

(3) From using in its firm name or on labels, or advertising or otherwise the word "Factories" or words of similar import in connection with statements indicating or representing that by reason of purchasing paints, varnish or roofing from it customers save, or can save, costs or profits otherwise and ordinarily required by intermediary dealers unless respondent is in fact a manufacturer, and not itself an intermediary dealer.

It is further ordered, That respondents, Abe Hochman and Harry Goldfish doing business under the name Army and Navy Stores or

Army and Navy Goods Stores; and each of them, their agents, servants and employees do cease and desist:

(1) From using the words "United States" or the symbol or abbreviation thereof "U. S.," or a picture of the figure known as "Uncle Sam" which by custom and general usage has become well known as symbolic of the United States either in combination or alone, in advertising matter or labels or otherwise, as describing commodities as having been purchased from, or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating or otherwise describing or advertising a commodity as "U. S. House Paint," "U. S. Floor or Utility Varnish," or by using words of similar import, as having been purchased from or manufactured for, or by the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for or by the Government of the United States.

(3) From selling or offering for sale in "Army and Navy Stores" or otherwise, either by means of advertising, designating or otherwise describing or representing, directly or indirectly a commodity as surplus Government supplies, or Government supplies when such commodities have not been purchased from, or manufactured by, or for the Government of the United States.

It is further ordered, That respondents and each of them within sixty (60) days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth, to which reports should be attached copies of all labels, circulars or other advertisements issued and circulated by respondents respectively in several States of the United States or attached to goods sold or offered for sale by the respondents in interstate commerce.

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FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

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FEDERAL TRADE COMMISSION

v.