FEDERAL TRADE COMMISSION

v.

OCCIDENTAL OIL CORPORATION ET AL.

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

Docket 931—October 19, 1923.

SYLLABUS.

Where a corporation organized for the ostensible purpose of drilling oil wells on leased lands, and certain individuals, its organizers, in promoting the sale of its stock, represented to stockholders, purchasers, and prospective purchasers that production of oil from said corporation's wells warranted dividends of 10% a month and that disbursements then being made were such dividends; the fact being that no profits or earnings properly applicable to dividends, or any other purpose, accrued to said corporation from such wells, which were operated at a loss and finally relinquished to the original lessor, and such so-called dividends were furnished by one of said individuals out of his personal funds or from funds secured from the sale of his personal stock; with the result that the public was thereby deceived and misled and induced to purchase said stock at a premium in excess of its par value:

Held, That such misrepresentations, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest pursuant to 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," the Federal Trade Commission charges that the Occidental Oil Corporation, T. Frank Smith, W. R. Charles and L. J. Robling, 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 said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The Occidental Oil Corporation is a corporation organized under the laws of the State of Delaware in May, 1920, with a capitalization of $500,000.00, divided into 10,000 shares having a par value of $50.00 each by respondents, T. Frank Smith, W. R. Charles and L. J. Robling, for the purpose of drilling and developing oil wells in the State of Texas, and the said respondent, T. Frank Smith, was elected President, the said respondent, W. R. Charles, Vice-President, and the said respondent, L. J. Robling, Secretary and Treasurer, at the first meeting of the board of directors of said corporation. The principal office of said respondent corporation is in the city of Washington, District of Columbia, and its field office is located at Mexia, Texas.

PAR. 2. Ever since the organization of said respondent corporation, the respondents, T. Frank Smith, W. R. Charles and L. J. Robling, have been and are now engaged in soliciting orders for and selling shares of the said respondent corporation, and in the course of such solicitation said respondents have made and still make use of statements contained in letters, circulars, maps and other literature setting forth information and representations concerning the oil leases, properties, assets and prospects of said corporation, which said respondents send from the city of Washington, District of Columbia, to numerous prospective purchasers at their several places of residence in the various States of the United States and which statements and assertions are made by said respondents, T. Frank Smith, W. R. Charles and L. J. Robling, directly to prospective purchasers of said shares of stock in the District of Columbia and elsewhere throughout the several States of the United States. Upon receiving orders for aforesaid shares of stock in respondent corporation as a result of such solicitation, said respondents fill or otherwise furnish the same by sending certificates for said shares of stock so purchased from the said city of Washington, District of Columbia, to the purchasers thereof at their several places of residence in the District of Columbia and in the various States of the United States.

PAR. 3. The statements, assertions and representations made by the said respondents, T. Frank Smith, W. R. Charles and L. J. Robling are contained in the aforesaid letters, circulars, maps and other literature used in soliciting as above set forth contain numerous false and misleading assertions concerning the properties, assets, oil production and prospects of said corporation, amongst which are assertions to the effect that the purchasers of shares of stock in said corporation will receive dividends of ten per cent per month until all the initial payment for the stock has been paid; that the corporation owns producing wells or interests therein and is producing oil in sufficient quantities and thus making sufficient earnings to cover the payment of said ten per cent dividend out of earnings; and that the corporation is drilling for oil amidst wells producing great quantities of oil and is shortly to start drilling wells in such territory; and that the existing earnings from producing wells and the exceptionally good prospects of finding large quantities of oil in the near future through drilling operations assure an income to the owners of such shares of stock; whereas, in truth and in fact, the corporation did not own producing wells or have interests in producing wells which produced oil in sufficient quantities to meet the expenses of production, and is not now making any net earnings whatsoever, and the only monies out of which

the corporation ever could or can now pay dividends on its said shares of stock were and are monies derived from the sales of such shares of stock, and the leases owned by respondent were not located in what was known as proven territory. The aforesaid false and misleading assertions and representations have the capacity and tendency to mislead and deceive the public into the belief that the purchase of the aforesaid shares of stock is a safe and profitable investment; that a return of ten per cent monthly would be realized by the stockholders; that the corporation owned producing oil wells or interests therein from which it derived profits and earnings more than sufficient to pay, and out of which are and will be paid the said ten per cent monthly dividend upon all the said shares of stock sold and to be sold, and sufficient to provide further dividends on such shares; and that the corporation is now drilling and intends in the near future to commence drilling oil wells in territory under conditions which practically assure the additional production of large quantities of oil and consequently the payment of large additional profits and dividends to the holders of said shares of stock.

PAR. 4. When marketing the shares of capital stock of respondent corporation, the respondents and each of them are in competition with other persons, partnerships and corporation in marketing the capital stock and shares of beneficial interest of oil companies and enterprises engaged in interstate commerce.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' competitors and constitute 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 Occidental Oil Corporation, a corporation, T. Frank Smith, President, W. R. Charles, Vice-President, and L. J. Robling, Secretary and Treasurer, individually and as officers of the Occidental Oil Corporation, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance herein by their attorneys, Etheridge, McCormick and Bromberg of Dallas, Texas, and filed answer, hearing was had and evidence introduced before an examiner of the Commission theretofore duly appointed, in support

of the complaint and on behalf of respondents. Thereafter and on May 2, 1923, the examiner duly filed his report upon the facts.

And thereupon this proceeding came on for final hearing and counsel for the Commission and for the respondents, having submitted briefs, and argument of counsel for the Commission having been heard, counsel for respondents having failed to appear for oral argument, though duly notified of the time and place designated therefor, and the Commission having duly considered the record and being now fully advised in the premises, and being of the opinion that the methods of competition in question are prohibited by said act, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Occidental Oil Corporation, was incorporated May 27, 1920, by respondents, T. Frank Smith, W. R. Charles, and L. J. Robling, and ever since has been and now is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with a capitalization of $500,000.00, represented by 10,000 shares each of par value of $50. Its purpose was represented to be drilling oil wells on various leases owned by the respondent corporation in the State of Texas. The principal office of the company was located in the City of Washington, in the District of Columbia, until some time in September 1921, when it was removed to Mexia, in the State of Texas.

PAR. 2. Immediately after the organization of the respondent, Occidental Oil Corporation, respondents T. Frank Smith, W. R. Charles, and L. J. Robling, individually and in conjunction with each other, but at all times under the control and direction of respondent, T. Frank Smith, commenced an active campaign to sell shares of stock in the company. As an inducement to invest therein, they, and each of them, represented personally and by agents, to purchasers and to prospective purchasers of stock that their money would be refunded to them out of the first proceeds from the production of oil. By means of this representation the respondents sold, and delivered the certificates thereof, by mail and otherwise, from its office in Washington in the District of Columbia, about 600 shares of 2,000 shares theretofore set apart as treasury stock, to persons residing in the District of Columbia, Virginia and New York. Some time late in August or early in September 1920, certain wells in Wichita County, Texas, in which the respondent, Occidental Oil Corporation, owned a partial interest, began to produce oil in small quantities. Thereupon, under direction of the individual respondents, it returned to its shareholders the money theretofore invested by them in the stock, approximately $30,000.00, with the false repre-

sentation that the money so returned was a dividend derived from production of oil out of the wells of the Occidental Oil Corporation, and that such production was sufficient to support monthly dividends thereafter at the rate of 10 per cent. During the period following this action, running from September, 1920, to May, 1921, respondent Occidental Oil Corporation, actually distributed among its shareholders six so-called dividends, each at the rate of ten per cent per month, amounting in the aggregate to $114,101.00. These payments were each and all falsely represented as proceeds from the production of oil by the company. In the meantime, while these so-called dividends were in process of distribution, increased efforts were made by respondents to dispose of the stock of respondent corporation and as a basis for their selling activities respondent called attention of all purchasers and prospective purchasers to the falsely so-called earnings and dividends of the company.

PAR. 3. The representations that the money returned to shareholders on account of their original investment was derived from the production of oil; that such production was sufficient for monthly dividends of ten per cent, and that six so-called dividends during the period when respondents were engaged in vigorous efforts to sell the stock of the Occidental Oil Corporation, were supplied from the production of oil were each and all false and had the capacity to mislead and deceive and they, and each of them, did mislead and deceive the public, or that portion thereof which purchased stock of the Occidental Oil Corporation, into the belief that it owned producing oil wells, the earnings of which had supplied the funds for the successive so-called dividends. By means of these representations, the respondents sold the remaining 1,400 shares of treasury stock and 400 shares of the individual stock of respondent, T. Frank Smith, which were sold by the Occidental Oil Corporation on its own account and as treasury stock. The 2,000 shares of treasury stock sold by respondents returned to the company a premium of $72,750.00 above par, or in the aggregate $172,750.00. The 400 shares of individual stock of T. Frank Smith sold by the company as treasury stock and on its own account realized double par, or $40,000.00.

In truth and in fact the gross amount of money which the Occidental Oil Corporation received from production of its wells during the period when said so-called dividends were being distributed among stockholders of the respondent company and its stock offered for sale and sold to the public, or from any other source than the sale of its capital stock, was the sum of $7,852.19. No profits or earnings of any kind, applicable to dividends or to any other purpose, accrued to the Occidental Oil Corporation from the oil wells

which were so represented as the basis and source of each and all of its so-called dividends. On the contrary, from the commencement of their production to the final relinquishment of the wells to the original lessor by respondent corporation, the wells were operated at a loss, which loss itself exceeded the amount of money disbursed as dividends by the company. The money, approximately $30,000 returned to shareholders, as well as the money applied to the successive dividends which followed, was furnished by respondent T. Frank Smith out of his own personal funds or from the sale of his individual stock in respondent, Occidental Oil Corporation.

CONCLUSION.

That the practices of respondent, Occidental Oil Corporation, T. Frank Smith, W. R. Charles and L. J. Robling, under the conditions and circumstances described in the foregoing findings of fact, 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 upon the complaint of the Commission, the answer of respondents, testimony and evidence, and argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondents, Occidental Oil Corporation, T. Frank Smith, W. R. Charles and L. J. Robling 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 respondent Occidental Oil Corporation, T. Frank Smith, W. R. Charles, and L. J. Robling, and their agents, do cease and desist from directly or indirectly making any false or misleading statements or representation concerning the resources, operations, production, profits, earnings, disbursements, dividends, progress, or prospects of the respondent Occidental Oil Corporation, or of any other corporation, association, or partnership, in connection with the sale or offering for sale in interstate commerce of the stock or other security of the respondent Occidental Oil Corporation, or of any other corporation, association or partnerships.

It is further ordered, That said respondents Occidental Oil Corporation, T. Frank Smith, W. R. Charles, and L. J. Robling, shall within forty (40) days from the date of service of this order file with the Commission a report setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth.

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