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

Docket 965—December 7, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture of business and social stationery through the use of a process which involved the application to type printing while still wet, of a chemical, and heat, and resulted in a raised letter effect closely resembling the more durable results produced by engraving, and in the sale of such stationery,

(*a*) Designated the same in its advertisements and in its business generally as "Relief-Engraving," with the capacity and tendency to deceive the public and with the effect of causing a portion thereof to purchase its products as and for genuine engraved stationery; and

(*b*) Falsely claimed that the aforesaid term had been registered in United States and Canada as its trade-mark:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. William C. Reeves for the Commission.

Mr. Willard H. Ticknor, of Buffalo, N. Y., for respondent.

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 Turner & Porter, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York, with principal place of business at Buffalo, in said State. Respondent is engaged in the business of manufacturing and selling business and social stationery, including business cards, letter heads, invitations, announcements, calling cards, etc., and causes stationery produced and sold by it to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States. In the course and conduct of its said business respondent continuously has been,

and is now, in competition with other persons, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. Respondent, in the course of its business as described in paragraph 1 hereof, produces stationery by a process which it designates as "Relief-Engraving," although such process is not engraving, and in no way includes the process of producing an impression on such stationery from engraved plates: That the stationery sold by respondent is produced upon a type press from ordinary type face, and, while the ink is still wet, a chemical in powder form is applied, so that it will adhere to the wet ink, and the stationery is then passed through a baking process in which the heat causes the chemical to fuse and present a raised letter effect, which causes stationery so produced to resemble, in appearance, to some extent, stationery upon which impressions have been made from engraved plates.

PAR. 3. That the word "engraving," particularly when applied to stationery, has been well known and understood by the public for a long period of years to include only stationery upon which there has been made an impression from an engraving, usually a copper plate, which has been cut with a graving instrument in order to form an inscription or pictorial representation: That the cost of producing engraved stationery greatly exceeds the cost of producing stationery of like stock, grade and quality produced by the process employed by the respondent, as set out in paragraph 2 hereof, and the purchasing public has indicated, and has, a decided preference for engraved stationery over stationery produced by the said process employed by the respondent, or similar processes, for the reason, among others, that the fused lettering on stationery produced by respondent's said process is easily broken and will peel, and will not retain its original attractive appearance, as will impressions from engraved plates.

PAR. 4. That respondent, as a means of inducing the public to purchase stationery from it, causes advertisements to be inserted in trade publications having general circulation through the several States of the United States, and distributes circulars, catalogues and other advertising matter to customers and prospective customers in various States of the United States, in which advertisements and advertising matter respondent makes the statement that the words "Relief-Engraving" have been registered in the United States Patent Office as the trade mark of the respondent, although no such registration has ever been had. The stationery offered for sale by

respondent is described in such advertisements and advertising matter as "Relief-Engraving," and the claim is made that respondent is the originator and sole producer of "Relief-Engraving."

PAR. 5. That respondent, through and by reason of the designation of stationery produced and sold by it as "Relief-Engraving," thereby represents to the public that such stationery is produced by having impressions made thereon from engraved plates, and such designation, and the advertisements and advertising matter of the respondents described in paragraph 4 hereof, has the capacity and tendency to mislead and deceive the purchasing public, and to induce the public to purchase such stationery upon the mistaken belief that the impressions upon such stationery were made from engraved plates.

PAR. 6. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors who are engaged in producing and selling genuine engraving, and transporting into the different States of the Union and into States other than the States where such engraving is produced, and constitute unfair methods of competition in commerce within the intent 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, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Turner & Porter, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer, the testimony of witnesses was taken and evidence was received, both in support of the charges stated in the complaint and on behalf of respondent, before an examiner of the Federal Trade Commission theretofore duly appointed, whereupon the trial examiner made his report upon the facts with proposed findings as to the facts, to which counsel for respondent filed exceptions.

Thereupon the matter came on for final hearing before the Commission, upon the complaint, the answer thereto, the evidence adduced, the report of the trial examiner and exceptions thereto by respondent, briefs by counsel for the Commission and counsel for respondent, and was orally argued by counsel, 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. That the respondent, Turner & Porter, Inc., is a corporation organized in 1915 under the laws of the State of New York, with its principal office and place of business at 49 West Swan St., Buffalo, N. Y., and is now and for several years past has been engaged in the business of manufacturing and selling wedding invitations, announcements, business cards, Christmas cards, letterheads and other business and social stationery to department stores, jewelers, stationers and dealers who sell direct to the public; that respondent causes such articles of stationery so sold by it to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States, and in the conduct of its business has been and is now in competition with numerous persons, partnerships and corporations similarly engaged in commerce among the several States of the United States.

PAR. 2. That the stationery produced by the respondent is known and advertised to the trade under the term "Relief-Engraving," and is produced upon a type press from ordinary type faces, and while the ink is still wet a chemical in powder form is applied and by the application of heat the chemical so applied is made to fuse with the wet ink and present a raised-letter effect; that the process so described is in no way similar to the process of "Engraving" which is well known and generally understood by the public to be impressions from engraved copperplates or steel dies, which have been cut into with graving instruments in order to form an inscription or name of a person or place, is inked in by hand and hand wiped and printed on a plate press or die stamp on the card of invitation or letterhead, which process takes all of the ink out of the lines and indentations cut into the plate or die and gives the raised-letter effect so well-known in the engraving trade; that the process used by respondent and described above, is known to the dealers in said product as raised printing or imitation engraving or process work, and stationery produced by that process resembles in appearance stationery produced by the art of the real engraver which contains impressions made from engraved copperplates or steel dies; that the resemblance between the stationery produced by the two processes above described is so marked as to often confuse the trade and is often a question for expert knowledge to distinguish the raised printing or imitation engraving work from the real engraving; that the art of engraving

upon steel and copperplates has been known for centuries, while the process of the raised printing or imitation engraving is a modern process of recent development; that there is a considerable demand for the raised printing or imitation engraved stationery, but the demand for stationery so produced by the modern process is much less in volume than for the product of the real engraver; that the cost of producing engraved stationery is much greater than the cost of producing stationery by the raised letter or imitation engraving process and the real engraving is more substantial and durable as the raised printing or imitation engraving letter can be easily scraped off with the finger nail, hence more easily loses its new and attractive appearance; that the public has come to test stationery by passing a finger over the surface of the writing on a card or invitation, and if the "feel" is that of a raised surface they have come to believe that indicative of a real engraving made from a copperplate or steel die.

PAR. 3. That respondent, in the course of its business, has caused advertisements to be printed in magazines and trade publications having general circulation throughout the several States of the United States, and has published circulars, catalogues, and other advertising matter, and caused same to be distributed to customers and prospective customers in the several States of the United States, in which advertisements and advertising matter respondent made the claim that the words "Relief-Engraving" has been registered in the United States and Canada as a trade-mark of respondent, when as a matter of fact no such registration had been had; that it appears from respondent's answer to the complaint in this case that when respondent learned that its application for registration for the words "Relief-Engraving" as a trade-mark, had not been perfected and allowed, that said respondent ceased to claim in its advertisements, and advertising matter, that such words had been so registered.

PAR. 4. That the use by respondent of the word "Engraving" as a part of the compound word "Relief-Engraving" in its advertisements, in trade periodicals, and in its business generally is confusing and misleading, and has a capacity and tendency to deceive the public, who have come to believe that the word "Engraving," as applied to stationery, means an impression made upon stationery from engraved copper plates or steel dies; that this causes portions of the public to purchase said raised printing or imitation engraving believing they are purchasing work of the real engraving made from copper plates or steel dies.

PAR. 5. That respondent has pursued the policy of informing the dealers through whom it distributes stationery produced by it,

that such stationery is not engraved stationery, but that same is produced by the process described in paragraph 2 hereof; but the mere use of the word "Engraving" as a part of the compound word "Relief-Engraving" to designate the product of respondent, which is not engraving, is confusing, misleading, and capable of deceiving large numbers of the purchasing public.

CONCLUSION.

That the practice of the respondent as set forth in the foregoing findings as to the facts are in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and the evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon the briefs and argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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,"

Now, therefore, it is ordered, That the respondent, Turner & Porter, Inc., its officers, directors, representatives, agents and employees cease and desist:

(1) From causing advertisements to be published in magazines, trade papers, or other publications of general circulation among the States of the United States, and from causing circulars, catalogues, and other forms of advertising matter, to be distributed in the several States, in which advertisements and advertising matter the claim is made that the word "Relief-Engraving" has been registered in the United States and Canada as the trade-mark of respondent, or for any similar purpose.

(2) From using "Relief-Engraving" or the word "Engraving," either alone or in combination with any other word or words, in its advertisements and advertising matter, to designate or describe stationery sold by it, the lettering, inscription or designs on which have been printed from inked type faces, electrotypes, or similar devices, and which stationery does not have thereon impressions

from engraved plates or dies, and which lettering, inscription or designs, have been given a raised letter effect by the application of a chemical in powder form to the ink while it was still wet, then subjecting same to heat thereby causing the chemical so applied to fuse with the wet ink.

It is further ordered, That the respondent shall file with the Federal Trade Commission, within ninety days from the date of this order, its report in writing, stating the manner and form in which this order has been conformed to and shall attach to such report two copies of all circulars, advertisements, devices or labels distributed or displayed to the public by the respondent in connection with the sale of its product, in interstate commerce, subsequent to the date of this order.

FEDERAL TRADE COMMISSION