

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## TEXAS-ATLANTIC OIL COMPANY ET AL.

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

Docket 933—February 8, 1924.

## SYLLABUS.

Where an oil company and certain individuals responsible for the organization thereof or associated therewith and interested in the sale of its stock; in promoting the same made numerous false and misleading statements and representations in their prospectuses, circulars, folders, and other advertising literature, in respect of certain oil producing properties alleged to be those of the company, in respect of the company's alleged tremendous production, and in respect of the alleged past and prospective payment of large dividends, and displayed in said advertising matter pictures of derricks and storage tanks, purporting to be located on the company's properties; the fact being that the company owned no such properties nor wells, produced no oil and owned no tanks, that said pretended dividends were paid from money advanced by another concern in order to induce and augment the sale of the company's stock, and that the company, while such intensive campaign to sell its stock was in progress, was insolvent, burdened with great indebtedness, and without income of any kind except from the sale of stock; with the result that the public was misled and deceived and induced to expend many thousands of dollars for the stock of such company:

*Held*, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

*Mr. James M. Brinson* for the Commission.

*Mr. E. C. Kingsburg*, of Ft. Worth, Texas, for respondents.

*Mr. P. E. Dedmon*, of Smith, Dedmon, Marks, Potter & Smith, of Ft. Worth, Texas, for respondent, V. C. Nelson.

*Mr. Richard A. Dunnigan*, of Los Angeles, Calif., for respondent, R. J. Leavitt.

## 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 Texas-Atlantic Oil Company, G. P. Edgell, J. B. Sikes, V. C. Nelson, R. J. Leavitt and W. Lincoln Wilson, hereinafter referred to as respondents, have been and are using unfair methods of com-

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

PARAGRAPH 1. Respondent Texas-Atlantic Oil Company, is a joint stock association, organized under and by virtue of a Declaration of Trust dated April 7, 1920, with its principal place of business at Fort Worth, Texas, and having an authorized capital stock of \$3,000,000, divided into 3,000,000 shares of the par value of \$1.00 each. Its general business purposes are to acquire oil and gas leases on lands in the State of Texas and elsewhere, and drilling wells thereon for the production of oil and gas. Respondent G. P. Edgell is one of the organizers and promoters of respondent company, and during the period from, to wit, April 7, 1920, to May 22, 1920, acted as trustee of respondent company. Respondent R. J. Leavitt is an organizer and promoter of respondent company, and at all times from and after the date of organization of respondent company, as aforesaid, acted as president and trustee of respondent company. Respondent J. B. Sikes is, and at all times from and after, to wit, May 22, 1920, has been trustee and vice-president of respondent company. Respondent V. C. Nelson is, and at all times from and after, to wit, May 22, 1920, has been, a trustee and secretary of respondent company. Respondent W. Lincoln Wilson does business under the unincorporated trade name and style of Texas National Trust Company, and from and after, to wit, April 7, 1920, also acted as so-called fiscal agent of respondent company.

PAR. 2. Respondent Wilson, acting individually and under the unincorporated trade name and style of Texas National Trust Company, sold or assigned on or about April 7, 1920, to respondent company, acting through respondents Edgell and Leavitt, certain oil, and gas leases covering approximately 10,208 acres of land in the State of Texas, for, and in consideration of, which properties respondent company issued and agreed to issue to respondent Wilson 1,000,000 shares of the capital stock of respondent company. On or about April 7, 1920, respondent Wilson, acting individually and under the unincorporated trade name and style of Texas National Trust Company, entered an agreement with respondent company whereby said respondent Wilson underwrote the remaining 2,000,000 shares of capital stock of respondent company. The said 1,000,000 shares of capital stock issued to respondent Wilson, as aforesaid, and the said 2,000,000 shares of capital stock underwritten, as aforesaid, by respondent Wilson will hereinafter be referred to as securities of respondent company. From and after the date of organization of respondent company, as aforesaid, respondent Edgell, acting individually and as president and trustee of respondent company; respondent Leavitt, acting individually and as officer and trustee of

respondent company and also doing business under the unincorporated trade name and style of Leavitt Brokerage Company; respondent Sikes, acting individually and as trustee and vice-president of respondent company; respondent Nelson, acting individually, as secretary, treasurer and trustee of respondent company; and respondent Wilson, acting individually and as fiscal agent of respondent company and doing business under the unincorporated trade name and style of Texas National Trust Company; each of said respondents in their several capacities, as aforesaid, and cooperating with and aiding and abetting each other therein, have caused for more than one year last past, and still cause, the said securities of respondent company to be offered for sale and sold to the general public throughout the United States, upon mail orders, telegraphic and telephonic orders, and through salesmen, agents and brokers, and have caused and cause the certificates of said securities of respondent company when so sold to be issued and transported from the State of Texas, through and into other States of the United States and the District of Columbia to the purchasers thereof; and have caused, and cause, to be carried on, as aforesaid, the marketing of said securities of respondent company in direct, active competition with other persons, partnerships, corporations and associations similarly engaged in interstate commerce.

PAR. 3. Respondents, and each of them acting in their said several capacities, in the marketing of said securities of respondent company, as aforesaid, have for more than one year last past made use of, and are still using, advertisements published in newspapers of general circulation throughout the United States, and prospectuses, pamphlets, circulars, telegrams, messages, and other advertising matter (said newspaper advertisements, prospectuses, pamphlets, circulars, telegrams, messages, and other advertising matter are hereinafter referred to as advertising matter) which respondents, and each of them, and aiding, abetting and cooperating with each other therein, as aforesaid, cause to be transmitted by mail, telephone, telegraph, agents, salesmen and brokers, and otherwise, from the State of Texas to purchasers and prospective purchasers of said securities of respondent company, and the public, throughout the United States; and in and through said advertising matter offered for sale and sold, and still offer for sale and sell, the said securities of respondent company to said prospective purchasers, purchasers and the public, and as inducements to said purchasers, prospective purchasers and the public to purchase said securities, caused for more than one year last past, and still cause, to be made in and through said advertising matter, agents, salesmen and brokers, numerous false, misleading and deceptive statements and other representations

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of and concerning the business, financing, management, operations, properties, earnings, and prospects of respondent company, and concerning the value of said securities of respondent company, all of which statements and other representations, and each of them, were calculated, have the capacity and tendency, to, and did, mislead and deceive the said purchasers, prospective purchasers and the public, and thereby induced large numbers of said purchasers to purchase said securities of respondent company. A number of said false, misleading and deceptive statements and other representations are statements and representations to the following effect:

That the respondent company is, and has been, on a dividend paying basis and has earned, and is earning, large profits;

That respondent company is a large, successful producing company;

That respondent company has paid, and does pay, monthly dividends of 2 per cent;

That the amount of dividends paid by respondent company averaged 24 per cent per annum;

That respondents guaranteed to the stockholders the payment of dividends of 2 per cent per month;

That respondent company's so-called well No. 1 is a tremendously large producer;

That the production from respondent company's so-called well No. 1 enables it to pay 2 per cent dividends monthly and also extra dividends in addition thereto;

That respondent company's well No. 2 is a large producer of high-grade crude oil;

That respondent company's well No. 3 is a large producer;

That the oil produced from said well No. 3 is brought forth under tremendous pressure of natural forces;

That respondent company's wells Nos. 1, 2, and 3 are all, and each of them, settled producers;

That the company has acquired valuable oil properties in the State of California;

That the said Texas National Trust Company is a financial institution of recognized standing in its community;

That the said Leavitt Brokerage Company and the Texas National Trust Company are each general underwriters and licensed brokers, that they are capable of giving, and that the advice given in aforesaid advertising matter is, sound, unbiased and expert advice to said prospective purchasers as to the value and desirability of said securities of respondent company as investments.

Whereas in truth and in fact respondent company has at no time been a large, successful producing company; that the funds distributed by respondent company as dividends were not dividends or funds properly applicable to the payment of dividends; that respondents have at no time been on a dividend paying basis, or earning large profits, and that its so-called dividends have not averaged 24 per cent per annum; that respondent company did not pay 2 per cent monthly dividends; that respondent company's interest in its so-called wells Nos. 1, 2, 3, and 4 is only a fractional part of the whole; that said wells have produced only small quantities of oil; that the production from said well No. 1, or from all of said wells has not been sufficient to enable respondent company to pay monthly dividends of 2 per cent or extra dividends in addition thereto; that said wells, or any of them, have never been settled producers, nor flowed by their own natural forces; that respondent company has at no time acquired or owned oil properties in the State of California; that said Texas National Trust Company is not, and has never been a financial institution of recognized standing in its community; that said Leavitt Brokerage Company and Texas National Trust Company are not, and have at no time been capable of giving expert advice as to oil investments; and that the advice and opinions given to said purchasers, prospective purchasers and the public in said advertising matter was biased, unsound, and not expert advice and opinions.

PAR. 4. In addition to the acts and things done as alleged in the foregoing paragraphs hereof, and in marketing the said securities of respondent company, as aforesaid, respondents, and each of them, acting in their several capacities, as aforesaid, and cooperating with and aiding and abetting each other therein, concealed and withheld at all times herein mentioned, and still so conceal and withhold, from aforesaid purchasers and prospective purchasers of said securities and the public throughout the United States, numerous unusual, material and essential facts and circumstances concerning the value of said securities, the business, financing, management, operations, holdings, earnings, prospects, etc., of respondent company, which concealing and withholding of said unusual, material and essential facts and circumstances were calculated and intended by respondents, and have the capacity and tendency to, and did, mislead and deceive said purchasers and prospective purchasers into the belief that said unusual, material and essential facts and circumstances, and each of them, did not and do not exist, and thereby

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induced large numbers of aforesaid purchasers to purchase said securities of respondent company. A number of said unusual, material and essential facts and circumstances so concealed and withheld from said purchasers, prospective purchasers and the public, are the following; namely; that respondent company during, to wit, April, 1920, borrowed and paid \$10,000 cash and obligated itself to pay \$290,000 more within six months thereof for, and in consideration of, the leases on its holdings in Sub-Division Four of the so-called Ranger Oil Pool, Eastland County, Texas; that 1,000,000 shares of said securities of respondent company were issued by respondent company to respondent Wilson for, and in consideration of, leases assigned by respondent Wilson to respondent company; that the valuation at which respondent company's several properties were acquired and paid for were inflated, excessive and exorbitant; that respondent company received only 40 cents per share for the said securities sold to the public out of the 2,000,000 shares underwritten by respondent Wilson as hereinbefore set forth; that a number of said securities of respondent company sold by respondents, as aforesaid, was not treasury stock of respondent company, and that respondent company received no part of the proceeds from the sale of such non-treasury stock; that respondent company's interests in its so-called wells Nos. 1, 2, 3, and 4 were but small fractional parts of the whole.

PAR. 5. The above alleged practices, acts and things done by respondents are all to the prejudice of the public and of 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 a complaint against the respondents, Texas Atlantic Oil Company, G. P. Edgell, J. B. Sikes, V. C. Nelson, R. J. Leavitt and W. Lincoln Wilson, and due service was had upon each and all of them except respondent W. Lincoln Wilson.

The respondents, with the exception of said W. Lincoln Wilson, filed answers and entered appearances by their attorneys, hearings were had before an Examiner of the Federal Trade Commission theretofore duly appointed and testimony introduced for and on behalf of the Commission and of the respondents. The evidence so

taken was reduced to writing and filed in the office of the Federal Trade Commission.

Thereupon, this proceeding came on for final hearing, and the Commission having heard argument of counsel, and having duly considered the record, and being now fully advised in the premises, makes this its findings of facts and conclusion:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Texas Atlantic Oil Company was organized by one P. P. Myhand and respondents G. P. Edgell and R. J. Leavitt, on the 7th day of April, 1920, under a so-called declaration of trust, with a capitalization of three million shares of the par value of one dollar (\$1.00) each. Its principal office and place of business was located at Fort Worth, in the State of Texas, which is also the residence of respondents G. P. Edgell, J. B. Sikes and V. C. Nelson. The present location of respondents R. J. Leavitt and W. Lincoln Wilson is unknown.

PAR. 2. Immediately after the organization of respondent Texas Atlantic Oil Company, it proceeded to borrow from the Farmers' and Merchants' Bank of Fort Worth, Texas, the sum of \$10,000.00, and using such money as a first payment thereon, it entered into an agreement to purchase, at a price of \$300,000.00, certain interests in oil wells belonging to the so-called Ranger Brooks Oil and Development Company, situated in the County of Eastland, State of Texas, and which had theretofore produced oil of the value of \$80,557.41.

It was agreed by and between the said Ranger Brooks Oil and Development Company and respondent Texas Atlantic Oil Company that an assignment of interests in said wells would be placed in escrow until the balance of the purchase price, to-wit, \$290,000.00, should be paid, whereupon such assignment would be delivered to respondent Texas Atlantic Oil Company.

It was further agreed that from and after April the 15th, 1920, receipts from the sale of oil produced by such wells, which were to remain in the possession of the said Ranger Brooks Oil and Development Company until payment of said purchase price, would be set aside in a separate account in the said Farmers' and Merchants' Bank of Fort Worth, Texas, to be paid to the Texas Atlantic Oil Company when full payment of the purchase price of the wells should be received. Thereupon the respondent, Texas Atlantic Oil Company entered into an agreement with the Texas National Trust Company, an unincorporated concern, which was in fact the trade name of

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respondent W. Lincoln Wilson, under and by virtue of which it secured the privilege of selling 2,000,000 shares of the stock of the Texas Atlantic Oil Company, paying therefor to said respondent the sum of 40 cents per share. It also entered into an agreement with respondent W. Lincoln Wilson for the issuance to him of 1,000,000 shares of its capital stock in exchange for certain leases, none of which, however, was thereafter utilized or developed by the company or on its behalf. This proposed issue was called property stock by the respondents, and it was agreed by respondent W. Lincoln Wilson that in consideration of the services of one W. F. White, president of the Ranger Brooks Oil and Development Company, and respondents Edgell, Nelson and Sikes, in connection with the promotion of Texas Atlantic Oil Company, 750,000 shares of said 1,000,000 shares would be divided among them after he had sold to the public 400,000 shares of the treasury stock of respondent company.

It was further resolved at a meeting of the trustees of the respondent, Texas Atlantic Oil Company, then consisting of the said P. P. Myhand and respondents Leavitt and Edgell, in conjunction with respondent W. Lincoln Wilson operating as Texas National Trust Company, that after he had sold 1,000,000 shares of the treasury stock of said Texas Atlantic Oil Company there would also be sold, along with other treasury stock of the said company, an equal amount of their so-called property stock until 250,000 shares thereof had been placed.

After these various transactions, P. P. Myhand and respondent R. J. Leavitt, who had served as trustees of the company only for organization purposes, resigned, the latter to engage in cooperation with respondent W. Lincoln Wilson in the sale of Texas Atlantic Oil stock in pursuance of his agreements hereinbefore stated. They were succeeded by respondents J. B. Sikes, who was also secretary of the said Ranger Brooks Oil and Development Company, and V. C. Nelson, who assumed the position as a representative of the said W. F. White, President of said company.

PAR. 3. Immediately upon the conclusion of the preliminary arrangements described in Paragraph Two, the individual respondents so associated as aforesaid, and at all times in conjunction with each other, but acting directly through respondent W. Lincoln Wilson operating under his trade name of Texas National Trust Company, and respondent R. J. Leavitt, doing business as the Leavitt Brokerage Company, proceeded to offer for sale, and to sell the stock of the respondent Texas Atlantic Oil Company to the public, by circulating among purchasers and prospective purchasers of stocks and securities in the various other States and territories of

the United States, prospectuses, circulars, folders, and other advertising literature wherein were printed and set forth the following among other false and misleading statements and representations:

That certain oil-producing properties in Eastland County, Texas, were the properties of the Texas Atlantic Oil Company;

That certain pictures of derricks and storage tanks appearing in some of the prospectuses, folders, and other advertising matter of respondents represented derricks and tanks situated on oil-producing properties of Texas Atlantic Oil Company;

That a tremendous flow of oil night and day was going into Texas Atlantic Oil Company's tanks from which dividends were paid on the 25th of each month;

That the Texas Atlantic Oil Company was a large and producing oil company, on a dividend basis, paying dividends of 2 per cent monthly, an average of 24 per cent per year;

That the Texas Atlantic Oil Company's No. 1 well was producing enough oil to enable it to pay 2 per cent monthly dividends;

That dividend of 2 per cent monthly was guaranteed by and from the production of the Texas Atlantic Oil Company.

In truth and fact, the respondent Texas Atlantic Oil Company neglected and failed to exercise its option by payment of the purchase price, and never acquired any title to or ownership of the property in question or interest therein. It owned at no time in its history the oil-producing properties described in its advertisements. There was no flow of oil night and day into its tanks as represented to the public, for the reason that the Texas Atlantic Oil Company had no wells, produced no oil, and owned no tanks. The production upon which it asserted its ability to pay dividends was entirely the production of the Ranger Brooks Oil and Development Company. The money distributed among its stockholders as dividends consisted of money advanced by the Ranger Brooks Oil and Development Company from the production of its wells, for the payment of fictitious dividends by the Texas Atlantic Oil Company in order to induce and augment the sale of its stock. During the entire period when respondents were engaged in an intensive campaign to sell the stock of respondent company, it was insolvent, burdened with great indebtedness, and entirely without income of any kind except from the sale of its stock.

PAR. 4. The respondents and each of them, acting in conjunction with each other, by means of the false representations and statements set forth in Paragraph Three hereof, each and all of which had the capacity and tendency to mislead and deceive, did in fact mislead

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and deceive the public, or that portion thereof which purchased stock in the Texas Atlantic Oil Company, and sold to it 141,000 shares for the sum of \$1.00 per share in direct and active competition with other persons, partnerships, corporations, and associations similarly engaged in the sale or distribution of stocks or securities in interstate commerce. The respondent Texas Atlantic Oil Company, however, received from the sale of such stock no more than the sum of \$37,276.05. The certificates of the stock sold as aforesaid were issued by the respondent company at the instance of and in cooperation with the individual respondents, and transported from the State of Texas to the purchasers thereof residing in the various other States and territories of the United States.

## CONCLUSION.

That the practices of the respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleadings and the testimony and evidence received by the Examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents have 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:"

*It is now ordered*, That the respondent Texas Atlantic Oil Company, and the respondents, G. P. Edgell, J. B. Sikes, V. C. Nelson and R. J. Leavitt, individually and as officers, shareholders or agents of the respondent Texas Atlantic Oil Company, and as officers, shareholders or agents of any other corporation, association or partnership, their trustees and agents, do cease and desist from directly or indirectly;

Publishing, circulating or distributing, or causing to be published, circulated or distributed, any newspaper, pamphlet, circular, letter, advertisement, or any other printed or written matter whatsoever, in connection with the sale or offering for sale in interstate commerce of stock or securities, wherein is printed or set forth any

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false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress or prospect of any corporation, association or partnership.

*It is further ordered*, That the respondents, Texas Atlantic Oil Company, G. P. Edgell, J. B. Sikes, V. C. Nelson and R. J. Leavitt, within forty (40) days from the date of the service of this order, file with the Commission a report, setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth; and that the proceeding be dismissed without prejudice as to respondent W. Lincoln Wilson.

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