

Complaint.

FEDERAL TRADE COMMISSION
v.
PROCESS ENGRAVING COMPANY.

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

Docket 1017—February 16, 1924.

SYLLABUS.

Where a corporation engaged under a name which included the words "process engraving," in the printing and sale 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 which closely simulated, to the nonexpert eye, the appearance produced by the more expensive process of genuine engraving, but was less durable; designated and sold its said stationery as "engraved," "process engraved," or "process engraving," and so described the same in its circulars and other advertising matter, and also as "engraved by our own process," with the capacity and tendency to mislead and deceive purchasers into believing said products to be the result of an impression from an engraved plate, commonly known to the public as an engraving, and with the effect of so doing:

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

Mr. William C. Reeves for the Commission.

Mr. A. C. Linenthal of Chicago, Ill., 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 Process Engraving Company, more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Process Engraving Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State, and with a branch office located in the city of Milwaukee, in the State of Wis-

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consin. Respondent is engaged in the business of printing and selling stationery for social and business purposes, including invitations, announcements, calling cards, letter heads, envelopes and similar products, and causes said stationery so produced, when sold, to be transported from its principal place of business in the State of Illinois to purchasers located in other States of the United States and from its branch office in the State of Wisconsin, to other States of the United States, and there is now and was at all times hereinafter mentioned, a constant current of trade and commerce in said product manufactured by said respondent between and among the various 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 individuals, 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, prints invitations, announcements, calling cards, letter heads, envelopes and similar social and business stationery products which it designates and advertises as "engraved," although such process as used by respondent is not the process used in engraving and in no way includes the process of producing an impression on such stationery from engraved plates; that the product manufactured and sold in commerce by respondent is the result of the use of a chemical in powdered form which is applied to such type printing while the ink is still wet; this chemical adheres to the wet ink and in passing through a baking process the heat causes it to fuse and present a raised letter effect so as to resemble in appearance or simulate the impression made from engraved plates known as engraving.

PAR. 3. The words "engraved" or "engraving" particularly when applied to invitations, announcements, calling cards, letter heads, envelopes and similar social and business stationery, has been well-known and understood by the public for a long period of years to include only such products as result from the impression made from engraved plates in which has been stamped, cut or carved, letters, sketches, designs or inscriptions from which the reproduction is made; that the process used by respondent as set out in paragraph 2 hereof, so simulates engraving in appearance and finish that the same is calculated and has the capacity and tendency to mislead and deceive the purchasers into the erroneous belief that such product was the result of an impression made from an engraved plate commonly known to the public as engraving.

PAR. 4. That respondent, as a means of inducing the public to purchase invitations, announcements, calling cards, letter heads, envelopes and similar social and business stationery products, causes advertisements to be circulated and distributes circulars and other advertising matter to customers and prospective customers in various States of the United States, in which advertisements and advertising matter respondent describes and refers to its products as "engraved," and with such advertisements and advertising matter respondent encloses sample specimens of its product finished to resemble engraving in appearance and so printed as to simulate engraving in relief, and in which advertising matter respondent also refers to such samples as "engraved by our process" and as "process engraving"; that the words "process," "engraved" and "engraving," when so used by said respondent in conjunction each with the other and/or in connection with the corporate name of the respondent corporation, were and are intended by respondent, and are calculated and have the capacity and tendency to mislead and deceive the purchaser into the erroneous belief that such products were and are the result of an impression made from engraved plates commonly known to the public as engraving.

PAR. 5. There are a considerable number of competitors of respondent who are manufacturing engraved invitations, announcements, calling cards, letter heads, envelopes and similar social and business stationery, which said products are made from engraved plates in which have been stamped, cut or carved letters, sketches, designs or inscriptions from which the reproduction is made, which is known to the trade and consuming public as engraving, which said products are sold in competition with the products of respondent

PAR. 6. That the above alleged acts and things done by respondent are all to the prejudice of the public, and of respondent's competitors, and constitute 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 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, Process Engraving Company, charging it with the

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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 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, to which counsel for the 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 the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Process Engraving Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in said State, where for the past two or three years it has been engaged in the business of printing and selling stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes and similar products, and in selling, shipping and delivering said products from its principal place of business in Chicago to customers in the several States of the United States, and such products, in the course of such sale and delivery are transported from the respondent's principal place of business in the city of Chicago through and into other States of the United States to purchasers at their various places of residence. In the course and conduct of its said business as hereinabove set forth, respondent has been and is in competition with other persons, partnerships, firms and corporations engaged in the manufacture and sale of other and similar stationery products.

PAR. 2. Respondent, in the course of its business as described in paragraph 1 hereof, prints business cards, calling cards, envelopes, letterheads, invitations, announcements and similar stationery products, which it designates and sells as "engraved," "process engraved," or "process engraving," although the great bulk of the stationery sold by it is not engraved nor produced from engraved plates. Its entire printing business in the year 1922 amounted to about \$150,000.

(a) Products so sold by respondent as "engraved," "process engraved," or "process engraving," are printed upon an ordinary press similar to the Gordon press, and while the ink is still wet there is applied thereto a powdered chemical substance, and the stationery is immediately thereafter heated so that the ink and powder will fuse and produce upon the surface of the paper raised letters closely simulating in appearance to the nonexpert eye effects produced by true engraving processes. That stationery so produced and sold by respondent in the year 1922 aggregated \$140,000, or more than 93 per cent of its entire volume of business.

(b) Engraving, as a term designating an art or craft, began historically with wood engraving, which was known in Europe about 1423, metal engraving developed in Europe about 1452, at that time being confined to the decoration of articles produced by the goldsmith's art. Later came copper engraving, which was used commercially in America early in the eighteenth century. Then followed steel engraving, which was developed early in the nineteenth century. Engraving, as a term of art, designated cutting of the plates themselves, and by some authorities, the product or prints, as well. Such engraving in its earlier stages dealt largely with art work or the illustration of books, but later was devoted also to production of currency and stock and bond certificates, and, later still, to stationery for various purposes. With the development of photography, photographic processes of reproducing works of art, or producing illustrations for books and periodicals, largely took the place of line engraving and other hand work. This left as a field for such hand engraving, largely, the production of currency, securities and stationery, as above indicated.

(c) In producing engraved products for commercial purposes, characters or drawings are engraved upon copper or steel plates or dies in intaglio, the depression filled with ink, surplus ink removed from the surface of the plate, and the sheet taking the impression brought into contact with the plate under pressure in special presses in a process known as "plate printing." Thus has been produced the work known commercially as "engraving," using the term without qualification.

(d) Toward the middle of the last century, photography was applied to the etching of plates, usually of zinc or copper. Such plate production was called "photo-engraving," "photo-gravure," or, less frequently, "process engraving." This is the only sense in which "process engraving" had been used up to

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very recent years (about five years) when real printing such as that produced by respondent has been chemically treated and developed and sold as "Process Engraving."

(e) Zinc plates made by photographic processes have entered into the production of a small percentage of the commercial stationery turned out by respondent in the course of its business as above described. Forty per cent of all respondent's products is produced from type without involving plates in any way. In the remaining sixty per cent the great bulk of the matter is produced from type, plates entering in a subsidiary way, as hereinafter described. Practically none of respondent's products are produced from plates alone, without type. The word "process" in the term "process engraving," as used by respondent, does not refer to the making of such plates, but only to the powdered chemical treatment of printing from type while the ink is still wet, and the baking process which produces raised letter effects simulating true engraving. Photographically prepared zinc plates, when entering production by respondent, ordinarily enter as a foundation for electrotypes characters or cuts which are used in ordinary printing process on ordinary presses similar to the Gordon press. Respondent does not produce engraved stationery at its own place of business, and when it receives an order from a customer which it is obliged to fill with engraved stationery, it turns such order over to an establishment at which engraved stationery can be produced, and when the stationery covered by such order is completed, it is delivered to respondent, who, in turn, delivers such stationery to its customer. That the value of the stationery so sold by respondent constitutes less than five per cent of its total volume of business.

(f) Respondent also, at times, designates as "process embossing," its products hereinabove described. "Embossing," in its common meaning, signifies raising from the surface, and correctly designates the effect of this process. "Embossing" as technically known, however, in the printing arts, is produced by means of dies.

PAR. 3. In the effects produced, respondent's products, to the non-expert observer, closely simulate true engraving. Designating such products as "engraved," "process engraved," or "process engraving," has the capacity and tendency to mislead and deceive purchasers of said products into the erroneous belief that such products are true engraving and are the result of an impression from an engraved plate commonly known to the public as an engraving.

There are exceptions. Where respondent has advertised and sold its product, and like products have been sold by others, some customers and prospective customers know it as "process engraving" and know that it is not a print from engraved steel or copper plates, and are not deceived, and express themselves as satisfied.

PAR. 4. In the effects produced, respondent's products, to the non-expert observer, closely simulate true engraving. Designating such products as "engraved," "process engraved," or "process engraving," has the capacity and tendency to mislead and deceive purchasers of said products, and actually does mislead and deceive purchasers and prospective purchasers into the erroneous belief that such products are true engraving and are the result of an impression from an engraved plate commonly known to the public as engraving.

PAR. 5. Respondent, as a means of selling about sixty per cent of the stationery produced by it, distributes in the several States of the United States, to customers and prospective customers, circulars and other advertising matter in connection with samples of its said products, in which respondent describes its said products as "engraved," "process engraved," "process engraving," or "engraved by our own process." Such products as hereinabove described are so printed and treated as to simulate closely in effects produced, true engraving. Such designation and advertisement of said samples as "engraved," "process engraved," "process engraving," or "engraved by our own process," especially taken in connection with the corporate name of respondent, has the capacity and tendency to mislead and deceive customers and prospective customers into the erroneous belief that such stationery had thereon impressions made from engraved plates and was the product of the engraver's art, as that term is understood by the public.

PAR. 6. Respondent sells in the several States, cards, letterheads, announcements, envelopes and similar stationery products, produced as hereinbefore described under the designation of "engraved," "process engraved," "process engraving," in active competition with producers of cards, letterheads, announcements and similar stationery products which have been made by processes of true engraving, and are, in fact, engraved products, as that term is understood by the public. In such competitive sales, the designation of respondent's said products as "engraved," "process engraved," or "process engraving," aids in selling respondent's products and gives respondent an advantage over competitors selling engraved products properly so designated which respondent could not enjoy if the words "engraved," or "engraving" were not used by respondent in designating its said products.

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PAR. 7. Engraved products made by means of copper or steel plates have distinctly higher production costs than the products of respondent, as above described, which do not involve in their marking the engraving of steel or copper plates. Where the copy or matter to be reproduced is small, the difference in cost may not exceed 20% or 25%, but where a considerable amount of lettering is involved, the engraved matter may be double the cost of the chemically treated printing produced by respondent. Respondent's products, as hereinabove described and designated, do not resist temperature changes or handling so well as matter printed from engraved plates, nor so well as plain, flat printing, but its simulation of true engraving in effects produced, makes it more attractive to customers than plain, flat printing, and it has the advantage of being less expensive than true engraving. It has a legitimate field under a proper designation.

PAR. 8. The volume of business in engraved products in the United States, in the calendar year 1921, is estimated at \$27,000,000. Engraved products are estimated to have cost the United States Government \$11,000,000 in 1922. The production of the National currency, Government bonds, corporate stocks and bonds and other securities, by having impressions made thereon from inked, engraved steel plates, prevents or materially lessens the danger of having such currency and securities counterfeited.

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 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, Process Engraving Company, its officers, directors, representatives, agents and employees, cease and desist—

From using the words “process engraving,” “engraved by our process,” or the word “engraving,” either alone or in combination with any other word or words, in its advertisements and advertising matter distributed or displayed to the public in the several States of the United States, 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, inscriptions 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 (90) 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 respondents in connection with the sale of its products in interstate commerce, subsequent to the date of this order.

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FEDERAL TRADE COMMISSION

v.

JOSEPH GREENBARG, BEN GREENBARG AND EVA
GREENBARG, COPARTNERS, TRADING AS KING OVER-
ALL COMPANY, ATLANTIC OVERALL COMPANY AND
A. GREENBARG SONS.