

Syllabus.

FEDERAL TRADE COMMISSION

v.

UNITED STATES PRODUCTS COMPANY, CHARLES C.
BUTTENFIELD, AND HARRY C. HAGMAIER.

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

Docket 898—February 23, 1924.

SYLLABUS.

Where a company engaged in the manufacture and sale of an abrasive bearing fitting compound which it called "Time Saver" and extensively advertised and which was the result of long experimentation on the part of its manager and was eventually patented; and thereafter an individual, under contract with it as its authorized representative and sales agent, acting in behalf of a business which he organized and incorporated to manufacture and sell a competitive product based upon the formula of said "Time Saver," as disclosed by analysis which he caused to be made, and which product he called "Kwik-Ak-Shun" and caused to be patented under a formula other than that actually employed in the manufacture thereof, as aforesaid,

- (a) Falsely advertised and represented that the name of such company's compound had been changed from that of "Time Saver" to "Kwik-Ak-Shun," and that his product "had been in use in a small way for over a quarter of a century and has operated satisfactorily during this period," misrepresented to a distributor of the product "Time Saver" the discounts allowed by such company and the extent of the advertising for the benefit of his product "Kwik-Ak-Shun," and through his association with another former sales agent of such company and in other ways passed off and attempted to pass off and substitute his product as and for that of such company;
- (b) Falsely advertised to the trade that his product was the only patented bearing compound of its kind on the market and was the original product, and that the other was a duplicate, or an inferior imitation, and constituted an infringement, and that steps were being taken to prosecute therefor;
- (c) Submitted pretended letters which he fabricated, and the signatures to which he forged, and caused to be forged, to the Federal Trade Commission as the basis for a proceeding by said Commission against such company, for unfair competition; and
- (d) Simultaneously and extensively advertised his application to the Commission for relief, in trade papers, together with assertions and charges of the character above set forth, and notified customers of such company of his aforesaid application;

With the result that the sales of such company's compound fell off to a great extent and the difficulty of retaining the remainder of its business was greatly increased:

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

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Mr. Walter B. Wooden and Mr. E. R. Blake for the Commission.

Mr. Charles M. Clarke of Clarke & Doolittle of Pittsburgh, Pa., for respondent United States Products Co. and respondent Charles C. Battenfield.

COMPLAINT.¹

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 United States Products Company, Charles C. Battenfield, and Harry C. Hagmaier, 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. Respondent company is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in the city of Pittsburgh in said State. It is engaged in the manufacture of an abrasive bearing-fitting compound named by it "KWIK-AK-SIUN," and in the sale thereof to owners and operators of garages, automobile repair shops, and machine shops and to other persons throughout the United States. It causes the said product when so sold to be transported from its said place of business in the city of Pittsburgh to said purchasers at points in various States of the United States. In the course and conduct of its said business, respondent company was and is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and sale or sale of similar abrasive compounds in interstate commerce, and with the trade generally. Respondent Battenfield is now the treasurer and holds the controlling interest in respondent company. Respondent Hagmaier is now the president of respondent company. This proceeding is brought against them individually for acts done prior to or in connection with the incorporation of respondent company.

PAR. 2. Amongst the aforesaid competitors of respondent company is the M. T. K. Products Co., which at all times hereinafter mentioned was and still is engaged in the manufacture and sale, in interstate commerce, of a similar abrasive compound in a like manner as respondent company. Said compound is known and sold under the name "TIMESAVER" and was perfected and placed on the market in 1918 and 1919. A patent was applied for on the compound "TIMESAVER" under date of June 30, 1919, and same was allowed by the United States Patent Office on November 6,

¹As amended.

1919. Application for an amended patent on "TIMESAVER" was filed under date of April 29, 1920, and was allowed by the United States Patent Office on January 8, 1921. Late in the year 1919 a contract was entered into between said M. T. K. Products Co. and respondent Charles C. Battenfield, under which the latter agreed to become the sales agent for the compound "TIMESAVER" in the State of Pennsylvania for a period of three years. In the year 1920 new contracts were entered into between said M. T. K. Products Co. and respondent Battenfield under which the States of Michigan, Indiana, Kentucky and Ohio were added to said Battenfield's territory as the sales agent for "TIMESAVER." It was understood and agreed between said parties that respondent Battenfield should conduct his sales of "TIMESAVER" under the name United States Products Company, which was done until some time during the year 1920.

PAR. 3. During the year 1920, while respondent Battenfield's obligations under the aforesaid contracts were uncompleted, and pursuant to threats made by him, said Battenfield began the manufacture and sale, under the name of United States Products Co., of a competing abrasive compound, to which he attached the name "KWIK-AK-SHUN." The name "KWIK-AK-SHUN," both in form and substance, had been suggested in respondent Battenfield's hearing by the sales manager of the M. T. K. Products Co. as a possibly superior substitute for the name "TIMESAVER."

PAR. 4. During the months of June and July 1920 while the contract described in paragraph 2 of this complaint was in full force and effect, respondent Battenfield, for the purpose and with the effect of securing the customers of the M. T. K. Products Co., distributed samples of a compound which he represented to be the compound "KWIK-AK-SHUN," but which in reality was the compound "TIMESAVER," the product and the property of the M. T. K. Products Co. During the same period specified in this paragraph respondents Battenfield and Hagmaier endeavored to substitute and in some instances did substitute the product known as "KWIK-AK-SHUN" on orders placed with said Battenfield for "TIMESAVER," said orders having been placed by virtue, of the sales agency contract between the said M. T. K. Products Co. and respondent Battenfield.

PAR. 5. Prior to placing said competing compound on the market, and while acting as the sales agent for the M. T. K. Products Co., respondent Battenfield associated himself with respondent Hagmaier. Said respondents jointly procured a technical laboratory analysis of the compound "TIMESAVER," Respondent Hagmaier

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thereupon made application for a patent based upon the result of said laboratory analysis, claiming that he personally was the original inventor. Respondent Hagmaier assigned the patent secured thereby to the United States Products Co. The United States Products Co. was subsequently incorporated as alleged in paragraph 1 of this complaint.

PAR. 6. In or about the month of March, 1921, respondent company prepared and circulated among the jobbers handling abrasive bearing compounds, printed circulars containing the false statement that "at present 'KWI-K-SHUN' is the only Bearing Compound of its kind on the market that is patented." Said statement was false, in that a patent had been allowed on the compound known as "TIMESAVER" on November 6, 1919, and an amended patent on January 8, 1921. Said circulars also contained the following false and misleading statements:

That we have substantial evidence that other compounds being offered for sale infringe our patent rights. An analysis made for us by a firm of recognized analytical chemists discloses one compound in particular of those referred to to be a duplicate of "KWI-K-SHUN." Our counselors state that we have a clear case of infringement. Accordingly we are taking steps to prosecute said infringers in the manner as provided by law.

Said statements were false and misleading, in that the said analysis, while it did show that "TIMESAVER" and "KWI-K-SHUN" were practically identical, was procured by the respondents Battenfield and Hagmaier for the purpose of duplicating the compound known as "TIMESAVER," as set out in paragraph 5 of this complaint.

PAR. 7. In or about the month of June, 1921, respondents Battenfield and Hagmaier conceived the idea of applying to the Federal Trade Commission for relief against certain alleged unfair methods of the M. T. K. Products Co. In order to substantiate respondent company's claims of injury resulting from these alleged unfair methods, the respondents Battenfield and Hagmaier, as treasurer and president, respectively, of respondent company, forged, or caused to be forged, the signatures of various customers and prospective customers to letters which falsely set forth that salesmen of the M. T. K. Products Co. had threatened said parties with patent infringement suits, that orders were being cancelled and goods returned to the respondent company because of said threats and that, in the opinion of the parties whose names were forged, "TIMESAVER" was inferior to "KWI-K-SHUN." Said forged documents were filed

with the Federal Trade Commission in support of respondent company's allegations that definite injury had resulted from the threats falsely alleged to have been made by the salesmen of the M. T. K. Products Co.

PAR. 8. Coincident with the filing of the aforesaid forged documents, respondent company issued and circulated generally among the jobbers of abrasive bearing compounds, printed card notices stating that "TIMESAVER" was "an inferior imitation of our product." About the same time respondent company caused to be published and circulated in trade magazines, widely read by jobbers and retailers of bearing compounds, advertisements which reiterated respondent company's claim that "TIMESAVER" was an "inferior imitation" of "KWI-K-AK-SHUN," and which falsely claimed that "KWI-K-AK-SHUN" "is the only bearing fitting compound manufactured under government patents." Said statements were false for the reasons set out in paragraphs 5 and 6 of this complaint.

PAR. 9. The aforesaid printed card notices circulated by the respondent company also contained the statement that "TIMESAVER" was "being put out under the ALLEGED PROTECTION OF PATENTS," that suit for infringement had been instituted in the courts against certain distributors of "TIMESAVER," that it "had commenced proceedings for unfair competition" against M. T. K. Products Co. and one of its distributors, "before the Federal Trade Commission to enjoin the same," and that similar actions would be instituted "wherever our rights are disregarded."

PAR. 10. The aforesaid wide distribution of said notices, circulars and advertisements was calculated and tended to prejudice the trade, including customers and prospective customers of the M. T. K. Products Co. in favor of the respondent company, to intimidate otherwise willing purchasers of "TIMESAVER" from freely purchasing that compound, and to induce the trade, in advance of determination by a competent judicial tribunal, to believe that the merits and equities of the dispute between the aforesaid companies necessarily would be determined in favor of respondent company.

PAR. 11. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said 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.

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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 its complaint upon the respondents herein charging them with unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances by their attorneys and having duly filed their respective answers admitting certain allegations of said complaint and denying others, and hearings having been held before an examiner of the Commission theretofore duly appointed, and counsel for the Commission having offered testimony and documentary evidence in support of the said charges of the complaint and said respondents having offered evidence in their defense, which evidence was recorded, duly certified, and duly transmitted to the Commission, and the Commission having carefully examined and fully considered the testimony and documentary evidence offered and received as heretofore set out, hereby makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the United States Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, having its principal place of business in the city of Pittsburgh in said State; that said respondent company was incorporated September 1, 1920, by the respondent C. C. Battenfield; that for a period of nine or ten months prior to the incorporation of said respondent company said respondent, C. C. Battenfield, had carried on the business as an individual under the name and style of United States Products Company; that when the respondent company was incorporated, said respondent C. C. Battenfield, who owned a large majority of the stock and had control of the organization, made the said respondent, H. C. Hagmaier, president, and made himself treasurer of said respondent company; that said respondent, H. C. Hagmaier, as president of said respondent company, was a mere figurehead; that he had nothing to do with the business management nor with directing the affairs or policies of said respondent company; that the entire management of said respondent company was in the control of said respondent, C. C. Battenfield; that said respondent, H. C. Hagmaier, was president of said respondent company from its incorporation in September of 1920 until May of 1922, at which time he resigned, and since that time has not been connected with

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said respondent company in any capacity; that some time after respondent company was incorporated, said respondent, C. C. Buttenfield, transferred all his stock in said respondent company, except one share, to his wife, but still is and at all times has been the sole manager of the affairs of said respondent company.

PAR. 2. That said respondent company manufactures and sells an abrasive bearing fitting compound which it calls Kwik-Ak-Shun; that said compound is a powder sold in cans and used principally by garages and automobile repair shops; that said respondent company sells said compound generally throughout the United States; that said respondent company employs salesmen located at various States of the United States to sell said compound; that in the sale of the said compound Kwik-Ak-Shun, said respondent company causes same to be transported from the State of Pennsylvania through and into various other States of the United States to purchasers located in said various other States; that in the manufacture and sale of said product and in causing said product when sold to be transported from the State of Pennsylvania, as above stated, said respondent company was in active and direct competition with persons, firms, and corporations similarly engaged.

PAR. 3. That the M. T. K. Products Company is a common law trust organized under and by virtue of the laws of the State of Washington, having its principal place of business in the city of Seattle in said State; that said company was organized August 15, 1919; that one of the trustees and the manager of said M. T. K. Products Company is one Joseph A. Menard; that said company is engaged in the manufacture and sale of an abrasive bearing fitting compound which it calls Time Saver; that said compound Time Saver is put up in cans and is sold generally throughout the United States; that during the years 1919, 1920, and subsequently the M. T. K. Products Company spent large sums of money in advertising Time Saver and introducing it to the trade; that in the sale of said product Time Saver, said M. T. K. Products Company causes the same to be transported from the State of Washington through and into various other States of the United States to purchasers so located in said various other States; that in the sale and in causing said product to be transported as aforesaid, the said M. T. K. Products Company is in active and direct competition with other persons, firms, and corporations and with the respondent, United States Products Company.

PAR. 4. That for some fifteen years prior to April 1919, said J. A. Menard had been experimenting with an abrasive compound and had so perfected said compound, that in said month of April, 1919, he be-

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gan to place it generally upon the market and to sell it in various States of the United States; that said compound has merit, in that it enables a person to fit a bearing quicker and better than could be done by the old method known as "scraping in the bearing"; that prior to placing said compound upon the market, said Menard had adopted for it the name "Time Saver"; that on June 30, 1919, said Menard applied to the United States Patent Office for letters patent on said abrasive compound; that on November 6, 1919, the said application for patent was allowed and said Menard notified to send in the final payment within six months from that date; that said Menard did not make the final payment within the time fixed; that on May 11, 1920, said Menard petitioned the Commissioner of Patents for a renewal of his forfeited application. This original application and the petition for renewal have not resulted in a patent being granted; that on April 29, 1920, said Menard filed an application for a patent on his abrasive compound which was allowed and on June 14, 1921, patent No. 1381728 was granted to the said Joseph A. Menard by the United States Patent Office.

PAR. 5. That on January 1, 1920, the respondent, C. C. Battenfield, entered into a contract with the said M. T. K. Products Company, whereby he became state agent in the sale of said product Time Saver in the State of Pennsylvania; that on February 1, 1920, by contract dated that date, said respondent Battenfield's territory was extended and he was granted the exclusive right by said M. T. K. Products Company to sell said product Time Saver in the States of Virginia, West Virginia, Maryland, Delaware, New Jersey, and the District of Columbia; that on April 16, 1920, another contract was entered into between said M. T. K. Products Company and said respondent C. C. Battenfield, whereby said respondent C. C. Battenfield acquired additional territory consisting of the States of Michigan, Indiana, Virginia, and Kentucky; that the above mentioned contracts were to run for a period of three years; that at the time above contracts were entered into, said respondent, C. C. Battenfield was operating under the name of United States Products Company; that while acting as sales agent for Time Saver respondent Battenfield became strongly impressed with the belief that there were unusual money-making possibilities in its manufacture and sale and that he made various offers to buy out the Time Saver business, including one offer to organize a company which would pay \$1,000,000 and other considerations to the M. T. K. Products Company.

PAR. 6. That about the 25th of May, 1920, said respondent, C. C. Battenfield instructed said respondent, Harry C. Hagmaier, to have a chemical analysis made of the product Time Saver; that said re-

spondent, Harry C. Hagmaier, removed the label from a can of Time Saver and took said can of Time Saver to the Pittsburgh Testing Laboratory and requested said laboratory to make an analysis of the contents of the said can; that said laboratory made the analysis as requested and on June 7, 1920, made a report showing the ingredients of the product Time Saver and the proportionate amount of each; that after said report of the analysis had been received said respondent C. C. Battenfield directed said respondent H. C. Hagmaier to try to make a compound, using the reports of the analysis of Time Saver as a formula; that the said respondent, H. C. Hagmaier, was not sufficiently versed in chemistry to make up a compound; that the said respondent H. C. Hagmaier procured the aid of one Dr. William Sieber and one Theodore Klein; that the said respondent H. C. Hagmaier and Dr. Sieber and Theodore Klein mixed a compound using a formula made by Dr. Sieber, which was based upon an analysis of the product Time Saver made by said Pittsburgh Testing Laboratory and an analysis made by himself, in which formula the average between the two analyses above mentioned was taken; that the said respondent Hagmaier and the said Klein carried on experiments and compared the compound they had mixed with the product Time Saver; that during the time said compound was being mixed and tested, said respondent C. C. Battenfield was kept informed as to the progress being made; that said respondent C. C. Battenfield was present on a number of occasions when a test of the compound, made under the Sieber formula, was made; that after said respondent C. C. Battenfield ascertained that a compound could be made by following the Sieber formula, he directed the said respondent H. C. Hagmaier to apply for a patent on said compound and took him to an attorney's office for that purpose; that previous to taking said H. C. Hagmaier to the attorney's office, the said respondent, C. C. Battenfield, knew that said Menard had applied for a patent on the bearing fitting compound called Time Saver made by the M. T. K. Products Company and said respondent C. C. Battenfield also knew what ingredients entered into the composition of the said product Time Saver; that the formula presented to the attorney was not similar to the analysis of the product Time Saver in that said product Time Saver contained from 4 per cent to 6 per cent of carbon in the form of lamp black and the formula on which patent was granted, as set out in paragraph 7, calls for 44½ per cent of carbon in the form of graphite; that very shortly after said application for a patent was filed, said respondent, United States Products Company, started the manufacture and sale of the compound which it calls Kwik-Ak-

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Shun; that in manufacturing said compound Kwik-Ak-Shun, said respondents did not follow the formula on which the application for patent was based, but did follow the formula made up by the said Dr. Sieber, which was based on the analysis of Time Saver; that an analysis of the compound Kwik-Ak-Shun made on the 7th of September, 1923 by the United States Bureau of Standards, shows that the said respondents in the making of Kwik-Ak-Shun are not following the formula set out in the said Patent No. 1361719 issued to respondent H. C. Hagmaier and assigned to the said respondent United States Products Company, although respondent Battenfield had testified to the contrary.

PAR. 7. That on June 30, 1920, the said H. C. Hagmaier filed an application with the United States Patent Office for a patent on a bearing fitting compound; that on the date the application referred to was made, said respondent H. C. Hagmaier assigned all interest in the patent that might be granted as a result of said application, to the respondent United States Products Company; that on December 7, 1920, Patent No. 1361719 was granted to H. C. Hagmaier, assignor to United States Products Company, a corporation of Pennsylvania.

PAR. 8. That when respondent Battenfield began to put the product Kwik-Ak-Shun on the market he was still the authorized representative of the said M. T. K. Products Company in the sale of Time Saver; that about February, 1920, one Paul G. Rast was representing said M. T. K. Products Company in the sale of Time Saver in the State of Ohio, operating as the Time Saver Sales Company, with headquarters at Cleveland; that said Paul G. Rast had just succeeded to the business of his deceased brother who had had a contract with the said M. T. K. Products Company to sell Time Saver in the State of Ohio; that some time in May, 1920, said respondent Battenfield wrote to said Rast to ascertain if he was interested in the distribution of products other than Time Saver; that negotiations were started which resulted in said Rast combining his business with that of the respondent United States Products Company; that at this time said United States Products Company had not been incorporated and said Rast turned over to Battenfield his business in the state of Ohio with the understanding said United States Products Company would be incorporated and he receive shares of stock in said corporation as payment for his Ohio business; that upon the consolidation said Battenfield made public announcement implying that the name of the product Time Saver was being changed to Kwik-Ak-Shun; that various efforts were made to substitute Kwik-Ak-Shun on orders received by said Rast and Battenfield for Time

Saver, such orders having been placed by customers in the belief that Battenfield and Rast were still acting as sales agents for the M. T. K. Products Company; that in a number of instances substitutions of Kwik-Ak-Shun were actually made on orders received for Time Saver and efforts were made to overcome the objections of customers to such substitution; that respondent Battenfield made representations to the United States Bureau of Standards that Kwik-Ak-Shun was merely a new name for the product Time Saver.

PAR. 9. That respondent Battenfield advertised to the trade that the compound Kwik-Ak-Shun had "been in use in a small way for over a quarter of a century and has operated satisfactorily during this period" and that respondent Battenfield admitted that this claim had no basis in fact; that in November, 1920, respondent Battenfield wrote letters to a certain distributor of the product Time Saver in which he made knowingly false statements concerning discounts which the M. T. K. Products Company had allowed its distributors, and knowingly false statements concerning the extent of the advertising done on the product Kwik-Ak-Shun.

PAR. 10. That in or about March, 1921, respondent Battenfield in the name of the United States Products Company circulated in the trade printed advertisements containing statements to the effect that Kwik-Ak-Shun was the only patented bearing compound of its kind on the market; that other compounds offered for sale infringed the Kwik-Ak-Shun patent; that an analysis made by a firm of analytical chemists disclosed one compound in particular to be a duplicate of Kwik-Ak-Shun and that steps were being taken to prosecute said infringers; that the one compound in particular referred to in said circular was Time Saver; that the statements in said circular as to Time Saver being a duplicate of Kwik-Ak-Shun were known by said Battenfield to be false in that Time Saver was not an imitation or a duplicate of Kwik-Ak-Shun, but that Kwik-Ak-Shun was an imitation or a duplicate of Time Saver.

PAR. 11. That prior to the 25th day of July, 1921, said respondent C. C. Battenfield requested his attorney to file a complaint against the said M. T. K. Products Company with the Federal Trade Commission charging said M. T. K. Products Company with unfair competition; that the said respondent C. C. Battenfield was informed by said attorney that before complaint could be filed, it was necessary to have some evidence upon which to base a complaint; that any letters received from customers of the said United States Products Company complaining of any unfair practices on the part of the said M. T. K. Products Company would be good exhibits to accompany the complaint; that said respondent C. C. Battenfield had

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no letters of this character; that said respondent C. C. Battenfield directed the said respondent H. C. Hagmaier to visit several garages and automobile sales companies in the city of Pittsburgh and procure blank letter heads from the places visited; that said respondent H. C. Hagmaier visited some seven or eight different places and secured a blank letter head at each place; that said respondent H. C. Hagmaier took the blank letter heads thus collected to the office of the United States Products Company and gave them to respondent C. C. Battenfield; that the said respondent C. C. Battenfield dictated certain letters to the two stenographers employed by the said United States Products Company; that he then handed the blank letter heads collected as hereinbefore set out to said stenographers and directed them to write certain letters so dictated on said blank letter heads; that the said respondent C. C. Battenfield also instructed the said stenographers to vary the appearance of the letters as they wrote them to use single space between the lines on some of the letters and double space on the others; that when said letters were written they were placed by said stenographers on the desk of the said respondent C. C. Battenfield; that said respondent C. C. Battenfield and H. C. Hagmaier and said Paul G. Rast signed said letters by writing at the bottom of the letter the name of the person who was the owner or connected in some official capacity with the firm as shown by the letter head; that the letters were so signed by the said respondents, Battenfield and Hagmaier, and the said Rast in the presence of the two stenographers; that the said respondents, Battenfield and Hagmaier and the said Rast were not authorized to sign the name of the person whose name appears on said letter head; that after the said letters had been signed, as above set out, they were delivered to the attorney and forwarded to the Federal Trade Commission with the petition of said respondent United States Products Company, for a complaint against the said M. T. K. Products Company; that about this time said Paul G. Rast resigned from respondent United States Products Company, informed said J. A. Menard of the circumstances under which said letters had been prepared, and told said Hagmaier that he had so informed Menard; that thereupon said Hagmaier informed said Battenfield of Rast's disclosures to Menard and that thereupon said Battenfield's attorney advised the Federal Trade Commission that said letters were not authentic; that shortly thereafter Mr. Cyr, an examiner for the Federal Trade Commission, called at the said United States Products Company and interviewed both respondent Battenfield and respondent Hagmaier; that he was informed by said respondent that said Rast was the party responsible for the authorship of said letters;

that said respondent Battenfield thereupon dictated, signed, and swore to a statement concerning the authorship of said letters, which statement was false and was known by said Battenfield to be false at the time he signed and swore to it; that the said respondent H. C. Hagmaier also made a statement putting the blame for preparing said letters on said Rast; that said respondent C. C. Battenfield was present when said Hagmaier made said statement and signed and swore to it, that the said respondent H. C. Hagmaier knew the statement was untrue when he signed and swore to it; that the said respondent C. C. Battenfield, who was present, also knew the statement of the said Hagmaier was not true when it was sworn to.

PAR. 12. That in May, 1921, said respondent Battenfield, acting for respondent United States Products Company, prepared to enter into an extensive advertising campaign which ran for several months; that this advertising campaign was in preparation for several months before it was released; that it was released simultaneously with the filing by respondent Battenfield of the petition and fabricated letters with the Federal Trade Commission, that respondent Battenfield caused advertisements to be placed in trade journals such as the Motor World and Motor Age; that he also caused circulars and pamphlets to be printed which were given wide distribution throughout various States of the United States; that in said advertisements and circulars respondent United States Products Company made the statement "that Kwik-Ak-Shun is the only bearing fitting compound manufactured under Government patents" and that "it having come to our attention that an inferior imitation of our product Kwik-Ak-Shun is being put out under the alleged protection of patents we have been compelled to institute suits for infringement in the courts and for unfair competition before the Federal Trade Commission to enjoin the same. Similar action will be instituted wherever our rights are disregarded as we propose to protect ourselves and our customers in every such case"; that simultaneously with the release of said advertising campaign respondent Battenfield mailed or caused to be mailed printed notices to customers of the M. T. K. Products Company; that these notices specifically stated that Time Saver was the "inferior imitation" referred to in said advertising and that respondent Battenfield also circulated among the sales representatives of the United States Products Company for their use in soliciting business, information to the effect that Time Saver was the "inferior imitation" referred to in said advertising.

PAR. 13. That at the time the above described statements and advertisements appeared in trade papers, circulars, and pamphlets respondent Battenfield knew they were false in that patent No.

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1318728 had been granted to J. A. Menard as set out in paragraph 4 hereof; that said respondent C. C. Battenfield also knew that the statement characterizing Time Saver as an inferior imitation of Kwik-Ak-Shun was false in that he knew that the product Kwik-Ak-Shun was being manufactured as the result of an analysis which he had caused to be made of the product Time Saver; that in all the things done by him as set out herein respondent Battenfield was acting in bad faith and with full knowledge of that fact; that the statements made and the acts done by respondents as previously set forth greatly affected the sales of the product Time Saver, caused the volume of such sales by the M. T. K. Products Company to fall off to a great extent, and substantially increased the difficulty with which said M. T. K. Products Company retained the remainder of its business.

CONCLUSION.

That the practices of the respondents, 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 respondents, testimony and evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon briefs submitted by counsel, oral argument having been waived by respondents' counsel, and the Commission having made its findings as to the facts and having reached its conclusion that the respondents have 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 respondent Charles C. Battenfield individually and as an officer of respondent United States Products Company, and respondent United States Products Company, cease and desist from—

(1) Advertising and representing to the trade that the product Kwik-Ak-Shun is the result of any invention on the part of the patentee Hagmaier.

(2) Advertising and representing to the trade that Time Saver was not or is not patented and that it was or is an infringement of

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a patent owned or controlled by respondent United States Products Company or by respondent Battenfield, at the time this proceeding was instituted.

(3) Passing off or attempting to pass off the product Kwik-Ak-Shun as and for Time Saver, the product of the M. T. K. Products Company.

(4) Advertising and representing to the trade that Kwik-Ak-Shun is the original product and that Time Saver is a duplicate thereof.

(5) Advertising and representing to the trade that Time Saver is an inferior imitation of Kwik-Ak-Shun.

(6) Fabricating letters, forging signatures thereto, and submitting same to the Federal Trade Commission as the basis for action by said Commission against a competitor.

(7) Making application to the Federal Trade Commission for relief against a competitor and simultaneously advertising to the trade the filing of such application before the issues involved are determinable by the Federal Trade Commission.

(8) Notifying the customers of a competitor that charges have been filed with the Federal Trade Commission against said competitor, and simultaneously publishing advertisements to the same effect, before the issues involved are determinable by the Federal Trade Commission.

It is further ordered, That the respondents shall file with the Federal Trade Commission, within 60 days from the date of this order, their report in writing stating the manner and form in which this order has been conformed to.

ORDER OF DISMISSAL AS TO RESPONDENT HAGMAIER.

This proceeding having come on for hearing before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, the trial examiner's report upon the facts, and the exceptions thereto, and it appearing to the Commission that the respondent Harry C. Hagmaier as to all the acts alleged was acting under the direction and advice of respondent Charles C. Battenfield, and that prior to the issue of the complaint herein, respondent Hagmaier severed all connection with respondents United States Products Company and Charles C. Battenfield, the Commission being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed as against respondent Harry C. Hagmaier.

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FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

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