

Complaint.

IN THE MATTER OF

W. C. MAHAFFEY, W. S. MAHAFFEY AND K. HENDRICKS,
CO-PARTNERS TRADING AS MAHAFFEY BROTHERS
& HENDRICKS.

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

Docket 1205—September 22, 1924.

SYLLABUS.

Where a firm engaged in printing stationery by a process which involved the application to type printing, while still wet, of a chemical followed by baking, and which resulted in a raised-letter effect resembling in appearance the impression made by the use of engraved plates, commonly known as engraving; in the sale thereof described said stationery as "Process Engraving" and "Engraving" in their advertising pamphlets, and referred to themselves or their business as "Process Engravers" and "Engravers" on letterheads, bill heads and covers of specimen books; with the capacity and tendency thereby to mislead and deceive the public into believing said stationery to be genuine engraved stationery and with the effect of causing a part of the public to purchase the same in that belief:

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

Mr. Robert O. Brownell for the Commission.

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 W. C. Mahaffey, W. S. Mahaffey, and K. Hendricks, copartners trading as Mahaffey Brothers & Hendricks, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, W. C. Mahaffey, W. S. Mahaffey and K. Hendricks, are copartners trading as Mahaffey Brothers & Hendricks, with their principal office and place of business located in the city of Linesville, State of Pennsylvania. Respondents are engaged in the business of printing by a special process stationery for social and business purposes, including invitations, announce-

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ments, calling cards, letterheads, envelopes and similar products, and in selling the same in interstate commerce, causing said stationery so produced when sold to be transported from their principal office and place of business in the State of Pennsylvania to purchasers thereof located in 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 products so manufactured and sold by said respondents between and among the various States of the United States. In the course and conduct of their said business, respondents continuously have been and are now in competition with other individuals, firms, partnerships and corporations likewise engaged in the business of printing and selling stationery for social and business purposes in interstate commerce, and particularly with individuals, firms, partnerships and corporations, engaged in the business of engraving and selling engraved stationery for social and business purposes in commerce between the various States of the United States.

PAR. 2. Respondents, trading as aforesaid, in the course and conduct of their business as described in paragraph 1 hereof, now print and have printed, by their said special process, invitations, announcements, calling cards, letterheads, envelopes and similar social and business stationery products, which they designate, define or describe as "Process Engraved," although such process as used by respondents 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 products manufactured and sold in interstate commerce by respondents are the result of the use of a chemical in powdered form which is applied to 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. That the words "Engraved" or "Engravers," particularly when applied to or used in connection with the process of manufacturing invitations, announcements, calling cards, letterheads, envelopes, and similar social and business stationery products, have been well known and understood by the public for a long period of years to include only such products as result from the impressions made from engraved plates in which have been stamped, cut or carved, letters, sketches, designs or inscriptions from which the reproductions are made; that the process used by respondents 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 purchasers into the erroneous belief that such products were and are the result of impressions made from engraved plates, commonly known to the public as "Engraving."

PAR. 4. That respondents, trading as aforesaid, as a means of inducing the trade and public to purchase their invitations, announcements, calling cards, letterheads, envelopes and similar social and business stationery products, produced by their said special process, caused the words "Process Engravers" to be placed on the letterheads used by them in soliciting the sale of said products in interstate commerce; that the billheads used by said respondents in rendering statements to the purchasers of their products in interstate commerce also contained the words "Process Engravers"; that the covers of the books containing specimens of their products as circulated in interstate commerce throughout the trade and used to secure orders for their said products from the purchasing public, also contained the words "Process Engravers"; that the said respondents, as a further means of inducing the public to purchase its said products, caused circulars to be distributed through the United States mails in interstate commerce through the several States of the United States, in which said circulars said respondents described one of their products manufactured by the said special process as being "Process Engraved" and referred to their business as "Process Engravers," and accompanying said circular said respondents enclosed a sample specimen finished to resemble engraving in appearance and so printed as to simulate engraving in relief; that the use by the respondents of the words "Engraved" or "Engravers," either alone or in conjunction with the word "Process," either to define or describe their products or designate their business, were and are intended by respondents, 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 results of impressions made from engraved plates commonly known to the public as "Engraving" and that the said respondents were in truth and in fact conducting an engraving business.

PAR. 5. There are a considerable number of competitors of respondents who are manufacturing engraved invitations, announcements, calling cards, letterheads, envelopes and similar social and business stationery products, which said products are made from engraved plates in which have been stamped, cut or carved, letters, sketches, designs or inscriptions from which the reproductions are made,

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which are known to the trade and the purchasing and consuming public as engraving, which said products are sold in competition with the products of respondents.

PAR. 6. That the alleged 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 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 (38 Stats. 719), the Federal Trade Commission issued and served a complaint upon W. C. Mahaffey, W. S. Mahaffey, and K. Hendricks, copartners, trading as Mahaffey Brothers and Hendricks, hereafter called respondents, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having filed their answer, an agreed statement of facts was signed by the respondents and by the chief counsel of the Federal Trade Commission. Thereupon, the matter came on for final hearing before the Commission upon the complaint, the answer thereto, and the agreed statement of facts; 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. The respondents, W. C. Mahaffey, W. S. Mahaffey, and K. Hendricks, were copartners, trading under the name and style of Mahaffey Brothers and Hendricks, with their principal office and place of business located in the city of Linesville, State of Pennsylvania. On or about the first day of July, 1924, respondent W. C. Mahaffey left the partnership which since that time has been conducted under the same name and style, and at the same place by respondents W. S. Mahaffey and K. Hendricks.

PAR. 2. The respondents are now and for more than one year last past have been engaged in the business of printing by a special process stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and similar products; and in selling the same in interstate commerce causing said stationery so produced, when sold, to be transported from their principal office and place of business in the State of

Pennsylvania to purchasers thereof located in other States of the United States. In the course and conduct of their said business respondents continuously have been and are now in competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of printing and selling stationery for social and business purposes in interstate commerce, and particularly with individuals, firms, partnerships, and corporations engaged in the business of engraving and selling engraved stationery for social and business purposes in commerce between the various States of the United States.

PAR. 3. The respondents in the regular course and conduct of their business, as described in paragraph 2 hereof, now print and have printed by their said special process invitations, announcements, calling cards, letterheads, envelopes and similar social and business stationery products which they have designated, defined and described as "Process Engraved," although such process as used by respondents is not a process used in engraving, and in no way includes the process of producing an impression on stationery from engraved plates. The products so manufactured and sold in interstate commerce by respondents are produced by applying a chemical in powder form to type printing while the ink is still wet; this chemical adheres to the wet ink and the stationery so treated is passed through a baking process. The heat causes the chemical to fuse with the ink and present a raised letter effect; so that it resembles in appearance the impression made from engraved plates upon the stationery, commonly known as "engraving."

PAR. 4. The word "engraving," particularly when applied to invitations, announcements, calling cards, letterheads, envelopes, and other items of social and business stationery has been well known and understood by the public for a long period of years to designate only such stationery products as result from an impression made from an engraved plate on which has been stamped, cut, or carved, letters, sketches, designs or inscriptions from which the reproduction is made.

PAR. 5. In the regular course and conduct of their business as aforesaid, as a means of inducing the trade and public to purchase their said products respondents have caused the words "Process Engravers" to be placed on the letterheads used by them in soliciting the sale of said products in interstate commerce. Respondents have also used the words "Process Engravers" on billheads, on covers of specimen books, and in other manner upon their business stationery. Respondents have also circulated and caused to be circulated advertising pamphlets in which respondents described their

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products, manufactured by said special process as being "Process Engraved," and refer to their business as "Process Engravers," and further used the words "engraving" or "engravers" either alone or in conjunction with the word "process" to define and describe their products or to designate their business.

PAR. 6. The use by respondents of the word "engraving," or the word "engravers" either alone or as a part of the term "Process Engraving," or the term "Process Engravers" in their advertisements and upon their business stationery as aforesaid, has the tendency and capacity to deceive the public who have come to believe that the word "engraving" as applied to stationery means stationery which has been impressed by the use of an engraved plate, and causes part of the public to purchase respondents' products in the belief that they are purchasing real engraving.

PAR. 7. Respondents have pursued the policy of informing the dealers through whom they distribute the stationery that such stationery is prepared by the process set out in paragraph 3 herein, but such facts are not set out in the advertisements published and circulated by respondents as heretofore described.

PAR. 8. There are a considerable number of competitors of respondents who are manufacturing engraved invitations, announcements, calling cards, etc., which said products are made from engraved plates on which have been stamped, cut or carved, letters, sketches, designs, or inscriptions from which the reproductions are made, which said products are known to the trade and purchasing and consuming public as "engraving," and which said products are sold in competition with the products of respondents.

CONCLUSION.

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 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 complaint of the Commission, the answer of the respondents and an agreed statement of facts, and the Commission having made its findings as to the facts and its conclusion that the

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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 the respondents, W. S. Mahaffey, W. C. Mahaffey and K. Hendricks, copartners, trading as Mahaffey Brothers and Hendricks, and their representatives, agents and employees, cease and desist:

From using the terms "Process Engravers," "Process Engraving" or the words "Engraving," "Engravers," or "Engraved" either alone or in combination with any other word or words in their advertisements, or upon their business stationery to designate or describe stationery sold by them, the lettering, inscription, or designs on which is or are not impressions from engraved plates or dies.

It is further ordered, That the respondents shall file with the Federal Trade Commission within thirty days from the date of this order their 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 their product in interstate commerce subsequent to the date of this order.

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IN THE MATTER OF

M. G. BERG AND S. S. SANSON, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE HERCULES HOSIERY MILLS.

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

Docket 1107—October 29, 1924.

SYLLABUS.

Where a firm engaged in the sale at retail of hosiery, purchased at cost from a manufacturing concern in which one of the partners owned an interest, and resold at prevailing retail prices, and in many instances at higher prices, and neither owning an interest in, controlling, nor operating any hosiery mill or factory;

- (a) Used the trade name "Hercules Hosiery Mills" upon the identification cards of its salesmen and in its price lists, booklets, letterheads, and other trade literature; and
- (b) Represented in its advertising and trade literature that it was selling its hosiery "direct from the mill to the customer" with a single profit, thus eliminating the middleman, by the use of such statements as, "manufacturers and distributors of men's, women's and children's hosiery", "our products are sold direct * * *". In this way we eliminate the profits of jobbers and retailers, * * *", etc., and by the display, with appropriate comment, of pictures of the factory of the concern from which it purchased, as its own, with a fictitious sign extending the length of the building, reading "Hercules Hosiery Mills", included in said pictures;

With the intent and effect of misleading and deceiving purchasers and prospective purchasers into believing that in buying from it they would save the profits of the middleman and obtain high quality hosiery at a price lower than that charged at retail stores; and

- (c) Represented certain hosiery offered and sold by it as "fashioned" hosiery, the fact being that said hosiery was the kind known in the trade and to the purchasing public as seamless hosiery which, unlike fashioned hosiery, does not retain its shape under all circumstances; with the intent and effect of misleading and deceiving purchasers and prospective purchasers:

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

Mr. G. Ed. Rowland for the Commission.

Mr. Rudolph M. Hirschwald of Philadelphia, Pa., for respondents.

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 M. G.