

FEDERAL TRADE COMMISSION DECISIONS.

FINDINGS AND ORDERS MARCH 23, 1925, TO NOVEMBER 27, 1925.

IN THE MATTER OF FILMS DISTRIBUTORS LEAGUE, INC., ET AL.

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

Docket 913—March 23, 1925.

SYLLABUS.

Where a motion picture actor popularly and extensively known as a screen artist, publicly announced the forthcoming production by him of "The Three Musketeers," and a distributing agency for many noted actors and producers instituted a publicity campaign through trade journals and papers, and available public prints, and conducted the same continuously from the time of the beginning of the production until its completion at a very heavy expense, and release, and the forthcoming picture acquired extraordinary publicity; and following said public announcement a film distributing corporation, and certain individual distributors, responsible for its organization and management, with knowledge of such announcement and publicity, and with intent to profit thereby without bearing any of the burden or expense sustained by the producers,

- (a) Negotiated, planned, and arranged with a former producing corporation for the reissuance as "Three Musketeers" of a picture produced at a far smaller expense a few years theretofore, and exhibited under the title "D'Artagnan";
- (b) Secured and retitled said old picture "The Three Musketeers," in pursuance of the aforesaid plan;
- (c) Prosecuted a publicity campaign for the exhibition of said old and retitled picture, under its new name, through advertisements in trade papers, circulation of advertising matter, and telegrams, in direct competition with that of the forthcoming new production;
- (d) Prepared for distribution among motion picture exhibitors of said reissued and retitled picture, large posters advertising the same, with no adequate notice, if any, as to the facts in reference to its being a reissue under a new name, and supplied distributors and exhibitors of such picture with other advertising matter giving no notice concerning any former exploitation, but using the words "adaptation of" or "re-creation of D'Artagnan";
- (e) Sent telegrams to the trade following the initial exhibition of the genuine "Three Musketeers" at a New York theatre, stating, "The Three Musketeers opened at the Lyric Theatre Sunday night. Acclaimed the greatest picture success of the season. We have The Three Musketeers formerly titled D'Artagnan * * *. You now have a chance for tremendous cleanup. Book now to insure dates best suited for your theatres";
- (f) Sold the right to exhibit said old and retitled pictures in the territory served by such individuals, almost immediately following the aforesaid initial exhibition and furnished the aforesaid posters and other adver-

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tising matter for use in connection with the exhibition of such picture, to vendee exhibitors;

- (g) Sold and distributed in connection with the sale and distribution of said retitled reissue, other pictures in which such screen artist had actually played the dominant rôles, with the intent of furthering the deception of the public and with the effect of thereby enabling exhibitors so to feature his name at their theatres at the time they were producing such reissue as to induce the belief that said screen artist also appeared in the latter production;

With the capacity and tendency to mislead and deceive the public and to cause the motion picture theatre going portion thereof to attend the exhibition of said reissued and retitled picture as and for the genuine "The Three Musketeers," starring and produced by, the aforesaid screen artist, and with the effect of furnishing motion picture exhibitors with opportunity and incentive for such deception and assisting them therein: *Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Mr. Albert S. Goldberg of New York City 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 the Film Distributors League, Inc., Eastern Feature Film Company, Favorite Players Film Corporation, Lande Film Distributing Corporation (of Ohio), Lande Film Distributing Corporation (of Delaware), Supreme Photo Play Corporation, Favorite Film Company, Friedman Film Corporation, Alexander Film Corporation, Supreme Film Company, Quality Film Corporation, Leo G. Garner, doing business under the trade name and style Reliance Film Exchange, M. Brown, doing business under the trade name and style Capital Film Exchange, William Alexander, Maurice Fleckles, and Herman Rifkin, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eastern Feature Film Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in the city of Boston in said State. Respondent, Favorite Players Film Corporation, is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Chicago in said State. Respondent, Lande Film Distributing Corporation (of Ohio) is a corporation organized under the laws of the State of Ohio with

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its principal office and place of business in the city of Cincinnati in said State. Respondent, Lande Film Distributing Company (of Delaware) is a corporation organized under the laws of the State of Delaware with its principal office and place of business in the city of Cleveland in the State of Ohio. Respondent, Supreme Photo Play Corporation, is a corporation organized under the laws of the State of California with its principal office and place of business in the city of Los Angeles in said State. Respondent, Favorite Film Company, is a corporation organized under the laws of the State of Michigan with its principal office and place of business in the city of Detroit in said State. Respondent, Friedman Film Corporation, is a corporation organized under the laws of the State of Minnesota with its principal office and place of business in the city of Minneapolis in said State. Respondent, Alexander Film Corporation, is a corporation organized under the laws of the State of New York with its principal office and place of business in the city of New York in said State. Respondent, Supreme Film Company, is a corporation organized under the laws of the State of California with its principal office and place of business in the city of Los Angeles in said State. Respondent, Quality Film Corporation, is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Pittsburgh in said State. Respondent, Leo G. Garner, is an individual doing business under the trade name and style Reliance Film Exchange with his principal office and place of business in the city of Washington, District of Columbia. Respondent, M. Brown, is an individual doing business under the trade name and style Capital Film Exchange with his principal office and place of business in the city of Philadelphia, State of Pennsylvania. Respondent, William Alexander is an individual who resides and has his principal office and place of business, in the city of New York, in the State of New York. Respondent, Maurice Fleckles, is an individual who resides and has his principal office and place of business, in the city of Chicago, in the State of Illinois. Respondent, Herman Rifkin, is an individual who resides and has his principal office and place of business, in the city of Boston, in the State of Massachusetts.

Each foregoing respondent for more than two years last past has been and still is engaged in the business of supplying to the owners and operators of moving-picture theatres, the positive films of photoplays and moving pictures for exhibition in their respective theatres. Said positive films are hereinafter called films. Said respondents are hereinafter called distributors and said owners and

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operators of moving-picture theatres are hereinafter called exhibitors.

Respondent distributors procure the films supplied by them to exhibitors as above set out, from individuals, partnerships and corporations engaged in the business of producing theatrical entertainments and photoplays, recorded upon photographic negative films and of thereafter making or granting to others the right to make, films adapted for use in motion-picture projecting machines and of leasing and granting to distributors and/or exhibitors the right to exhibit said theatrical productions and photoplays to the public. Said persons engaged in the business of producing photoplays as above set out are hereinafter called producers.

In the regular course of the business of respondent distributors, the producers supplying them ship negative and positive films from the States wherein the same are produced or held in storage, into and through other States of the United States to respondent distributors at their several places of business hereinbefore set out. After respondent distributors have received said films or have caused films to be made from the negatives so shipped to and received by them, they cause the positive films of said photoplays to be shipped from their respective places of business into and through other States of the United States and the District of Columbia to aforesaid exhibitors at the points where are located their several theatres. In the course and conduct of their said business respondent distributors continuously have been and now are in competition with other individuals, partnerships and corporations similarly in business as distributors and with the trade generally.

Respondent, Films Distributors League, Inc., hereinafter called the league, is a corporation organized under the laws of the State of New York with its principal office and place of business in the city of New York in said State. Immediately after its incorporation and ever since it has been engaged in the business of securing from producers exhibition rights for that portion of the United States served by respondent distributors in the aggregate, and of thereafter supplying respondent distributors with the films of the photoplays and moving pictures so secured. The nature of the league's business and its relation to respondent distributors is hereinafter more fully set out.

PAR. 2. Prior to the incorporation of the Film Distributors League, Inc., in about November, 1920, as hereinafter set out, respondent distributors had severally entered into contract with the Triangle Film Corporation, a producer, under the terms of which in each instance the distributor was granted the exclusive right to

exhibit, or to supply to exhibitors, the photoplays of said producer in an exactly defined territory. In some instances the territory covered by the contract lay wholly within one State of the United States and in other instances embraced territory lying within several such States, the territory thus served covering in the aggregate a large portion of the United States. In each instance the distributor dealt separately with said producer in and about the carrying out of said contract and independently of any other said distributor.

Prior to the year 1920 the Triangle Film Corporation had ceased to produce new photo plays and during said year the photo plays secured from said producer by respondent distributors, and by them supplied to exhibitors in their respective territories, were old photo plays which had theretofore been exhibited to the public and which upon being again so exhibited were and are known to the trade as reissues. Under the terms of their several contracts respondent distributors, in the year 1920, supplied to the exhibitors in their respective territories, aforesaid reissues of the productions of the Triangle Film Corporation. The reissues thus supplied were chosen severally by each respondent exhibitor from among the supplies of films held in storage by said producer or by causing films to be made from negatives of said prior productions similarly in storage. In about the month of November, 1920, respondent distributors, for the purpose of unifying and putting into a single management and control the selection of such films for reissue, the procuring of films from such aforesaid negatives as might be so chosen, the procurement of billing, posters and other advertising matter for use in connection with the exhibition of said reissues, the arranging in advance of schedules and dates for the shipment and routing of such reissues to and among respondent distributors, and other duties and functions in and about the supply of aforesaid reissues to respondent distributors, caused to be incorporated respondent Film Distributors League, Inc., the incorporators thereof being officers of or parties interested in the several respondent distributors, and the officers of the league, after its incorporation, being chosen from among the officers of or parties interested in respondent distributors. Each respondent distributor became and still is a stockholder in the league and the business and operations of the league were and are financed by voluntary contributions from respondent distributors either in the form of the purchase of stock in the league or otherwise. At no time since its incorporation has the league been engaged in business for profit to itself but has at all times acted as the instrument and agent of said distributors at their dictation and under their control in and about the selection of aforesaid reissues for

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exploitation by the distributors from time to time; the procuring of poster, billing and other advertising matter to be used in connection with the exhibition of said reissues; the arranging in advance of schedules for the distribution and routing of said reissues to said distributors, and other matters relating to the continuous and current supplies of said reissues to said distributors for redistribution by them to their exhibitors.

PAR. 3. In about the month of April, 1921, the Douglas Fairbanks Picture Corporation, a producer, commenced the production of a photo play entitled *The Three Musketeers*, based upon the romance of that name written by Alexander Dumas pere. The leading rôle, commonly called the star rôle, in said photo play was enacted by Douglas Fairbanks, an actor of preeminent popularity with the theatre-going public throughout the United States and in foreign countries, and other rôles in said production were enacted by other well-known and popular actors, and said production was in all respects of an extraordinarily high quality and character. The cost of producing said photo play was approximately \$700,000. The exhibition of said photo play to the public began on or about August 28, 1921. During the course of production of said photo play, the Douglas Fairbanks Picture Corporation and others financially interested caused said production to be advertised in advance of its exhibition by means of advertisements, editorials and other articles and comments published from time to time in trade magazines and other magazines and newspapers of general circulation throughout the United States, and by reason of said advertising and the great popularity of said Douglas Fairbanks amongst the theatre-going public, a large and valuable demand for the exhibition of said photo play was created amongst the public in advance of the exhibition of said play.

Respondent league and respondent distributors acting through the league, well knowing all the facts in this paragraph above set out and with the intention and purpose, by means of misleading and deceiving the public as hereinafter set out, of trading upon the popularity of said Douglas Fairbanks amongst the theatre-going public and upon the demand for the said photo play "*The Three Musketeers*" created by advance advertising as hereinbefore set out, chose from among the aforesaid Triangle reissues a photo play produced for the Triangle Film Corporation in about the year 1915 at a cost of about \$15,000, which photo play was entitled "*D'Artagnan*" and which purported to be based upon said romance entitled "*The Three Musketeers*," by Alexander Dumas pere. The league changed the name of said reissue from "*D'Artagnan*" to "*The Three Mus-*

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keteers" and as thus altered caused films to be made thereof and supplied said films to respondent distributors together with bills, posters and other advertising matter in which said altered reissue was advertised as "The Three Musketeers." In some instances said advertising matter bore no statement or notice whatsoever that said play was a reissue and renamed as above set out, and in other instances said advertising matter contained a notice or statement in equivocal language such as "Formerly titled D'Artagnan" and "Adaptation of D'Artagnan," or the still more equivocal and misleading words "Recreation of D'Artagnan." Said statements and notices when inserted in said advertising matter, appeared in small and inconspicuous type in such a manner as to escape the notice of the casual reader, whereas the title "The Three Musketeers" appeared in all said advertising in large, bold and conspicuous type. The league supplied each respondent distributor with said altered and renamed films and said advertising matter, to be distributed by respondent distributors to the exhibitors in their respective territories and upon the appearance of the photo play "The Three Musketeers" produced by the Douglas Fairbanks Picture Corporation and the beginning of the exhibition thereof to the public, respondent distributors supplied the aforesaid renamed and altered reissue to the exhibitors in their respective territories, and in connection therewith suggested to, advised and counseled said exhibitors that they locally advertise said reissue in such a manner as to mislead and deceive the theatre-going public into the belief that said reissue so exhibited was identical with aforesaid photo play produced by the Douglas Fairbanks Picture Corporation. Pursuant to said suggestion, counsel and advice, many exhibitors throughout the aggregate territory served by respondent distributors did advertise said reissue by means of aforesaid advertising matter supplied to them by respondent distributors and by means of other posters, banners and advertising matter and through advertisements which they caused to be inserted in newspapers and other publications of local circulation in the communities where their respective theatres were located, and as thus advertised, exhibited said reissue to the theatre-going public. None of said advertising so done by said exhibitors contained any statement or notice disclosing the fact that the play thus exhibited was a reissue formerly exhibited to the public under a different title, but on the contrary all said advertising was worded and designed in a manner calculated to mislead and deceive the theatre-going public into the belief that said reissue was a new play and was aforesaid production of the Douglas Fairbanks Picture Corporation. Respondent distributors, with the intention

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of furthering the deceptive effect of said advertising by said exhibitors, supplied to said exhibitors in some instances one or more additional photo plays in which said Douglas Fairbanks enacted the leading rôle, said last-named plays to be shown by said exhibitors in the same performance or program with aforesaid reissue. In such instances the aforesaid local advertising put out by said exhibitors featured and set forth the name of Douglas Fairbanks in such a manner as to naturally and plainly bear the meaning that said Douglas Fairbanks enacted the leading rôle in said reissue.

PAR. 4. The above alleged acts and things done by respondents and by each of them, and the above alleged acts and things done pursuant to and in connection therewith by aforesaid exhibitors, had the capacity and tendency of misleading and deceiving the public throughout a large portion of the United States into the belief that the said reissue exhibited as above set out was the photo play entitled "The Three Musketeers" produced by the Douglas Fairbanks Picture Corporation as above set out, and to induce the public to patronize the exhibition of said reissue in that belief.

PAR. 5. The above alleged acts and things done by respondents and by each of them were and are all to the prejudice of the public and 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 and served a complaint upon the respondents, Films Distributors League, Inc., Eastern Feature Film Company, Favorite Players Film Corporation, Lande Film Distributing Corporation (of Ohio), Lande Film Distributing Corporation (of Delaware), Supreme Photo Play Corporation, Favorite Film Company, Friedman Film Corporation, Alexander Film Corporation, Supreme Film Company, Quality Film Corporation, Leo G. Garner, doing business under the trade name and style of Reliance Film Exchange, M. Brown, doing business under the trade name and style Capital Film Exchange, William Alexander, Maurice Fleckles and Herman Rifkin, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Answers having been filed by respondents, Eastern Feature Film Company, Lande Film Distributing Corporation (of Ohio), Lande

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Film Distributing Corporation (of Delaware), Favorite Film Company, Alexander Film Corporation, Quality Film Corporation, and William Alexander, by their attorney, and the other respondents having failed to answer within the prescribed period or at all, hearings were had and evidence introduced in support of the complaint and on behalf of the respondents, before an examiner theretofore duly appointed for such purpose, at which hearings said respondent William Alexander appeared in person and by his said counsel, who also appeared in behalf of all answering respondents.

And thereupon, this cause came on for final hearing upon the complaint, and answers aforesaid, and brief on behalf of the Commission, and was argued on behalf of the Commission and the said answering respondents by their respective attorneys, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents have been engaged as distributors in the business of supplying to the owners or operators of moving picture theatres, hereinafter called exhibitors, the positive films of photo plays and moving pictures for exhibition in their respective theatres. They have procured the films so supplied by them from individuals, partnerships and corporations, engaged in the business of producing theatrical entertainments and photo plays recorded upon photographic negative films and of thereafter making or granting to others the right to make, films adapted for use in motion picture projecting machines and of leasing and granting to distributors or exhibitors the right to exhibit said theatrical productions and photo plays to the public. The said persons, so engaged in the business of producing photo plays, are hereinafter called producers. In the regular course of the business of respondent distributors the producer supplying them shipped negative and positive films from the States wherein the same are produced, or held in storage, into and through other States of the United States to respondent distributors. After respondent distributors have received said films or have caused films to be made from the negatives so shipped to and received by them, they cause the positive films of said photo plays to be shipped from their respective places of business into and through other States of the United States, and the District of Columbia, to exhibitors at the points where are located their several theatres. In the course and conduct of their said business respondents continuously have been in competition with other individuals,

partnerships and corporations, similarly engaged in business as distributors and with the trade generally.

PAR. 2. Prior to the incorporation of the respondent Films Distributors League, Inc., hereinafter set forth, the respondent distributors had severally entered into contracts under and by virtue of which they received either directly or indirectly from the Triangle Film Corporation, a producer, the exclusive right to exhibit or to supply to exhibitors photo plays of said Triangle Film Corporation in their respective territories. Some time prior to the year 1920 this producer, the Triangle Film Corporation, had ceased to produce new photo plays, and during said year the photo plays secured from it by respondent distributors and by them supplied to exhibitors in their respective territories were old photo plays which had theretofore been exhibited to the public and which, upon being again so exhibited were and are known to the trade as reissues.

The individual respondents, Herman Rifkin, operating through the respondent Eastern Feature Film Company, Boston, Mass., which he controlled, managed and directed, Morris Brown, doing business under the trade name and style of Capital Film Exchange, Philadelphia, Pa., and William Alexander, operating through Alexander Film Corporation of New York City, N. Y., of which he was president and general manager, were each engaged in the distribution of such motion picture films from their several places of business in the States aforesaid, and through various other States adjacent thereto.

On the 11th day of November, 1920, one H. A. Lande, who controlled, managed, directed and operated the respondent Lande Film Distributing Corporation of Ohio, and the Lande Film Distributing Corporation of Delaware, and respondents Herman Rifkin, who controlled and directed said Eastern Feature Film Company, and Maurice Fleckles, entered into an agreement with the Triangle Film Corporation under and by virtue of which they became entitled, under certain terms and conditions, to receive from time to time from the Triangle Film Corporation, such of its reissued pictures as might be selected for distribution by them through their several exchanges, or otherwise. It was also understood that the respondents who entered into this agreement with the Triangle Film Corporation would cause to be formed a distributing company to which they would assign their rights under the said contract with the Triangle Film Corporation. Thereafter, during November, 1920, in pursuance of said arrangement said respondents Herman Rifkin and Maurice Fleckles, together with said H. A. Lande, caused to be incorporated in the State of New York, the respondent

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Films Distributors League. Maurice Fleckles became its president, said respondent Morris Brown, its vice president, and H. A. Lande, the treasurer. During the month of May, 1921, respondent Maurice Fleckles resigned as president of respondent Films Distributors League and was succeeded by respondent William Alexander, who then and there became and during its subsequent operation was, the active and directing manager of the respondent Films Distributors League.

PAR. 3. In 1919 Douglas Fairbanks, a motion picture actor popularly and extensively known as a screen artist, determined to produce "The Three Musketeers," and communicated his intention to a representative of the United Artists Corporation, which was and is the distributing agency for the pictures of many noted actors and producers. On the first of February, 1921, actual public announcement of this production was made. Active preparations for it started on February 28, 1921. The first enactment of its various scenes was commenced, or in the parlance of the business the first "shooting" occurred, April 15, 1921, and the picture was completed July 28 and exhibited to the public in the City of New York in August, 1921.

On February 13, 1921, the "Morning Telegraph," and on February 19, 1921, the "Exhibitors Trade Review," the "Motion Picture News" and the "Motion Picture World," and on February 26, 1921, the "Exhibitors," each of them trade publications in general circulation in the motion picture business, contained editorial references to the forthcoming production of "The Three Musketeers" by Douglas Fairbanks. Immediately after the initial announcement of the production of this picture by Fairbanks, to wit: February 1, 1921, the United Artists Corporation instituted a publicity campaign through trade channels, trade papers, and available public prints, magazines and newspapers, which campaign was conducted continuously from the time the production began, as aforesaid, until release of the picture in August, 1921. As a result of this widespread advertisement of the picture it acquired extraordinary publicity.

These individual respondents hereinbefore named were in the habit of reading and consulting the aforesaid trade magazines, and in consequence thereof were familiar with the announcements and stories published therein concerning the picture to be produced by Fairbanks.

During the early part of 1921, Respondents Maurice Fleckles, then president of the respondent Films Distributors League, and William Alexander, subsequently his successor as said president of respondent league, acting under and by virtue of the agreement made with the Triangle Film Corporation, mentioned in paragraph 2 hereof

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in regard to the right to distribute and exhibit its reissues, entered into negotiations, with its representative for the purpose of procuring for reissuance by respondent Films Distributors League a picture produced some years theretofore by the said Triangle Film Corporation at a cost of eighteen thousand dollars. This picture had been generally exhibited throughout the United States under the name and title of "D'Artagnan." They expressed to said representative of the Triangle Film Corporation their desire to distribute among the membership of the respondent Films Distributors League for exhibition to the public, a reissue of this picture, "D'Artagnan," under the name and style of "Three Musketeers." They were informed by such representative of the Triangle Film Corporation that the Federal Trade Commission had theretofore issued an order in connection with the exhibition of old or retitled pictures which they were advised to examine. These respondents, however, desired to have this old picture reissued under the name "Three Musketeers," and discussed with the Triangle Film Corporation the steps necessary for such purpose. These negotiations and the arrangements which succeeded them, consisting of preparation of the false and misleading bills, posters, and other advertising matter hereinafter described and the organization of facilities for prompt distribution thereof and of the proposed reissued picture occurred after the public announcements aforesaid, of the early appearance of "The Three Musketeers" by Douglas Fairbanks. As a result of these negotiations the old picture "D'Artagnan" was secured from the Triangle Film Corporation by the respondent Films Distributors League, through respondent William Alexander, who had become its president, and was retitled "The Three Musketeers" in pursuance of the said plan of the said individual respondents, at the particular time when the attention of the public was daily confronted with descriptions in the press and elsewhere of the picture of "The Three Musketeers" in which the rôle of D'Artagnan was to be performed by Douglas Fairbanks.

The motive which prompted the parties in bringing about reissue of "D'Artagnan" under the title of "Three Musketeers" was to profit by the extraordinary publicity campaign of the United Artists Corporation for "The Three Musketeers" without any of the anxiety, burden, or expense the producers of the genuine "Three Musketeers" had been compelled to sustain. The monetary expense alone, of that production, approximated three-quarters of a million dollars.

Thereafter, respondent Alexander, as president of the Films Distributors League and also of the respondent Alexander Film Cor-

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poration, in conjunction with respondent Morris Brown, vice president of the Films Distributors League, who controlled and directed the Capital Film Exchange of Philadelphia, and Herman Rifkin, who controlled, managed and conducted The Eastern Feature Film Company of New England, and was one of the original incorporators of the respondent Films Distributors League, prosecuted a publicity campaign for the exhibition of the old and reissued picture, "D'Artagnan," under its new name, "Three Musketeers," in direct competition with the picture "Three Musketeers" by Douglas Fairbanks. Such campaign was conducted by means of advertisements in trade papers and circulation of advertising matter, and by means of telegrams to exhibitors calling attention as hereinafter described to the success of the Fairbanks "Three Musketeers," as yielding a great opportunity for exhibition of the retitled picture.

The Fairbanks picture, "The Three Musketeers," was first exhibited to the public at the Lyric Theatre in New York City, in August, 1921, and respondent Herman Rifkin, through his Eastern Feature Film Company and respondent Morris Brown, through the Capital Film Exchange, and respondent William Alexander, through the Alexander Film Corporation in conjunction with each other as aforesaid, sold the right to exhibit the old, reissued picture in the territory served by said respondents, respectively, almost immediately after the exhibition of the Fairbanks picture at the Lyric Theatre in New York City, as aforesaid. The film therefor, and the bills, posters and lobby cards hereinafter described to be used in advertisement of the pictures, were shipped from the City of New York to them and other respondent distributors in the various States and Territories of the United States by respondent Film Distributors League. Respondents Film Distributors League, Herman Rifkin, Morris Brown and William Alexander distributed such advertising matter among the motion-picture exhibitors to whom they sold the right to exhibit the picture, and it was used by said exhibitors and the picture generally exhibited in the various States in which said respondents operated as aforesaid.

PAR. 4. Said individual respondents, acting in conjunction with each other, and employing as their chief medium of distribution the Films Distributors League which was under the direct management of respondent William Alexander, also operating by and through the particular distributing exchanges controlled by them, adopted and practiced among other means the following method of procuring the exhibition and patronage of the reissued picture D'Artagnan in various States of the United States in competition with the new Fairbanks picture "Three Musketeers."

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On August 28, 1921, there was sent out to the trade by the Alexander Film Corporation, of which respondent William Alexander was the general manager, in addition to being the president and manager of the Films Distributors League, the following telegram:

Douglas Fairbanks in *The Three Musketeers* opened at the Lyric Theatre Sunday night, Acclaimed the greatest picture success of the season, Stop. We have *The Three Musketeers* formerly titled *D'Artagnan* personally directed by Thomas H. Ince featuring Orrin Johnson, Dorothy Dalton, Louise Glaum, Rhea Mitchell, Walt Whitman, and supporting cast of over twenty-five hundred. Positively the best directed and greatest presentation of Alexander Dumas' masterpiece ever attempted Stop. You now have a chance for tremendous cleanup. Book now to insure dates best suited for your theatres.

The respondent Films Distributors League, with William Alexander as president and Morris Brown as vice president thereupon caused to be prepared and shipped to the respondent Eastern Feature Film Company of New England, the Capital Film Exchange of Philadelphia, and the respondent Alexander Film Corporation, New York City, for distribution among motion picture exhibitors in the territory served by such exchanges, large bills or posters for the advertisement of the old and reissued picture, "*D'Artagnan*." Some of the advertising matter referred to the Triangle picture as "*Formerly titled D'Artagnan*," but for the most part it was described in the advertising literature as an "*adaptation of D'Artagnan*," or "*The re-creation of D'Artagnan*." In the only instances where the words "*Formerly titled D'Artagnan*" appeared they were printed on posters and cards in type one-twelfth as large as the words "*Three Musketeers*," so that ordinarily they would be unlikely to attract notice or attention. In such posters and cards the larger type possesses the greater attraction value, and small type as a rule is used to place on a poster or advertisement only that which must appear thereon but which the advertiser does not care whether or not it is read by the public. In other words, such type is usually employed to "*bury*" the information it purports to convey.

The other advertising matter supplied distributors and exhibitors by respondent Films Distributors League, under the management and direction aforesaid, and in pursuance of the scheme evolved by said individual respondents, furnished no information or notice concerning any former exploitation or exhibition of the picture. It merely contained, as hereinbefore stated, either the words "*adaptation of D'Artagnan*" or "*re-creation of D'Artagnan*." The words "*adapted from*" or "*adaptation of*," appearing in connection with the advertisement of a picture, mean that the picture in question has been taken or adapted for screen uses, from a novel, play or story. These words are in no respect applicable to the old picture "*D'Artagnan*,"

retitled "Three Musketeers." The other words used in connection with the description of the picture, "Re-creation of D'Artagnan" denote an entirely new picture that is one which has been reenacted or reperformed before the camera.

There was at no time any pretense or semblance of effort on the part of the said individual respondents to advise the public that the production they were distributing was a reissued photoplay. On the contrary, these respondents, by retitling the picture and thereupon distributing the same, furnished motion-picture exhibitors with opportunity and incentive for deception of the public, even in the absence of direct stimulation in the shape of telegrams such as the respondent Alexander Film Corporation circulated, calling attention to the great success of the Fairbanks "The Three Musketeers."

The respondent, Films Distributors League, M. Brown doing business under the trade name and style of Capital Film Exchange, Herman Rifkin and William Alexander, not only issued the picture in a way that enabled the exhibitor to mislead the public through change of title, but they assisted them in such deception of the public by supplying advertising literature in which the information, such as "formerly titled D'Artagnan" was expressed in small type.

Each of the phrases, "adaptation of D'Artagnan" and "re-creation of D'Artagnan," was false and deceptive. Each and both of them had the capacity and tendency to mislead the public into the belief that they related to a new picture, and in particular they, and each of them, had the capacity and tendency to induce that portion of the public who patronize motion-picture theatres, to attend the exhibition of the picture in question in the belief that it was "The Three Musketeers" produced by Douglas Fairbanks and in which he played the rôle of D'Artagnan.

Respondent William Alexander, president of respondent Film Distributors League and Alexander Film Corporation, through and by means of salesmen and solicitors of the latter respondent and with the object and purpose of further deceiving the public into such belief, sold and distributed in connection with the sale or distribution of the reissued picture, "Three Musketeers," other pictures in which Douglas Fairbanks had actually played the dominant rôles. They thereby enabled exhibitors to present to the public the reissued picture in connection with such other photoplay of Fairbanks, after displaying in front of their theaters and in the lobbies thereof bills, posters and lobby cards containing name of Douglas Fairbanks in large type, with representations of him in characteristic attitudes, familiar to the public.

For instance, a representative of respondent Alexander Film Corporation induced motion-picture exhibitors in New Jersey to take

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the reissued picture by the assurance that there was a chance to clean up with it, on account of the big hit that Fairbanks was making in New York, and in one case the picture was distributed on a percentage basis, that is to say, payment for its use consisted of a percentage of the profits derived from its exhibition. In that particular case, as one inducement to take the picture, the respondent Alexander Film Corporation furnished, without charge, another picture entitled, "Manhattan Madness," in which Douglas Fairbanks actually appeared. This picture was played in motion-picture theatres at New Brunswick, South Amboy, and South River, New Jersey, the same night as the genuine, "The Three Musketeers," was exhibited in the same towns. Advertisements of said exhibitors displayed in large letters "Manhattan Madness with Douglas Fairbanks" and "The Three Musketeers," in such was as to induce the belief that Fairbanks appeared in the picture, "The Three Musketeers."

In another case the reissued picture of the Triangle Film Corporation was played as "The Three Musketeers" at Ridgewood and at Passaic, New Jersey. It had been purchased for exhibition, after solicitation by the respondent Alexander Film Corporation, which, as an inducement therefore, supplied the exhibitor with another picture entitled, "Flirting with Fate." Thereafter, the exhibitor who conducted motion picture theatres in said towns in New Jersey, advertised the picture so secured from Alexander Film Corporation as follows: "Big Feature Program Next Week," in large type. This was followed by "Monday and Tuesday, October 31 and November 1," in small type. Then came in large type, the following: "Double Feature Douglas Fairbanks in 'Flirting with Fate' also The Three Musketeers." The name of Douglas Fairbanks appears in larger type than any other letters in the advertisement, and it was clearly calculated to mislead and deceive the public into the belief that both of the pictures were productions of Douglas Fairbanks.

PAR. 5. Respondents, Eastern Feature Film Company, Favorite Players Film Corporation, Lande Film Distributing Corporation (of Ohio), Lande Film Distributing Corporation (of Delaware), Supreme Photo Play Corporation, Favorite Film Company, Friedman Film Corporation, Alexander Film Corporation, Supreme Film Company, Quality Film Corporation, Leo. G. Garner, doing business under the trade name and style of Reliance Film Exchange participated with respondents M. Brown, doing business under the trade name and style Capital Film Exchange, William Alexander, Maurice Fleckles and Herman Rifkin, in the general plan for organization and support of the respondent Films Distributors League. There

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is no competent evidence, however, that the reissued picture *Three Musketeers* shipped to them by the respondent *Films Distributors League*, as aforesaid, was sold or distributed, or caused to be sold or distributed in commerce, by respondents *Favorite Players Film Corporation*, *Lande Film Distributing Corporation* (of Ohio), *Lande Film Distributing Corporation* (of Delaware), *Supreme Photo Play Corporation*, *Favorite Film Company*, *Friedman Film Corporation*, *Supreme Film Company*, *Quality Film Corporation*, or *Leo G. Garner*, doing business under the trade name and style *Reliance Film Exchange*, or that in fact, the said advertising matter was used, or the said picture exhibited directly or indirectly, through the agency of said respondents, or any of them, in their particular territories, or at all. The evidence does show that these particular respondents had no connection with the supervision or management, direction or control of the respondent *Films Distributors League*, or with the acts or conduct of respondent *Films Distributors League*, *Maurice Fleckles*, *William Alexander*, and *Herman Rifkin*, in selecting and causing the old picture *D'Artagnan* to be reissued as "*The Three Musketeers*," or in the preparation, publication, circulation, or use of the advertising matter hereinbefore described in connection therewith or at all.

Respondent, *Eastern Feature Film Company*, ceased to exist and its property and assets were acquired and its business reorganized by the *Eastern Feature Film Corporation* in May 1922, and this company was neither directly nor indirectly connected with or responsible for the organization of respondent, *Films Distributors League*, nor any of the acts or things done by it, or other respondents in the distribution or sale of the reissued picture "*Three Musketeers*."

Respondents, *Supreme Photo Play Corporation*, *Favorite Film Company*, and *Alexander Film Corporation* have either dissolved, or ceased to engage in the distribution or sale of motion picture films or photo plays, or any business whatever.

Respondent, *Leo G. Garner*, who formerly did business under the trade name and style of "*Reliance Film Exchange*," is no longer engaged in such business.

No personal service of the complaint or other process or notices of the Commission has been made upon the respondent *Maurice Fleckles*, an individual, who, during the year 1920, and the early part of 1921, was engaged in the distribution of motion picture films, for the reason that he could not be located or found.

PAR. 6. The acts and conduct of respondent *Films Distributors League* and said individual respondents, *M. Brown*, doing business

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under the trade name and style of Capital Film Exchange, William Alexander, Maurice Fleckles and Herman Rifkin, in so offering and holding out the said reissued picture "D'Artagnan" as "The Three Musketeers" to the trade and general public as aforesaid, had the capacity and tendency to mislead and deceive the public and to cause the public, or that portion thereof who patronizes motion picture theatres, to attend the exhibitions of such reissued picture in the belief that such picture was the new photoplay "The Three Musketeers" produced by Douglas Fairbanks.

CONCLUSION.

That the practices of the said respondents, Films Distributors League, M. Brown, doing business under the trade name and style of Capital Film Exchange, William Alexander, Maurice Fleckles and Herman Rifkin, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation 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, the testimony and evidence received by an examiner duly appointed by the Commission, the report of said examiner upon the facts and conclusion, the exceptions thereto, and the brief of counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that certain 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,"

Now, therefore it is ordered, That the respondents, M. Brown, doing business under the trade name of Capital Film Exchange; William Alexander, Herman Rifkin and Films Distributors League, Inc., their agents, servants and employees, cease and desist from directly or indirectly advertising, selling or leasing, or offering to sell or lease, any reissued motion-picture photoplay under a title other than that under which such photoplay was originally issued and exhibited, unless the former title of such photoplay and the fact that it theretofore had been exhibited under such former title, be clearly, definitely, distinctly and unmistakably stated and set

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forth, both in the photoplay itself and in any and all advertising matter used in connection therewith in letters and type equal in size and prominence to those used in displaying the new title.

It is further ordered, That the proceeding be dismissed, and the same is hereby dismissed, as to Eastern Feature Film Company, Favorite Players Film Corporation, Lande Film Distributing Corporation (of Ohio), Lande Film Distributing Corporation (of Delaware), Supreme Photo Play Corporation, Favorite Film Company, Friedman Film Corporation, Alexander Film Corporation, Supreme Film Company, Quality Film Corporation, Leo G. Garner, doing business under the trade name and style Reliance Film Exchange, and Maurice Fleckles.

And it is further ordered, That the respondents, M. Brown, doing business under the trade name and style of Capital Film Exchange; William Alexander; Herman Rifkin, and Films Distributors League, shall file with the Commission, within sixty days from the date of this order, its report in writing stating the manner and form in which this order has been conformed to.

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Complaint.

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IN THE MATTER OF
THE NUGRAPE COMPANY OF AMERICA.

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

Docket 1199—March 23, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture of a sirup which contained only a very small proportion of product of the grape and derived its purple color from artificial coloring matter and its characteristic flavor simulating that of grape juice, from sources other than the small amount of said product therein contained, and in the sale thereof to bottling plants;

- (a) Used and featured the word "NuGrape" in advertising its aforesaid products and upon the bottles authorized for use by its bottlers, together with a conspicuous cluster of grapes, without any adequate notice, if any, that said sirup was not made from said product; and
- (b) Made such statements in its advertising as "NuGrape is made from the purest of pure Concord grapes," together with pictorial representations of clusters of grapes and of vineyards, and made numerous other statements directly or impliedly representing that grape juice was the principal or only ingredient of "NuGrape" and only inadequately advised the reader, when at all, as to its true composition;

With the effect of misleading the latter in reference to the composition thereof; *Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. H. A. Cox for the Commission.

Candler, Thomson & Hirsch of Atlanta, Ga., and *Browne & Phelps* of Washington, D. C., 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 The NuGrape Company of America, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, issues this its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, The NuGrape Company of America, is a corporation organized under the laws of the State of Georgia, November 5, 1921, existing and doing business under and by virtue of the laws of said State, and with its principal or executive offices