

Complaint.

9 F. T. C.

IN THE MATTER OF
J. W. MURPHY.

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

Docket 1239—March 24, 1925.

SYLLABUS.

Where a corporation engaged in the publication of a high class and very popular weekly periodical, which for many years had been named "The Saturday Evening Post," and as such had come to be associated by the subscribing, purchasing, and reading public throughout the United States exclusively with the weekly periodical published by such corporation; and thereafter an individual engaged in a certain State in the publication of a weekly periodical, designated the same "The Saturday Evening Post" and sought subscriptions by means of advertisements and by personal solicitation of his agents without disclosing the identity of his publication, with the result that the public was misled and persons subscribed believing they were taking the periodical of the aforesaid corporation:

Held, That such appropriation and use of the trade name of a competitor's product, under the circumstances set forth, constituted an unfair method of competition.

Mr. L. B. Perkins 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 J. W. Murphy, 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, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual with his place of business in the city of Burlington, State of Iowa. He is now, and at all times hereinafter mentioned has been engaged in the publication at said point of a weekly periodical named, and published under the name, "The Saturday Evening Post," and the sale of said periodical to subscribers therefor and to purchasers thereof located at points in Iowa and in other States of the United States. He causes the weekly issues of said periodical, upon their publication, to be transported from his said place of business in the city of Burlington, Iowa, into and through other States of the United States to said

subscribers and purchasers at their respective points of location. In the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations engaged in the publication of periodicals and magazines and the sale and transportation of current issues thereof in interstate commerce between and among various States of the United States.

PAR. 2. Among the competitors of respondent referred to in paragraph 1 hereof is the Curtis Publishing Company, a corporation organized under the laws of the State of Pennsylvania with its principal place of business in the city of Philadelphia, in said State. It is, and at all times hereinafter mentioned has been engaged in the publication of a weekly periodical named and published under the name, "The Saturday Evening Post," and the sale thereof to subscribers for and purchasers of said periodical located at points throughout the United States and in many foreign countries. At all times hereinafter mentioned said Saturday Evening Post published by the Curtis Publishing Company enjoyed a great popularity, demand, and circulation throughout the United States, the number of copies of said periodical sold and shipped weekly by said Curtis Publishing Company in the course of its said business being more than two millions. The public throughout the United States at all said times associated the name "The Saturday Evening Post" when standing alone and unqualified, exclusively with said "Saturday Evening Post" published by the Curtis Publishing Company, with the exception of subscribers to the magazine of respondent, who at said times numbered about 600, and with the exception of a few other individuals residing for the most part in the State of Iowa.

PAR. 3. In the month of November, 1923, and at sundry times thereafter, respondent by means of circular letters, advertisements inserted in various newspapers and other publications of general circulation in the United States or in various sections thereof, and through the personal solicitation of agents employed by respondent in that behalf, sought to procure subscriptions to his said periodical by misleading and deceiving the public into the belief that the publication for which respondent was so soliciting subscriptions was said Saturday Evening Post published by the Curtis Publishing Company. To carry out such intent and purpose respondent in aforesaid advertising and circular letters, and through his said agents, caused his said periodical to be offered as the "Saturday Evening Post" without disclosing that the same was the Saturday Evening Post published at Burlington, Iowa, and through said agents in many instances represented that respondent's said periodi-

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cal was aforesaid Saturday Evening Post published by the Curtis Publishing Company.

PAR. 4. Aforesaid advertising, circular letters and solicitations through agents done by respondent, all as in paragraph 3 hereof set out, had the capacity and tendency to mislead and deceive many of the public into the belief that the magazine so offered by respondent was said Saturday Evening Post published by the Curtis Publishing Company, and to subscribe for respondent's said periodical in that belief.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's 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 respondent J. W. Murphy, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent entered his appearance on the 3d day of November, 1924, and made answer in writing to said complaint, and made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts, and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission, being now fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, J. W. Murphy, is an individual with his place of business in the city of Burlington in the State of Iowa, where he is now and has been engaged for 42 years in the publication of a weekly periodical designated and named "The Saturday Evening Post." He has solicited and secured subscribers to, and purchasers of, said publication in Iowa and other States of the

United States, and causes the issues of said publication to be transported from his aforesaid place of business in the city of Burlington, Iowa, into and through other States of the United States to said subscribers and purchasers at their respective points of location. In the course and conduct of his business aforesaid, respondent is in competition with other individuals, partnerships and corporations engaged in the publication of periodicals and magazines and/or the sale and transportation of issues thereof in interstate commerce between and among the various States of the United States.

PAR. 2. One of the competitors of respondent, referred to in paragraph 1 hereof, is the Curtis Publishing Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the city of Philadelphia of said State, where it is engaged in the publication of a weekly periodical named and designated as "The Saturday Evening Post," which has since the year 1821 been so designated, named and known as "The Saturday Evening Post." Said "Saturday Evening Post" published as aforesaid by the Curtis Publishing Company, is of a high class and has great popularity, demand and circulation throughout the United States, the number of copies of which sold and shipped to subscribers thereof aggregating more than two million each week. The subscribing, purchasing and reading public throughout the United States for the last several years and at all the times referred to in the complaint herein, has associated the name of "The Saturday Evening Post" when standing alone and unqualified, exclusively with said "The Saturday Evening Post" published by the Curtis Publishing Company, with the exception of subscribers of the magazine of respondent, who at the times aforesaid approximated about 600 persons, and with the exception of a few other individuals residing in the most part in the State of Iowa.

PAR. 3. In November, 1923, and at other times thereafter, respondent sought to procure a greater circulation for his periodical, and in order to procure subscribers thereto respondent did by means of circular letters, advertisements inserted in newspapers and other publications of general circulation in the United States, and through the personal solicitation of agents engaged by himself in that behalf, seek to enlarge the circulation of his publication, as aforesaid, without disclosing that his said publication was "The Saturday Evening Post" published at Burlington, Iowa, and his said agents in many instances secured subscribers to his aforesaid publication from many people who believed that they were subscribing for "The Saturday Evening Post" of Philadelphia, as published by the said Curtis Publishing Company.

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PAR. 4. The advertising, circular letters and solicitation of respondent's agents as aforesaid, and as set out in paragraph 3 hereof without disclosing the character and place of his said publication, has the capacity and tendency to and does mislead and deceive the public into the belief that the magazine offered by respondent is "The Saturday Evening Post" published by the Curtis Publishing Company of Philadelphia, Pa., as aforesaid.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in 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 complaint of the Commission, the answer of the respondent and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, J. W. Murphy, cease and desist from directly or indirectly—

(1) Publishing or circulating a publication published by him at Burlington, Iowa, or elsewhere under the name or designation "The Saturday Evening Post," or soliciting subscriptions or advertisements therefor; and

(2) Using, employing or appropriating said name or designation in any manner in connection with his publishing business.

It is further ordered, That the respondent, J. W. Murphy, shall within sixty days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
NEW YORK TWINE MILLS COMPANY, INC.

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

Docket 1249—March 30, 1925.

SYLLABUS.

Where a corporation engaged in the purchase of twine, string, and other cordage from the manufacturers, and in the sale thereof to retail dealers and consumers, and neither owning, operating, nor interested in any mill, conducted its business under a corporate name which included the words "twine mills" and featured said name upon its business stationery, and in its circulars and other trade literature, with the effect of misleading and deceiving the trade and consuming public into believing that in purchasing from it they were saving the profits of middlemen, and of inducing many to deal with it in such belief, and thereby divert business from and injure manufacturing competitors who actually sold such products directly to dealers and consumers, and distributing competitors who in nowise represented themselves as so doing:

Held, That the use of such misleading corporate name, under the circumstances set forth, constituted an unfair method of competition.

Mr. G. Ed. Rowland 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 the New York Twine Mills Company, Inc., hereinafter referred to as respondents, has been and is 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 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. It is engaged in the business of buying twine, string and other cordage, and of thereafter selling same to retail dealers and consumers located at points in various States of the United States. It causes said commodities when so sold to be transported from its said principal place of