

Complaint

11 F. T. C.

IN THE MATTER OF
PHILIP CAREY MANUFACTURING COMPANY, · PHILIP
CAREY COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914,
AND OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1184. Complaint, May 23, 1924—Decision, Aug. 4, 1927

Where a corporation, and its subsidiary, engaged in the manufacture and sale of patented preformed bituminous expansion joints, and occupying a dominant position in the industry,

- (a) Sent spies under assumed names to the plants of competitors, to report on their facilities, capacities, and operations;
- (b) Used information thus acquired as a basis for representations to prospective customers of such competitors, to the effect that such competitors could not make extensive deliveries or fill orders of magnitude, notwithstanding the fact reports showed that they were taking care of all business which came to them, and were planning expansions with a view to taking care of additional business if and when obtained;
- (c) Circulated through their salesmen a statement, to the effect that a bankruptcy petition had been filed against a competitor, in such a way as to give prospective customers the impression of such competitor's bankruptcy, the facts being, among other things, that an involuntary petition in bankruptcy was filed against such competitor by a competitor of it, one of their own licensees, that a contract involving many thousands of dollars in joints was pending at the time, that the company against which such petition was filed, while at the time not strong financially, was solvent and meeting its obligations, and that the bankruptcy proceedings were never pressed; and
- (d) Represented to purchasers and prospective purchasers of the products herein concerned, that the product of competitors was unsuitable for the purposes intended and would not be passed or accepted;

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

Mr. James M. Brinson for the Commission.

Mr. Alfred C. Cassatt, of Cincinnati, Ohio, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Philip Carey Manufacturing Co., an Ohio cor-

poration engaged in the manufacture and sale of asbestos and asphalt roofing materials, paving joints, and other asbestos and asphalt products, with principal office and place of business in Lockland, Ohio, and respondent Philip Carey Co. (its sales subsidiary), and a New Jersey corporation, but with principal office and place of business also in Lockland; engaged in the sale of the aforesaid products through distributors assigned certain territories exclusively and covering in the aggregate a large portion of the United States, occupying a dominant position in the business concerned, and manufacturing and marketing about 80 per cent of the paving joints marketed and distributed through the aforesaid distributors, with contracting on an exclusive and tying basis, with a tendency to substantially lessen competition, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, and with the effect of substantially lessening competition and intending to create a monopoly in the distribution and sale of paving joints in interstate commerce, in violation of section 3 of the Clayton Act; and with disparaging and misrepresenting competitors and their products, spying on competitors' business, threatening customers and prospective customers with infringement suits, not in good faith, and inducing breach of competitors' contracts with customers, and preventing the making thereof through threats, intimidations and disparagement, in violation of section 5 of the act first above referred to.

Respondents, as charged, in entering into contracts with distributors, to each of whom it had allotted exclusive territory for the sale by such distributor of its products, exclusively, and who sold said products to building contractors and other ultimate users, nearly all engaged in the building and allied trades, with a resulting outlet and market for its products and similar products of its competitors, largely restricted to the aforesaid contractors and users, and with practically none for said products through the usual channels of trade from manufacturer to wholesaler to retailer to ultimate purchaser, and in an even more restricted market and outlet for its paving joints, "used exclusively by persons engaged in the laying of concrete paving, including such building contractors as from time to time engaged in such business, which in large part is restricted to the paving of highways and streets, let by municipalities under competitive bids, said paving being done under the inspection and control of municipal authorities," denied to their competitors "access to the restricted means and channels of distribution of said products, and particularly of paving joints," and said practice of respondents tended "to substantially lessen competition in

Complaint

11 F. T. C.

the sale of said products and particularly of paving joints in interstate commerce and to create a monopoly of such commerce in the hands of respondents," in violation of section 5, as above set forth, and, as regards distribution and sale of paving joints, had and have the effect of substantially lessening competition and tending to create a monopoly, in violation of section 3 of the Clayton Act.

Respondents further, as charged, for a number of years preceding the complaint, engaged and engage "in a campaign of persecution and harassment against competitors calculated and intended to prevent sales of said competitors' paving joints; in the course of which campaign and to carry out the purposes thereof respondents did and still do the following acts and things":

(a) Disparage paving joints of competitors to their customers and prospective customers, particularly to the effect that their quality is poor and that they will not successfully serve the purposes for which intended;

(b) Disparage such competitors' business methods, and especially their financial responsibility, size, output and ability to fulfill their contractual undertaking to supply paving joints in any considerable quantity at the times specified therein, or under any circumstance to supply substantial quantities thereof within a reasonable time;

"(c) Send their salesmen and other agents under assumed names and false pretexts and purporting to represent persons and business institutions other than respondents, to the manufacturing plants operated by said competitors or at which their products are manufactured to and they do obtain and report to respondents full information as to the capacity of said plants and the methods of making said competing paving joints, together with materials and the amount thereof entering into the composition of said competing paving joints. Respondents use the information thus obtained as the basis of disparaging attacks upon such competitors, including the statements referred to in specification (b) hereof.

"(d) Cause customers of said competitors to break existing contracts for the purchase of said competing paving joints and prevent prospective purchasers from contracting for or purchasing said competing paving joints in the first instance, by various threats and intimidations, including the disparaging statements before referred to in these specifications, and by making threats of infringement suits against such customers and prospective customers if they should purchase or continue to accept delivery of and use said competing paving joints; said threats of infringement suits being based upon the alleged ground that said competing joints are infringements of

respondents' products, and being made in bad faith without the intention of bringing any such suit or suits.

"Practically all the statements, assertions and threats made by respondents as referred to in the foregoing specifications are false and respondents have never instituted any infringement suit against any such competitors or the users of such competing joints although frequently threatening such suits, as set out in specification (d) thereof."

Said acts and things had the capacity and tendency to and did, as charged, cause competitors' customers to break their contract for paving joints and to forestall and prevent intended purchases by many persons of competing joints, sold for the most part at much lower prices than demanded by respondent for theirs; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents above named, charging them and each of them, with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of September 26, 1914, and further charging that said respondents and each of them had been and were entering into contracts for the sale of their products, containing terms and conditions, in violation of section 3 of said act of October 15, 1914.

Each of the respondents appeared and filed answer, whereupon hearings were duly had, testimony taken and evidence received, in support of the complaint, and on behalf of respondents, before an examiner for the Federal Trade Commission, theretofore duly designated for such purpose.

Thereupon this matter came on for decision and the Commission having considered the record and being advised in the premises, makes this, its report, stating its findings as to the facts, and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Philip Carey Manufacturing Co., has been for many years last past, and now is, a corporation organized

Findings

11 F. T. C.

and existing under and by virtue of the laws of the State of Ohio, engaged in the manufacture, and sale in commerce among the various States of the United States as described herein, of composition roofing materials, insulating materials and preformed bituminous expansion joints, having its principal office and place of business in the city of Lockland in said State. It commenced to manufacture and sell preformed bituminous expansion joint in 1911, in accordance with the invention of an employee, for which it subsequently acquired a patent from the Government of the United States. This product is used to exclude foreign matter from crevices or spaces between sections or slabs of paving material, used in the construction of streets, roads and highways, and to provide and compensate for the contraction and expansion in the opposite or adjacent sides of such crevices or spaces. It consists, in general, of premoulded filler, of the necessary length, depth and thickness, composed primarily of bituminous products, reinforced with fiber, or otherwise adopted to the aforesaid purpose.

Until respondent, Philip Carey Manufacturing Co. began the manufacture and sale of preformed bituminous expansion joint in 1911, it had been the common practice to pour hot pitch or bitumen into the said crevices or spaces between the sections or slabs of paving material, and respondent, Philip Carey Manufacturing Co. had a monopoly in the sale of the preformed expansion joint for six years after it had placed such product on the market. Inventions of preformed expansion joints by others having no connection with respondents or either of them, followed by patents therefor, resulted in the entry of such products into competition with the preformed expansion joint of said respondent in 1917 and the several years following immediately thereafter. The amount of preformed bituminous expansion joint manufactured and sold in the United States now exceeds annually \$1,000,000 in value, and respondent Philip Carey Manufacturing Co., manufactures and sells 75 per cent of it, and occupies a dominant position in such industry. This respondent for a period of more than 25 years has offered for sale and sold all of its products, including preformed bituminous expansion joint since 1911, by and through respondent Philip Carey Co., which during said period has been, and now is, a corporation which respondent Philip Carey Manufacturing Co. caused to be organized, under the laws of the State of New Jersey, to serve as its medium or agency for the sale and distribution of its products. The general office and place of business of respondent Philip Carey Co. is the same office and place of business in the city of Lockland in the State of Ohio, maintained by respondent Philip Carey Manufacturing Co., and both of re-

spondent companies have the same officers. All of its stock, except several shares necessary to be held by certain directors in order that they may be eligible for such positions, is owned by the respondent Philip Carey Manufacturing Co., by which at all times heretofore, its affairs have been controlled and directed. Since its organization by respondent Philip Carey Manufacturing Co., respondent Philip Carey Co. has engaged continuously, directly and exclusively, and now so engages, under the supervision and direction of respondent Philip Carey Manufacturing Co., in the business of advertising, offering for sale and selling each and all of said products manufactured by Philip Carey Manufacturing Co., and causing them to be shipped from respondent's place of business through and into other States of the United States to the purchasers thereof.

PAR. 2. In the course and conduct of their said business respondents through their agents and employees have sent spies under assumed names to the plants of respondents' competitors to report on the facilities, capacities and extent of operation of such competitors and the information acquired was used thereafter as a basis for representations to prospective customers of such competitors that such competitors could not make extensive deliveries or fill orders of magnitude, though such reports showed that such competitors were taking care of all business coming to them and planning to expand so as to take care of more business if and when it was obtained.

PAR. 3. In the course and conduct of their said business, respondents through their agents and employees circulated through their salesmen, a statement that a bankruptcy petition had been filed against the Servicised Products Co., a competitor in preformed bituminous paving expansion joints, for use by such salesmen in connection with the sale of respondents' goods in competition, and such use was made by such salesmen of said statement, as to give prospective customers of such competitor the impression that such competitor was bankrupt. An involuntary petition in bankruptcy was filed against the Servicised Products Co. and Albert C. Fischer, on December 4, 1923, by the Pioneer Asphalt Co., for a claim of \$1,476, Brannum Lumber Co. for a claim of \$108 and J. L. Jones for a claim of \$70. The pioneer Asphalt Co. was a competitor of the Servicised Products Co. and made joints under a license from the Philip Carey Co. The Brannum Lumber Co. was a creditor of C. C. Hall, of the Banner Rock Products Co., which had manufactured joints for the Servicised Products Co. but was then a competitor of that concern in the expansion joint business. The bankruptcy proceedings were never pressed. There was pending at the time a contract involving about \$16,000 in joints for the Sewerage Disposal

Order

11 F. T. C.

Plant in Chicago, Ill. Serviced Products Co. was at the time not strong financially but was solvent and meeting its obligations.

PAR. 4. In the course and conduct of their said business, respondents through their agents and employees have represented to purchasers and prospective purchasers of preformed bituminous expansion joints that such product of their competitors was unsuitable for the purpose intended and would not be passed or accepted.

PAR. 5. The statements and representations set forth in paragraphs 2, 3, and 4 above were literally untrue or so calculatingly misleading as to produce a false impression and were intended to injure competitors and were calculated to have that effect.

CONCLUSION

The methods of competition described in paragraphs 2, 3, 4, and 5 of the foregoing findings of facts, constitutes under the circumstances set forth therein, unfair methods of competition in interstate commerce in violation of 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."

ORDER TO CEASE AND DESIST

This matter having been heard by the Federal Trade Commission, upon the complaint of the Commission, answers of respondents, testimony and evidence, the trial examiner's report upon the facts and the exceptions thereto, briefs and oral arguments of attorneys for the Commission and respondents, and the Commission having made its report stating its findings as to the facts and its conclusion, that 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",

It is therefore ordered, That respondents, Philip Carey Manufacturing Co. and Philip Carey Co., their officers, agents and employees, cease and desist from directly or indirectly:

1. Employing or using any system of espionage whereby officers, agents, or employees of respondent corporations or either of them, obtain or seek to obtain information as to the facilities, capacities, operations or customers of any competitor;

2. Circulating, representing or publishing or causing to be circulated, represented or published among purchasers or prospective purchasers of preformed bituminous expansion joint, any false, deceptive

228

Order

or misleading statement concerning the ability of any competitor to fill orders or make deliveries;

3. Circulating, representing or publishing or causing to be circulated, represented or published among purchasers or prospective purchasers of preformed bituminous expansion joint, any false, deceptive or misleading statement of or concerning the acceptableness or adaptability for the use intended of the product of any competitor;

4. Circulating, representing or publishing or causing to be circulated, represented or published among purchasers or prospective purchasers of preformed bituminous expansion joint, any false, deceptive or misleading statement concerning the financial standing, the business or business methods of any competitor.

It is further ordered, That the charge set out in the complaint of a violation of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," be and the same is hereby dismissed.

It is further ordered, That respondents, Philip Carey Manufacturing Co. and Philip Carey Co. shall, within 45 days from and after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form of compliance therewith.

IN THE MATTER OF
MID-AMERICAN OIL AND REFINING COMPANY AND
J. H. CRITES

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 925. Complaint, Oct. 16, 1922—Decision, Aug. 16, 1927

Where an oil company organized under a declaration of trust; in selling, for a commission and as fiscal agent and trustee, shares or units of interest (together with a bonus of its stock) in so-called syndicates, formed for the development, or alleged development, of particular rights or holdings conveyed by it to the syndicate trustees, and for the purpose of raising funds with which to carry on its business; (following its acquisition, for a large proportion of its stock, of the assets of another company, at the instance of an individual responsible for the promotion or organization of both companies); and said individual, who planned the formation of and sale of units in, such syndicates, to be represented as subsidiaries of the company;

- (a) Represented in circulars and other advertising matter that the company was the promoter of one of such syndicates and the owner of the leasehold interest, in units thereof, and that all units over and above the actual cost of the well to be drilled would be owned by and assigned to it, the fact being that the underlying contract providing for the organization of such syndicate made no provision for any such interest, but provided that the three contracting individuals were equal owners of the entire syndicate, and that such units as remained after providing for the expenses of organization and sinking the well should be divided equally between them;
- (b) Represented that in drilling the well in question, the contractor had agreed to take units for his work and that casing, tanks and hauling had been paid for with units, the fact being that the contractor's agreement provided for the assignment to him of \$10,000 in units, and the payment of specified amounts in cash for such drilling, that the casing was to be paid for in cash, that several thousand dollars were paid thereon, that \$30,000 in units were issued to the vendor thereof to secure such payment, and that, full payment never having been made, such units were never returned to the syndicate;
- (c) Represented that the company acting as trustee would purchase and hold for the benefit of purchasers of the fractional units sold by it, the whole unit of interest for every 10 fractional one-tenth subscriptions, the fact being that no such units were purchased or held by the company although many fractional units were sold, and that the company later admitted such fractional units to be valueless, and promised to exchange the same for similar units in a second syndicate;
- (d) Represented, in promoting the sale of units in a second "syndicate," projected by said individual, without the knowledge or consent of the other trustees, and never formally organized, that the same was a subsidiary of

the company, that the company would act as its trustee, that the company had purchased a valuable lease of 80 acres with one producing well and another on the sand, that the purchase price was \$50,000 in cash and a similar amount in the shares of the company, that the company was on a producing basis and guaranteed a return of the investors' money out of its production, and that the purchaser of units in such syndicate was guaranteed a return of his original investment 90 days after the beginning of the syndicate well, and was further guaranteed a dividend equal to his investment out of oil and gas then being produced out of said 80-acre lease, the fact being that the purchase price thereof was \$100,000, of which \$50,000 was to be paid in cash and a similar amount out of oil production from the property, that such lease was the only producing lease of the company, that it had only one producing well upon it, total daily production of which at the time of contract of purchase was 40 to 50 barrels, of which the owners of the land were entitled to one-eighth as royalty, and of which one-half of the balance was to apply upon the purchase price thereof, and that following the payment of \$8,500 on the purchase price thereof and after possession for some 60 days, default was made in payments, the contract was forfeited or cancelled, and the wells were not producing in paying quantities;

- (e) Represented, in promoting the sale of units in a third syndicate organized by said company and individual, for the purpose of completing a well drilled upon a certain tract, that the company had purchased a lease in the Mexia, Texas Oil Field and that units were being sold in the syndicate in question to make final payments on the lease and to complete drilling a well thereon, and that the investor was guaranteed the return of his original investment from the sale of 160 acres of the 240 acres purchased, to other large oil companies drilling in the vicinity, the fact being that only a nominal amount had been paid on the purchase of such a lease, no further payments were thereafter made, the well was abandoned as a dry hole and the lease later forfeited, and that no sale of any part of such acreage was made to other oil companies, and no attempt made on the part of said company and individual to refund to the purchasers of units in such syndicate any part of their original investment;

With the effect of misleading and deceiving a substantial portion of the public into purchasing shares or units in the aforesaid syndicates or one or more of them, together with shares in the company as a bonus:

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

Mr. James M. Brinson and Mr. John M. Burkett for the Commission.

Mr. Arthur Collins, of Fort Worth, Tex., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Mid-American Oil and Refining Co., an unincorporated, voluntary association operating under a declaration of trust, organized for the purpose of dealing in oils, gas and other mineral lands and for producing, manufacturing and selling oil, gasoline and other

products, with principal place of business in Fort Worth, Tex., and respondent J. H. Crites, its organizer, with engaging in misleading and deceptive acts and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, made numerous false and deceptive statements and representations concerning the business, property, and prospects of respondent Mid-American Oil Co., and the value of its stock, in advertising the same in newspapers of general circulation throughout the United States and in letters, circulars, maps, prospectuses and advertising matter given such general circulation, such statements, made under the signature of respondent's president, but without his knowledge or consent, being to the effect, among other things, that respondent Mid-American guarantees the payment of 100 per cent in dividends on the original investment, from present production, the fact being that the only production in which it had any interest, was a well on a lease in the course of purchase, but which never was actually purchased; all with the capacity to mislead and deceive and with the natural and probable tendency and effect of misleading and deceiving the public.

Respondents further, as charged, after it appeared that the land and leases owned or controlled by respondent Mid-American Co., following its merger and consolidation with the O-Tex Production Co. and the Colonial Oil & Production Co., were not producing in paying quantities, and its stock was not being purchased, and that it was without funds, did certain false and misleading acts and things in connection with the creation of three subsidiary organizations, called syndicates, and the sale of shares or units therein, "for the avowed purpose of further developing said properties and of purchasing and developing additional oil and gas leases."

Said subsidiaries or syndicates, successively caused to be organized by respondent Crites, as unincorporated voluntary associations, were called the Mid-American Syndicate, Stevens County Syndicate, and the Mid-American Mexia Syndicate. Numerous false and deceptive statements were made in advertising the units of said syndicates for sale, in advertisements in newspapers of general circulation, letters, circulars, maps, prospectuses and other advertising matter given general circulation, said statements being under the signature of the president of respondent Mid-American Oil Co., but made without his knowledge or consent.

The matters referred to may be described or suggested as follows:

In the organization of the Mid-American Syndicate, with an authorized capital stock of \$100,000, divided into units of a par value of

\$100 each, respondent Mid-American Oil Co. and its president were made trustees of its property and assets. Respondent Crites caused respondent Mid-American Oil Co. to transfer to said syndicate certain acreages and leases, on the understanding that said last named respondent was to sell the units of the syndicate as a broker, giving as a bonus in the sale thereof certain shares of its own stock, and receiving, after sale of sufficient units to warrant the drilling of a well, one-third of the remaining units or the proceeds therefrom. "As a matter of fact, however, said respondent J. H. Crites had complete charge of the sale of the units of this said syndicate and acted as its fiscal agent and sold its units to the public for cash, and on a partial payment plan, it being understood under the said partial payment plan that the said respondent, Mid-American Oil & Refining Co. acted as trustee, holding the units until they were completely paid for when they were to be turned over to the purchasers thereof. However, the units were never actually issued to the said respondent, Mid-American Oil & Refining Co., although a large number thereof had been sold on the said partial payment plan."

In the sale of the units of said syndicate such false statements were made as that after payment of the cost of royalty to landowners and cost of completing a well, unsold units would be assigned to respondent Mid-American Co. as payment for its leases, the fact being that it was understood that two-thirds of the unsold units would go to trustees of respondent Mid-American individually and only one-third to such respondent itself; also that respondent Mid-American would act as trustee and that the syndicate would issue a unit for every 10 subscriptions at \$10, the fact being that the syndicate never issued any units on such plan and money paid on such plan never reached said syndicate.

Some five or six months thereafter, respondent Crites, without the knowledge of the other trustees of respondent Mid-American Co. attempted the organization of the Stevens County Syndicate, and to persuade those who had made partial payments for the units in the Mid-American to exchange such partial payment units for those in the new syndicate. Representations were also here made to the public that the respondent Mid-American would act as trustee of said last named syndicate, and numerous other false and misleading statements were made in advertising the units of said syndicate, relative to its purchases, leases, requirements and prospects, including the false statement that the purchaser of units was guaranteed the return of his original investment in 90 days and the dividend equal thereto from an 80-acre lease represented as having been purchased, the fact being that neither respondent Mid-American nor respondent's syndi-

Findings

11 F. T. C.

cate had any right to oil or gas produced therefrom; all with the capacity to mislead and deceive and with the natural and probable tendency and effect of misleading and deceiving the public.

Mid-American Mexia Syndicate was formed in a manner similar to that of the syndicate last named, respondent Mid-American being trustee. Such syndicate was caused by respondents to sell its units by offering the public two, for the price of one. Advertising matter and literature used in the sale of the units contained false statements, with the capacity and tendency above set forth, such statements including one that the syndicate had purchased a lease on 240 acres in the Mexia, Texas, oil fields, that units were being sold therein to make final payment on such lease and complete drilling a well thereon and that the investor was guaranteed return of his original investment out of the sale of 160 acres of said 240 to other large companies in the vicinity, the fact being that only a nominal amount had been paid on said purchase, no further payments were made, the well was abandoned as a dry hole, and the lease forfeited, and no sales of acreage were made to other companies nor any attempt by respondents to refund to purchasers of such units any part of their original investment, and that after a large number thereof had been sold, respondent notified the unit holders that the syndicate had struck a dry hole and offered to exchange their units for stock of another oil company, represented as a successful firm, contingent upon their purchasing such new stock for cash.

"The acts and things performed by said respondents, Mid-American Oil & Refining Co. and J. H. Crites, and the representations made by them and each of them in the organization of and in the sale of the capital stock of the said respondent, Mid-American Oil & Refining Co., and the units of its said subsidiary syndicates as described in the foregoing paragraphs had the capacity to mislead and deceive and the natural and probable tendency and effect of them and of each of them was to mislead and deceive the purchasing public and induce numerous persons located throughout the several States to purchase the capital stock of the said respondent, Mid-American Oil & Refining Co. and units in its said subsidiary syndicates;" all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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 charging them with the use of unfair methods of competition in violation of law.

Thereupon, respondents entered appearances, filed answers and formal hearing was had in the course of which testimony and evidence were introduced in support of the complaint and on behalf of the respondents. Thereafter, brief was filed by counsel for the Commission, and respondents having failed to file brief within the time prescribed, or at all, and this matter having come on for final decision and the Commission having considered the record and being 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 said respondent, J. H. Crites, caused the organization of the said respondent, Mid-American Oil & Refining Company as an unincorporated, voluntary association under a declaration of trust dated May 1, 1920, with its principal place of business at Fort Worth, Tex., having authorized capital stock of \$1,000,000 divided into 1,000,000 shares with a par value of \$1 each, for the purpose of purchasing, leasing, selling and conveying lands supposed to contain oil, gas, and other minerals; drilling wells and producing crude petroleum, manufacturing refined oil, gasoline and other products; constructing, operating and maintaining refineries in the State of Texas and elsewhere. In July, 1920, he caused the said respondent Mid-American Oil & Refining Company to merge with the Colonial Oil & Production Company, and in October, 1920, he caused the O-Tex Production Company, which had also been promoted by him to transfer its assets to the respondent, Mid-American Oil & Refining Company, in consideration of a large proportion of its stock. None of this stock was sold for cash but such portion thereof as became the property of others than respondent J. H. Crites, and associates, was obtained either in said exchange for property of O-Tex Production Company or as a bonus for the purchase of shares or units in the various syndicates hereinafter described. After the merger with the Colonial Oil and Production Company and acquisition of the property of the O-Tex Production Company, there were available for respondents no funds with which to develop leases, drill wells, or conduct any other activities in the oil industry, or the oil fields of Texas, and no means by which funds for such purposes could probably be obtained from sale of the stock of respondent, Mid-American Oil & Refining Company. Respondent, J. H. Crites, conceived and put into active operation as a contrivance or device to win the confidence of prospective investors and to procure the use of their money for his enterprises, the formation of so-called syndicates to be represented to the public as sub-

sidiaries of respondent, Mid-American Oil & Refining Company, and the sale of shares or units therein with the delivery therewith of shares in respondent company as a bonus to purchasers of shares or units in such syndicates as the initial step in the development or use of such device.

PAR. 2. The said respondent Crites caused to be organized the Mid-American Syndicate by a declaration of trust dated February 26, 1921, executed by the Mid-American Oil & Refining Company by its trustees, John T. Honea, Ennis Roberts and J. H. Crites, the Commerce Trust Company by J. E. Willis and by G. Graham, Sterling P. Clark, and John T. Honea. In said declaration of trust was recited the conveyance by the Mid-American Oil & Refining Company to Sterling P. Clark, John T. Honea, and G. Graham as trustees of a ten-sixteenth interest in a certain oil and gas lease covering city block 21 in the town site of Breckenbridge. The value of the trust estate was fixed at \$100,000 divided into 1,000 units of a par value of \$100 each. The Commerce Trust Company of Fort Worth, Tex., was constituted "Special Trustee" to receive and disburse money arising from pipe line runs of oil. The said conveyance of interest in block 21 and said declaration were made pursuant to a contract by and between Sterling P. Clark, John T. Honea, and G. Graham, dated January 21, 1921, setting forth the terms under which said conveyance and said declaration of trust would be executed, and providing among other things that the shares or units of said syndicate would be sold to the public, and that the Mid-American Oil & Refining Company would act in the capacity of fiscal agent in the sale thereof, receiving a commission of 15 per cent on the gross units sold for cash. It was also provided that the respondent company would act as trustee for the syndicate, opening an account against which checks were to be drawn by John T. Honea and countersigned by J. H. Crites. In carrying out the campaign of selling said units said respondent Crites had complete charge and sold units to the public for cash to the amount of about \$41,000. Said units were sold largely to the stockholders or shareholders of the respondent, Mid-American Oil & Refining Company, and there was given as a bonus to the purchaser of each unit in the Mid-American Syndicate, 25 shares of the respondent, Mid-American Oil & Refining Company. There was also sold by the said respondent Crites a large number of fractional units in multiples of one-tenth unit, for which receipt or assignment certificate was issued to purchaser, agreeing that for each whole unit represented by fractional multiples the respondent company would purchase and have issued to it to hold as trustee one unit or share of the syndicate

and registered on the books of the Commerce Trust Company as special trustees.

The whole units of the Mid-American Syndicate so sold were represented by certificates which were sent through the mail, or by other means of transportation, to purchasers thereof throughout the United States by the said respondents, Mid-American Oil & Refining Company and J. H. Crites. In the campaign to sell and the sale as aforesaid of the shares or units of the Mid-American Syndicate, the said respondents, with the active cooperation or acquiescence of John T. Honea, as president of said respondent, Mid-American Oil & Refining Company, prepared and circulated or caused to be prepared and circulated throughout the United States, circulars, letters, maps and other advertising matter which contained numerous false and misleading statements of and concerning the business, property and prospects of the respondent Mid-American Oil & Refining Company and the Mid-American Syndicate. Such false and misleading statements were to the effect that the respondent, Mid-American Oil & Refining Company, was the promoter of the Mid-American Syndicate and the owner of the leasehold interest, in units of the Mid-American Syndicate, and that all units over and above the actual cost of the well would be owned by and assigned to the respondent company; when in truth and in fact the contract by and between the trustees of the syndicate providing for the organization of the Mid-American Syndicate stated that the contracting parties were equal owners of the entire syndicate and entitled to receive each an equal one-third of the profits from the development of said lease, and the declaration of trust of said Mid-American Syndicate provided that after the sale of only that number of units of interest as should be necessary to provide funds to cover organization expense and the cost of sinking the well on the lease, the remainder of the units would be divided equally between the following named persons, to wit: Sterling P. Clark, John T. Honea, and G. Graham; also the statement that in drilling the well on block 21 Breckenridge the drilling contractor had agreed to take units for his work, and casing, tanks and hauling had been paid for with units; when in truth and in fact, the agreement with the contractor provided for the assignment to him of \$10,000 in units and the payment of \$4.50 per foot for drilling down to top of the line and \$150 a day for time necessary to drill the well in with \$100 a day for shut-down time caused by failure of the company to provide water, fuel or casing. The casing furnished for the well by E. Graham was to be paid for in cash, and three or four thousand dollars was paid. To secure the payment for the casing, approximately \$10,000, there were issued and de-

Findings

11 F. T. C.

livered to E. Graham \$30,000 of units of the Mid-American Syndicate to be returned upon payment for the casing. Full payment was never made and the units were never returned to the syndicate.

The aforesaid circular letters and other advertising matter distributed as herein stated by respondents, Mid-American Oil & Refining Company and J. H. Crites, also contained the statement that the respondent, Mid-American Oil & Refining Company, acting as trustee would purchase and hold for the benefit of the purchasers of fractional units in the syndicate, the whole unit of interest in the Mid-American Syndicate for every 10 fractional one-tenth subscriptions of \$10 each, when in truth and in fact no such units were purchased or held by said respondent company, although many fractional units were sold by it.

Subsequently the respondent company notified the purchasers of fractional units that it had been its expectation to furnish such units from those which were to come to it from the one-third interest of the trustee, John T. Honea, in units remaining after the financing and completion of the well; that said well was not and probably never would be completed; that the fractional units were therefore absolutely valueless; that in exchange for such fractional interests represented by assignments of units issued in the name of the respondent company, units in an equal amount would be issued in the Mid-American Stevens County Syndicate.

In the latter part of December, 1921, the Mid-American Syndicate went into the hands of a receiver.

PAR. 3. On or about May 4, 1921, without the knowledge or consent of the other trustees of the said respondent, Mid-American Oil & Refining Company, the said respondent, J. H. Crites, undertook to organize a new syndicate known as the Mid-American Stevens County Syndicate for the alleged purpose of development of 40 acres out of a lease of an 80-acre tract in Stevens County which the respondent, J. H. Crites, had contracted to purchase for the Mid-American Oil & Refining Company. A large number of units to the extent of approximately \$26,000 in said Mid-American Stevens County Syndicate were either sold for cash or issued in exchange for fractional units of the Mid-American Syndicate. In the organization or attempted organization of said Stevens County Syndicate no formal organization was attempted or carried out, but the said syndicate was represented to the public as a subsidiary of the respondent, Mid-American Oil & Refining Company and it was also represented that said respondent company would act as trustee for the syndicate. In the sale of said units for cash there were given with each unit a bonus of 25 shares of stock of the respondent, Mid-American Oil & Refining

Company. The sale of units in the second syndicate was made by said respondents, Mid-American Oil & Refining Company and J. H. Crites, in a manner similar to the sale of units of the Mid-American Syndicate as aforesaid, and advertising matter and literature were sent out by the respondents into the various parts of the United States in connection with the campaign to sell, and the sale of, said units which contained many false and misleading statements. Among them were statements to the effect that the respondent, Mid-American Oil & Refining Company, had purchased a valuable lease of 80 acres with one producing well and another on the sand; that the purchase price was \$50,000 in cash and \$50,000 in shares of the respondent, Mid-American Oil & Refining Company; that respondent, Mid-American Oil & Refining Company was on a producing basis and guaranteed a return of the investor's money out of its production; that the purchaser of units of the Mid-American Stevens County Syndicate was guaranteed the return of his original investment 90 days after the beginning of the syndicate well and he was further guaranteed a dividend equal to his investment out of oil and gas then being produced for the said 80-acre lease, whereas in truth and in fact, the purchasing price of said lease was \$100,000 of which \$50,000 was to be paid in cash and \$50,000 out of oil production from the property; the said 80-acre lease was the only producing lease of said respondent company; there was only one producing well upon it, the total daily production from which, at the time contract was made for its purchase by the respondents, Mid-American Oil & Refining Company and J. H. Crites, was 40 to 50 barrels; of this production the owners of the land were entitled to one-eighth as royalty and one-half of the remaining seven-eighths was to apply upon the purchase price of the lease; \$8,500 was paid on the purchase price of said lease and after possession thereof for about 60 days from the date of the contract, default having been made in payments, the contract was cancelled or forfeited and at time of cancellation or forfeiture the wells on said lease were not in fact producing in paying quantities.

PAR. 4. The said respondents caused the organization of the Mid-American Mexia Syndicate on or about June 30, 1921, with a proposed capitalization of \$70,000, divided into 7,000 units with a par value of \$10 each. The said Mexia Syndicate was organized for the purpose of completing a well which had been drilled to a depth of approximately 3,000 feet upon an 80-acre tract, which was part of a 240-acre lease in the Mexia, Texas Oil Field, for the purchase of which the respondent, Mid-American Oil & Refining Company had an option. This syndicate was formed in a manner similar to the said Mid-American Stevens County Syndicate, with no articles of

Conclusion

11 F. T. C.

incorporation or association, and with the said respondent, Mid-American Oil & Refining Company, as trustee. The said respondents caused the said Mid-American Oil & Refining Company to sell the units of the said syndicate to the public, to the extent of approximately \$7,000 by offering two units for the par price of one. The advertising matter and literature used in the sale of these units were distributed to the public in the same manner as that of the Mid-American Syndicate and the Mid-American Stevens County Syndicate, and contained false statements to the effect that the said respondent, Mid-American Oil & Refining Company, had purchased a lease on 240 acres in the Mexia, Texas Oil Field, and units were being sold in the said Mid-American Mexia Syndicate to make final payment on the lease and to complete drilling a well thereon; that the investor was guaranteed the return of his original investment out of the sale of 160 acres of the said 240 acres to other large oil companies drilling in that vicinity, when as a matter of fact only a nominal amount had been paid on the purchase of the said lease and no further payments were thereafter made, the well being abandoned as a dry hole and the lease later forfeited and no sale of any part of said acreage was made to other oil companies, and no attempt was made on the part of said respondents to refund to the purchasers of units in said Mid-American Mexia Syndicate any part of their original investment.

PAR. 5. Respondents, Mid-American Oil & Refining Company and J. H. Crites, offered for sale and sold the units or stock in the Mid-American Oil & Refining Company, the Mid-American Syndicate, the Mid-American Stevens County Syndicate, and the Mid-American Mexia Syndicate, in the various States of the United States in competition with individuals, partnerships, corporations and associations engaged in the sale of oil stocks in the various States of the United States, and caused certificates or other evidences of ownership to be transmitted from Fort Worth, Tex., to purchasers thereof at their points of location in the various States of the United States.

PAR. 6. The foregoing false and misleading representations had the capacity and tendency to mislead and deceive, and did mislead and deceive, a substantial portion of the public into the purchase of shares or units in the said so-called syndicates or one or more of them, and the acquisition of shares in respondent company as a bonus, for and on account thereof.

CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated, 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 answers of respondents, the testimony and evidence and the brief of counsel for the Commission, respondents having failed to file brief within the prescribed time, or at all, and the matter having come on regularly for decision and the Commission having made its report stating its findings as to the facts with its conclusion that respondents, Mid-American Oil & Refining Company and J. H. Crites, 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",

It is ordered, That the respondents, Mid-American Oil & Refining Company and J. H. Crites, cease and desist from publishing, circulating or distributing, in interstate commerce, in connection with offering for sale or selling stock of the Mid-American Oil & Refining Company, the Mid-American Syndicate, Mid-American Stevens County Syndicate, the Mid-American Mexia Syndicate, or any other association, corporation or syndicate, magazines, pamphlets, prospectuses, newspapers, circulars, circular letters, or any other printed or written matter containing false or misleading statements or representations concerning the organization, management, financial condition, resources, production, properties, earnings, income, progress, or prospect of respondent, Mid-American Oil & Refining Company, or any of said syndicates, or of any other corporation, association or syndicate, whose stock or units are offered for sale or sold by respondents or either of them in interstate commerce.

It is further ordered, That said respondents shall, within 60 days from the date of the service of this order, file with the Commission a report setting forth in detail the manner and form in which they have complied therewith.

IN THE MATTER OF
THOMAS E. POWE AND F. C. HARRINGTON, PARTNERS,
DOING BUSINESS UNDER THE FIRM NAME AND
STYLE, THOMAS E. POWE LUMBER COMPANY¹

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1281. Complaint, Feb. 12, 1925—Decision, Aug. 16, 1927

Where the wood mahogany had long had a merited and enduring reputation associated with the word, was usually sold to lumber dealers and manufacturers under such names indicating origin as "Honduras Mahogany", "Mexican Mahogany", etc., and was usually dealt in in the retail furniture trade without such prefixes, and where furniture and other articles were customarily bought, dealt in, and purchased by buyers for large retail stores, by retail dealers, and by the public in reliance upon representations by the manufacturers and dealers respectively as to their composition and whether or not they were mahogany; and thereafter a firm engaged in the sale of hardwood lumber and hardwood products to wholesale and retail lumber dealers, manufacturers of furniture, and others,

Represented and advertised certain Philippine hardwoods as "Philippine Mahogany", and induced others so to represent the same and products thereof, advising customers and prospective customers (including manufacturers of mahogany furniture who had begun to use other woods stained to imitate mahogany following the World War scarcity thereof), and the public generally, in advertisements and correspondence, that products made from such woods could be guaranteed as made of "Genuine Mahogany", and making such statements in circular letters as "Would you like to be in a position of guaranteeing to your trade that your products are made of GENUINE MAHOGANY?", "Can we interest you in mahogany lumber at a price that will allow you to use it along with quartered white oak, red birch and other domestic woods—and still give you real mahogany—a wood that needs no imitation—no false staining—and a genuine mahogany grain after it comes from the finishing room?", "* * * our LAUAN MAHOGANY fills a long-felt want", "WHAT IS LAUAN MAHOGANY? A ma-

¹ Findings and orders were first issued as of July 15, 1926, in three of the group of six cases in which findings and orders are now issued as of August 16, 1927, involving the use of the term "Philippine Mahogany," such group being composed of the instant case, namely, the Thomas E. Powe Lumber Co., Docket 1281; Indiana Quartered Oak Co., Docket 1316; Kirschmann Hardwood Co., Docket 1323; Hammond Lumber Co., Docket 1324; Robert Dollar Co., Docket 1325; and The Jones Hardwood Co., Docket 1332. The cases referred to in which such findings and orders were first issued were the first two and the last, as above enumerated. (See 10 F. T. C. 280, 300, and 320, respectively.) The cases were reopened at the request of respondents and the Philippine Government, intervenor, for the purpose of considering additional relevant testimony, said not to have been available at the original trial of the cases. The effect of the new findings is to modify and enlarge those theretofore made, the orders remaining undisturbed. As to the other three cases, namely, the Kirschmann Hardwood, Hammond Lumber, and the Dollar cases, it was stipulated that the record of the evidence taken in the reopened cases should constitute the evidence upon which the Commission should proceed to make its report in such proceedings.