

Syllabus

IN THE MATTER OF

HENRY H. HOFFMAN, R. C. RUSSELL, J. H. CAIN, R. V. WILSON, B. BAERNSTEIN, THE RANGER-BURKBURNETT OIL COMPANY, THE RANGER-COMANCHE OIL COMPANY, AND THE UNION NATIONAL OIL COMPANY

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

Docket 865. Complaint, Jan. 26, 1922—Decision, Aug. 19, 1927

Where an individual, in promoting the sale of the stock of several oil companies organized by him,

- (a) Used the name Union Trust Company as his trade name and displayed the same in his advertising matter and upon his letterheads, together with the words "Capital Stock \$500,000, Henry H. Hoffman, President", and solicited and secured subscriptions for and sold stock in said companies under the aforesaid name, through prospectuses, pamphlets, leaflets, circulars, newspapers and letters;
- (b) Made numerous false and misleading statements and representations in the aforesaid prospectuses, etc., relative to his alleged successful activities theretofore in the Texas oil industry, employing such phrases as "Hoffman's Past Envious Record", "Hoffman Makes Good", together with such statements, variously captioned "RECORD NO. 2", "RECORD NO. 3", etc., as "The Banker's Oil and Gas Company is the second of 'HENRY HOFFMAN'S list of big successes, and has paid 100 per cent in dividends", "RECORD NO. 4, 1,100 PER CENT DIVIDENDS. The fourth on the list of 'HENRY HOFFMAN'S PREMIER ACHIEVEMENTS—Great Southern Oil Company—first paid shareholders 240 per cent dividends, and has since paid a total of 900 per cent dividends, and is still a good dividend producer," the fact being that said individual's connection with the companies referred to ceased after his organization and partial development thereof, and that in no instance, with one or two exceptions, were dividends paid or financial returns of any kind made to shareholders in any of the companies represented as his successes, while under his control, management or direction; and
- (c) Represented in his prospectuses, pamphlets and other advertising matter that a well had been brought in on a lease of one of the companies, producing 5,000 barrels daily, that it owned a lease of 12½ acres in the Burk Burnett field, only a few hundred feet from "big gushers", that it owned many valuable leases comprising several thousand acres, for the development of which its stock was being sold to the public, and that another one of the companies herein concerned owned a 10-acre tract adjoining the so-called Goss Well, producing 500 barrels of oil daily, the fact being that the first named lease at no time averaged any such production, that the 12½-acre tract was not situated near "big gushers" nor within a mile and a half of any producing wells, that the many thousands of acres of so-called valuable leases were in "wild cat" territory and of no substantial or prospective value, and that the Goss Well was situated more than a mile from the 10-acre tract above referred to, and produced no oil whatever;

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With the effect of misleading and deceiving a substantial portion of the public into purchasing the stock of one or more of the above companies in the belief that they owned valuable properties, and were and would be under the supervision, management and direction of one who had made an enviable record in the Texas oil fields, in the conduct or management of companies which had made large financial returns to their stockholders: *Held*, That such false and misleading advertising under the circumstances set forth, constituted unfair methods of competition.

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

Mr. J. E. Price, of Houston, Tex., for respondents Henry H. Hoffman, J. H. Cain, B. Baernstein, Ranger-Comanche Oil Co., and Union National Oil Co.

Mr. J. M. Gibson, together with *Mr. J. E. Price*, of Houston, Tex., for R. V. Wilson.

SYNOPSIS OF COMPLAINT

Acting in the public interest, the Commission charged respondent individuals, and respondent oil companies with misrepresenting offerings, and advertising falsely or misleadingly in connection with the sale of oil stocks, in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition in interstate commerce.

The matters involved have to do with the sale of stock by respondent Henry H. Hoffman, respondent R. C. Russell, respondent J. H. Cain, respondent R. V. Wilson, and respondent B. Baernstein in corporations organized and promoted by respondent Hoffman, as follows: The Hoffman Oil & Refining Corporation, the Ranger-Burkburnett Oil Co., The Ranger-Comanche Co., and The Union National Oil Co., the last three named joined as respondents.

Upon the organization of such companies respondent Hoffman, as charged, sold and assigned to each of them certain so-called oil leases or interests therein, receiving in return therefor from each of them, their entire capital stock, of which he thereupon donated to their treasuries one-half, more or less thereof, retaining and devoting to his own use the remaining shares of each and all of them. Such shares were thereafter sold to the public as and for treasury stock, said Hoffman also receiving a substantial percentage of the money derived by the various respondent companies from the sale of the shares donated as above set forth to their treasuries.

Respondent Hoffman, acting for himself and the respondent companies and the Hoffman Oil & Refining Corporation and "while acting as the promoter and organizer thereof" and the other respondent individuals, acting each for himself and also in conjunction with, and on behalf of and under the direction and control of respondent

Hoffman and in connection with the particular company or companies with the sale of whose stock he was particularly identified "have deceived and defrauded the public, particularly that part thereof who have purchased or contracted to purchase stock in the said companies, or either or any of them, by means of false and misleading advertisements, false representations, false pretenses, and by making, publishing, advertising and circulating false and misleading reports, false statements and false representations regarding the plan of organization, assets, resources and business progress, good will and prospects of the various companies aforesaid, and of the standing, ability and integrity of respondent Henry H. Hoffman, and for such purpose the respondents so associated in respect to the said companies", represented, advertised and circulated a large number of statements and representations, all of which were false and misleading, in whole or in part, and thereby sold much of the stock of the aforesaid companies in various States and Territories.

As illustrative of the kind of statements made, in connection with the sale of stock in the different companies, the following are selected from the large number set forth in the complaint:

Hoffman Oil & Refining Corporation.—That this company had a 31-acre lease at Humble, Tex., with a producing well just brought in, in addition to other wells on the property, producing 75 to 100 barrels daily and that the company was managed by men of practical experience who had made millions for their stockholders and had never made a failure, that its efficiency department had estimated the cost of producing lubricating oil as 9 cents a gallon and that the company had already booked a large number of orders at 30 cents a gallon; that there were two more big gushers at Humble, one making 1,000 barrels and one 2,000 barrels and that the company was setting Strainer No. 10 and hoped to bring in another good well.

The facts were that the company referred to did not own said 31-acre tract or have any interest therein, that the producing well on such property yielded not more than 15 barrels a day, settled production, and that other wells consisted of a water well and a dry hole; that neither Hoffman nor his associates had any personal experience in refining oil; and that the company had no efficiency department, had never booked an order for oil and never owned any gushers or oil wells at Humble or elsewhere.

Numerous other false statements and representations of a similar tenor were made, such as alleged purchase or lease of tank cars, sale of refinery products, etc.

Ranger-Burkburnett Co.—That this company owned 12½ acres in the Burkburnett field only a few hundred feet from big gushers and

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that it had many valuable leases, the fact being that there were no big gushers near said tract and that its leases were, with one or two exceptions, valueless, and known to be so by respondents at the time when such representations were made; that respondent Hoffman had been very skillful in organizing oil companies, placing special emphasis on the success of certain companies, and had been the means of putting more than a million dollars in the pockets of investors, the fact being that the alleged success of the companies in question was in no way due to respondents or any of them.

Ranger-Comanche Oil Co.—That this company had brought in a well at Desdemona and that its Humble lease was worth hundreds of thousands of dollars, the fact being that the well in question was a dry hole and that, instead of the lease being worth hundreds of thousands of dollars, the company gave away 400 of the 500 acres.

Union National Oil Co.—Statements of the same character were employed in the sale of the stock of this company as were used in selling the stock of the Ranger-Comanche Co.

Respondent individuals, further, as charged, in selling stock in the various companies used the name "Union Trust Co." as one of their agencies, repeatedly employing such name in their circulars and other advertising matter in such a way as to indicate that "Union Trust Co." was a substantial and reputable going concern, actively engaged in the banking and trust business and in the sale of bonds, mortgages and stocks, placing upon the letterheads of said "Union Trust Co." the legend "Capital stock \$500,000; Henry H. Hoffman, president", the fact being that said Union Trust Co. was not incorporated, had no capital stock and no financial responsibility and was merely a device through and by means of which respondent Hoffman carried on its business of selling stock in the various respondent and other companies.

As charged by the complaint, "in the promotion and organization of The Hoffman Oil & Refining Corporation, the respondents Ranger-Burkburnett Oil Co., Ranger-Comanche Oil Co., and Union National Oil Co., neither the respondent Henry H. Hoffman, their promoter, nor any of their other officers or agents named as respondents herein contributed any money to, or purchased any stock in, any of said companies, for cash, but on the contrary, the said companies and each and all of them were used as agencies to enable the respondent Henry H. Hoffman, and the other respondents, to unload on the said companies certain oil leases owned by them at greatly excessive and fictitious prices, all of which leases, with the exception of one or two, were of doubtful or no value at all; and in the case of one or two of real value, the shareholders of said corporations were

not allowed by the said respondents to participate in profits derived therefrom, and the greater portion of the proceeds of the sale to the public of the stocks of the respondent oil companies was appropriated by the respondent Henry H. Hoffman and his associates for leases conveyed by them to the various companies, and their affairs were at all times conducted in the interest and for the benefit of the respondent Henry H. Hoffman and his associates, herein named as respondents, and against the interests of the other stockholders, who provided the respondent companies with all of the capital which they or any of them possessed."

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 (the Federal Trade Commission Act) 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.

Respondents filed appearances and answers, hearings were had, testimony and evidence introduced in support of the complaint and on behalf of respondents, brief filed by counsel for the Commission, respondents having failed to file brief, and the matter now coming 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. Respondent, Henry H. Hoffman, is a resident of and has his principal office and place of business at Houston, Tex. In the years 1916, 1918, and 1919, he successively organized the Hoffman Oil & Refining Co., with a capitalization of 1,000,000 shares of the par value of \$1 each; the Ranger-Burkburnett Oil Co., with a capitalization of 500,000 shares of the par value of \$1 each; the Ranger-Comanche Oil Co., with a capitalization of 500,000 shares of the par value of \$1 each; and the Union National Oil Co., with a capitalization of 10,000,000 shares of the par value of 10 cents each.

PAR. 2. Immediately after the organization of respondent companies, respondent, Henry H. Hoffman, proceeded to advertise and offer for sale the stock of each and all of them except that of the Ranger-Comanche Oil Co., by and through the medium of the Union Trust Co., which was represented in its literature or advertising matter, including letterheads, as: "Union Trust Co., Capital Stock

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\$500,000, Henry H. Hoffman, president." This so-called company was unincorporated, had no capital stock, was owned and controlled by, and consisted entirely of, Henry H. Hoffman. It was the trade name under which he conducted his business of organizing and promoting oil companies, having none of the qualities and performing none of the offices, functions, or duties associated by the public with trust companies. In the name of said Union Trust Co., respondent, Henry H. Hoffman, solicited and procured subscriptions for, and sold stock of each of respondent oil companies, except the Ranger-Comanche Oil Co., by means of prospectuses, pamphlets, leaflets, circulars, newspapers, and letters, which he caused to be distributed among purchasers and prospective purchasers, in the various States of the United States, containing, as inducements to the purchase of such stock, numerous false and misleading statements and representations, among which were references to alleged successful activities of respondent, Henry H. Hoffman, in the oil fields or oil-producing industry in the State of Texas. These references were conspicuously displayed in such striking phrases as "Hoffman's Past Envable Record" and "Hoffman Makes Good," with specific statements of or concerning companies which the public was informed had made large returns to shareholders through the efficient management of respondent, Henry H. Hoffman, in the following form:

RECORD NO. 2
HOFFMAN'S SECOND
COMPANY

The Banker's Oil & Gas Co. is the second of HENRY HOFFMAN'S list of big successes, and has paid 100 per cent in dividends.

RECORD NO. 3

National Oil & Gas Co., operating in the Humble Field, was sold out, and full par value of the stock being paid to each and every shareholder.

RECORD NO. 4
1100 PER CENT DIVIDENDS

The fourth on the list of HENRY HOFFMAN'S PREMIER ACHIEVEMENTS—Great Southern Oil Co.—first paid shareholders 240 per cent dividends, and has since paid a total of 900 per cent dividends, and is still a good dividend producer.

RECORD NO. 5
MORE DIVIDENDS

The Hoffman Deep Well Co., organized in 1916, paid a dividend of 100 per cent in the fall of the same year; 50 per cent dividend in the following March; sold seven-eighths interest in holdings to Goose Creek for \$800,000 and the one-eighth remaining interest has already paid the shareholders nearly \$200,000

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additional dividends, or nearly 50 per cent more, and is paying big dividends at present.

RECORD NO. 6

STILL MORE DIVIDENDS

The Hoffman Goose Creek Co. is the sixth on this list of RECORD-BREAKERS; sold property for \$140,000, leaving shareholders a one-eighth interest in approximately 400 acres of valuable oil lands. Paid initial dividend of 50 per cent and is now paying about 25 per cent annually in dividends to shareholders.

In truth and in fact, respondent, Henry H. Hoffman, organized the companies mentioned in said advertising matter and partially developed the properties of some of them, but his connection with them thereupon terminated. In no instances, except those of the Banker's Oil & Gas Co. and the National Oil & Gas Co., were dividends paid or financial returns of any kind made to shareholders in any of the companies represented as his successes, while under his control, management or direction. The prospectuses, pamphlets, circulars, and other advertising matter so published and distributed by respondent, Henry H. Hoffman, further contained, as inducement to the purchase of the stock of respondent oil companies, false statements and false representations to the effect that a well has been brought in on a lease of the Ranger-Burkburnett Oil Co. producing 5,000 barrels of oil daily, that it owned a lease of 12½ acres in the Burkburnett oil field only a few hundred feet from "big gushers" and that said respondent oil company owned many valuable leases, comprising several thousand acres, for the development of which its stock was being sold to the public, and that the respondent, The Ranger-Comanche Oil Co., owned a 10-acre tract adjoining the so-called Goss Well which produced 500 barrels of oil per day. In truth and in fact, the lease of the Ranger-Burkburnett Oil Co. at Burkburnett, at no time averaged 5,000 barrels of oil daily and during its active operation its daily production was far below such amount, the 12½-acre tract of said company in the Burkburnett oil field was not situated near "big gushers" and there were no producing wells of any kind within a mile and a half of such tract. The "many thousands of acres" of so-called valuable leases advertised as inducements to purchase Ranger-Burkburnett stock, were in so-called "wild-cat" territory and of no substantial or prospective value, and the so-called Goss Well was situated more than a mile from the said 10-acre tract of the Ranger-Comanche Oil Co., and produced no oil whatever.

PAR. 3. Each and all of the above and foregoing false and misleading statements and representations had the capacity and tendency to

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mislead and deceive, and did mislead and deceive, a substantial portion of the public into the purchase of the stock of one or more of the several respondent companies, in the belief that they owned the valuable properties described in the advertising matter distributed among them by respondent, Henry H. Hoffman, and were and would be under the supervision, management and direction of one who had made an enviable record in the oil fields of Texas, in the conduct or management of companies which had made large financial returns to their shareholders.

PAR. 4. The stock of the several respondent oil companies advertised, offered for sale and sold by respondent, Henry H. Hoffman, under the name of Union Trust Co., was so advertised, offered for sale and sold, in competition with individuals, partnerships, corporations and associations engaged in the sale of stocks and securities, in commerce, among the various States of the United States, and certificates of stock sold, respondent, Henry H. Hoffman, caused to be transported to purchasers thereof, from Houston, Tex., at their points of location in the various States of the United States.

PAR. 5. The Ranger-Burkburnett Oil Co. on the 11th of April, 1921, was placed in the hands of a receiver by the District Court of the 11th Judicial District of Texas, sitting in and for the county of Harris, in the State aforesaid. The Ranger-Comanche Oil Co., and the Union National Oil Co. are inactive and no longer under the control or management of the respondent, Henry H. Hoffman. Respondents R. C. Russell, J. H. Cain, R. V. Wilson, and B. Baernstein, at no time had any responsible part or connection with the respondent companies or Henry H. Hoffman, in the effort to sell, or in connection with the sale of stock in said companies, or any or either of them, except as employees, acting at all times under the supervision and explicit direction of respondent, Henry H. Hoffman.

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 the said 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, answers of re-

spondents, the testimony and evidence and brief of counsel for the Commission, respondents having failed to file brief, and the Commission having made its report stating its findings as to the facts with its conclusion that the respondents, The Ranger-Burkburnett Oil Co., The Ranger-Comanche Oil Co., The Union National Oil Co., and Henry H. Hoffman, 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 now ordered, That the respondents, The Ranger-Burkburnett Oil Co., The Ranger-Comanche Oil Co., The Union National Oil Co., their officers, directors, employees, and agents, and respondent Henry H. Hoffman, individually, and as an officer or representative of any or either of said respondent companies, cease and desist from publishing, circulating, or distributing, or causing to be published, circulated, or distributed, any newspaper, pamphlet, circular, circular letter, advertisement, or any other printed or written matter whatsoever, in connection with the sale or offering for sale in interstate commerce of the stock of said respondent companies or any other stocks or securities, wherein it is printed or set forth any false or misleading statement or misrepresentation to the effect that the property or operation of any of said respondent companies, or of any other corporations, associations, partnerships, the stock of which is offered for sale, lies near or is surrounded by proven oil territory, or producing oil wells, or any other false or misleading statement or misrepresentation concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress or prospects of any corporation, association, or partnership.

It is further ordered, That the complaint be and hereby is dismissed as to the respondents, R. C. Russell, J. H. Cain, R. V. Wilson, and B. Baernstein.

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

IN THE MATTER OF

A. W. PERRYMAN, DOING BUSINESS UNDER THE NAME
AND STYLE PERRYMAN INVESTMENT COMPANY,
ET AL.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 871. Complaint, Mar. 25, 1922—Decision, Aug. 19, 1927*

Where an individual, president and controlling spirit in a company organized by him under a declaration of trust; in promoting the sale of its stock or shares,

- (a) Represented through circular letters and other advertising matter that the aforesaid company was organized with sufficient funds to start development, was not dependent on the sale of stock for its operations, owned leases and holdings of great value in eleven great and proven fields and, in many instances, adjacent to producing wells, some of which were large producers, the fact being that the company was unable to complete the drilling of a well started by it, due to lack of funds, after expending thousands of dollars thereon, chiefly derived from the sale of stock, and was compelled to call upon another company to finish the same, that said well and other wells drilled for it under an arrangement entered into with said company were not successful, that none of its leases proved to be of real or permanent value, and that none were located in proven or producing portions of the oil fields concerned, but were located from three-fourths of a mile to four miles from producing wells or active operations, with the exception that one lease adjoined land with a gas well; and
- (b) Represented that the company was a joint association organized under the stringent laws of Texas, the fact being that the company was a so-called common-law trust, created by a deed and declaration of trust with full and absolute authority over its property lodged in the trustees, consisting of the aforesaid individual and two others associated with him;

With the effect of misleading and deceiving numerous persons into purchasing the stock of said company in the belief that it had sufficient funds with which to prosecute the development of leases owned by it in proven and productive oil fields, and that such stock was the stock of a joint association organized under the stringent laws of Texas:

Held, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

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

Carothers & Brown, of Houston, Tex., for respondents.

SYNOPSIS OF COMPLAINT

Acting in the public interest, the Commission charged respondent A. W. Perryman, engaged under the name A. W. Perryman Investment Co. in a general stock brokerage business, with office and prin-