

Syllabus

IN THE MATTER OF
DISPATCH PETROLEUM COMPANY, PORTER OAKES
AND JAMES T. CHILES

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

Docket 932. Complaint, Nov. 20, 1922—Decision, Aug. 19, 1927

Where an individual, in selling shares in a company organized under declaration of trust by himself and an associate, to which company the latter transferred oil and gas leases, and the other a "Sucker list", as agreed between them, it having been further agreed that the former should sell the company's stock to the public and receive 50 per cent of the proceeds as his proportion, and that the latter was to be paid from the proceeds of the other 50 per cent, \$110,000 for and on account of the leases transferred by him to the company; stated and represented in the prospectuses, pamphlets, and circular letters published and distributed by him among those prospective purchasers whose names appeared on the aforesaid list, and others, with the knowledge, consent and cooperation of his said associate that the company was earning large profits, was on a dividend paying basis, had two producing wells and a program of drilling 40 wells on a tract of 138 acres, and that the land was in proven territory where only shallow wells would be required to obtain oil, the fact being that the company was at all times after its organization indebted to said associate for the aforesaid leases, that so-called dividends distributed by the company consisted of money derived either from the sale of its stock, or borrowed by it, that at no time was it earning money applicable to payment of dividends, that it did not own two producing wells, and had only a seven-eighths interest in one well, which did not produce enough oil to enable it to pay any dividend, and had no program for drilling 40 wells on the land in question, and that such land was not in proven territory; with the effect of misleading and deceiving a substantial portion of the public into purchasing stock in said company in the belief that it owned two producing wells, earned profits from which it was paying and would pay dividends, and would prosecute a program of drilling 40 other wells on land known to be situated in proven territory.

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.

Burns, Christian, Gumm & Gordon, of Fort Worth, Tex., for Dispatch Petroleum Co.

Mr. Charles S. Moore, of Washington, D. C., for Porter Oakes.

Mr. Grady Niblo, of Niblo & Crawford, of Dallas, Tex., for James T. Chiles.

Complaint

11 F. T. C.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Dispatch Petroleum Co., a joint stock association organized in Texas under so-called articles of agreement and declaration of trust for the purpose of dealing in oil and gas leases, and developing and operating oil and gas properties, and with principal place of business in Wichita Falls, and respondents Porter Oakes and James T. Chiles, its organizers, trustees, officers, promoters and agents, with misrepresenting offerings, advertising falsely or misleadingly, and concealing and withholding material and essential facts and circumstances, 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, in their advertising matter in newspapers, prospectuses, circulars, etc., and through their agents and salesmen made "numerous false, misleading and deceptive statements and other representations of and concerning the organization, business, management, operations, properties, earnings, prospects, etc., of respondent company, and concerning the value of said stock of respondent company all of which statements and other representations, and each of them, were calculated, have the capacity and tendency, to, and do mislead and deceive the said purchasers, prospective purchasers and the public, and respondents thereby induced said purchasers to purchase said stock."

Among such false and misleading and deceptive statements and representations set forth in the complaint the following may be mentioned as illustrative:

That the company was on a dividend paying basis and had paid large cash dividends, was operating successfully and earning large profits, all of which was false, the fact being, furthermore, that funds distributed as dividends were not properly applicable for the payment of dividends.

That the company had two producing oil wells, the fact being that only one was producing at the time; and that the company had under way a 40-well drilling program on its 138 acre proven shallow property, the fact being the property was not proven shallow property, and that respondents at no time contemplated or carried out a drilling program of more than four wells thereon.

Respondents, furthermore, as charged, concealed and withheld from purchasers, prospective purchasers and the public throughout the United States "numerous unusual, material and essential facts and

circumstances concerning the value of said stock of respondent company, and the business, finances, management, operations, earnings, holdings, etc., of respondent company, which concealing and withholding of said unusual, material and essential facts and circumstances, were calculated and intended by respondents, have the capacity and tendency to, and did mislead and deceive large numbers of said purchasers, prospective purchasers and the public into the belief that said unusual, material and essential facts and circumstances, and each of them, did not, and do not, exist, and respondents thereby induced large numbers of said purchasers to purchase said stock of respondent company."

Among the aforesaid facts and circumstances thus concealed and withheld, and set forth in the complaint the following may be mentioned:

That respondent company acting through respondent Oakes as its so-called president-trustee, agreed, at about the time of respondent's organization, to pay and did pay, from the proceeds of the sale of the company's stock, \$110,000 to respondent Oakes in his individual capacity, in consideration of oil and gas leases and options assigned or transferred to the companies, the prices so charged by and paid to respondent Oakes individually being inflated, excessive and exorbitant; and

That the "Union Trust Co." of which respondent Oakes claimed to be president, and which was so represented by respondents in their advertising matter, was at all times since the day of its organization, engaged principally in performing bookkeeping service for five oil concerns a number of which were organized, promoted or managed by said Oakes, and that said Union Trust Co. was never a financial institution of recognized standing in its community.

The aforesaid practices, acts and conduct of respondent were, as charged, all to the prejudice of the public and of respondents' competitors and constituted unfair methods of competition in commerce within the intent and meaning of section 5.

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 commerce, in violation of law.

Thereupon respondents, Porter Oakes and James T. Chiles, filed their answers, formal hearing was had at which said respondents

Findings

11 F. T. C.

appeared in person and by attorneys, testimony and evidence were introduced in support of complaint and upon behalf of respondents, and no briefs having been filed either by the attorney for the Commission or by respondents within the time prescribed therefor, or at all, and this matter having come on regularly for decision and the Commission having considered the record and being advised in the premises, makes this its report, stating this its findings as to facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Porter Oakes and James T. Chiles, entered into an agreement, in the State of Texas, in September, 1920, under and by virtue of which they were to organize by a declaration of trust a company to be known as the Dispatch Petroleum Co., with assets consisting of certain oil and gas leases to be transferred to it by respondent, Porter Oakes, and a mailing list of prospective purchasers of stock, usually known and described as a "Sucker's List," to be furnished by respondent, James T. Chiles. In pursuance of this agreement, they did cause, on September 23, 1920, respondent, Dispatch Petroleum Co., to be so organized with a capitalization of \$200,000, divided into 20,000 shares of a par value of \$10 each, with place of business and principal office at Wichita Falls, Tex. Thereupon respondent, Porter Oakes, transferred the said leases and respondent, James T. Chiles, the said "Sucker's List" to said company.

It was agreed that the stock of the company should be offered for sale to the public by respondents acting directly through respondent, James T. Chiles, who would be entitled to receive 50 per cent of the proceeds therefrom, as his proportion, and that from the proceeds of the other 50 per cent, respondent, Porter Oakes, would be paid the sum of \$110,000 for and on account of the leases transferred by him to the company as aforesaid.

PAR. 2. Thereupon, respondent, James T. Chiles, with the knowledge, consent and cooperation of respondent, Porter Oakes, advertised, offered for sale and sold a large amount of the stock of respondent company by means of prospectuses, pamphlets, circulars and circular letters, which he caused to be distributed among the prospective purchasers, in the various States of the United States, whose names appeared on said "Sucker's list," and others, in competition with persons, partnerships, corporations and associations engaged in the sale of stock and securities in commerce among the States of the United States. As particular inducements to influence said persons to purchase the stock offered them, ostensibly as the stock of respondent, Dispatch Petroleum Co., respondents made the

following, among other, false and misleading statements and representations in the prospectuses, pamphlets, circulars, and circular letters published and circulated as aforesaid by respondent, James T. Chiles, with the knowledge, consent and cooperation of respondent, Porter Oakes: That respondent, Dispatch Petroleum Co., was earning large profits and was on a dividend-paying basis; that it had 2 producing wells and a program of drilling 40 wells on a tract of 138 acres; and that such land was in proven territory where only shallow wells would be required to obtain oil; whereas, in truth and in fact, the respondent, Dispatch Petroleum Co., was at all times, after its said organization, indebted to respondent, Porter Oakes, for the leases transferred to it by him as aforesaid, and the so-called dividends distributed by the company consisted of money derived either from sale of its stock or money borrowed by it, and the company at no time has been or is now earning money applicable to payment of dividends; it did not own 2 producing wells, and had only a seven-eighths interest in 1 well, which did not produce enough oil to enable a respondent company to pay any dividend, and it had no program for drilling 40 wells on said land nor was it in proven territory.

PAR. 3. The above and foregoing false and misleading statements and representations had the capacity and tendency to mislead and deceive, and did mislead and deceive, a substantial portion of the public into purchasing the stock of respondent, Dispatch Petroleum Co., in the belief that it owned 2 producing wells, earned profits from which it was paying and would pay dividends, and would prosecute a program of drilling 40 other wells on land known to be situated in proven territory.

PAR. 4. Respondents, Porter Oakes, James T. Chiles, and Dispatch Petroleum Co., caused certificates of the stock of the Dispatch Petroleum Co., when sold, to be transported from Wichita Falls, Tex., through and into other States of the United States to the purchasers 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

11 F. T. C.

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, Porter Oakes and James T. Chiles, the testimony and evidence, and having come on regularly for decision and the Commission thereupon having made its report stating its findings as to the facts with its conclusions that respondents, Dispatch Petroleum Co., Porter Oakes and James T. Chiles, 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 respondent, Dispatch Petroleum Co., its officers, agents, and employees, and respondents, Porter Oakes and James T. Chiles, as individuals and as officers, directors, shareholders, or agents of respondent, Dispatch Petroleum Co., cease and desist in connection with offering for sale or selling in interstate commerce stock of the Dispatch Petroleum Co., or of any other corporation, association or partnership, from publishing, circulating, or distributing any prospectus, pamphlet, magazine, newspaper, circular, circular letter, or any form of written or printed matter containing false or misleading statements or representations to the effect that respondent, Dispatch Petroleum Co., or any other corporation, association or partnership, owns producing oil wells from which it earns large profits and is on a dividend-paying basis, or in respect to the organization, history, resources, assets, production, income, progress or prospects of respondent, Dispatch Petroleum Co., or any other corporation, association, or partnership, stock of which respondents, or either of them, are offering for sale or selling to purchasers or prospective purchasers in the various States of the United States.

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.

Complaint

IN THE MATTER OF

ROLLER OIL & REFINING COMPANY, INC., H. C. ROLLER,
G. F. GIBBONS, PERCY C. WILIE AND E. H. DOUD

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

Docket 963. Complaint, Feb. 1, 1923—Decision, Aug. 19, 1927

Where several individuals, in selling stock in a corporation organized by them, falsely represented in prospectuses, pamphlets, circulars and circular letters that the corporation owned and controlled oil and gas leases on some 1,600 acres of land in McLennan County, Tex., on which it was drilling a well which was then 2,600 feet in depth, that it enjoyed an income of \$3,000 a day from wells situated on land owned by it, and that it was on a dividend paying basis, the fact being that it had no interest in such land or in any well being drilled thereon, except the right to acquire it on terms, which it neither fulfilled nor attempted to fulfill, owned no land, but merely a royalty interest in producing wells developed on certain land, averaging as income therefrom only \$4,000 a month instead of \$3,000 a day, and that it was at all times indebted to one of such individuals, its president, in the sum of \$600,000 or the major portion thereof, for and on account of certain royalty interests transferred by him to the company, and at no time was on a dividend paying basis or possessed of money applicable to such purpose; with the effect of inducing many persons to whom such representations were made, to purchase the corporation's stock in the belief that it owned the property so described, had an income of \$3,000 a day, and was on a dividend basis:

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

Mr. James M. Brinson for the Commission.

Mr. C. S. Bradley, of Groesbeck, Tex., and *Mr. A. B. Rennolds*, of Mexia, Tex., for H. C. Roller.

Mr. Joseph W. Bailey, jr., of Bailey, Nichols & Bailey, of Dallas, Tex., for Percy C. Wilie.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent company, a Delaware corporation with principal office and place of business in Mexia, Tex., and respondents Roller, Gibbons, Wilie, and Doud, its directors, and its president, vice president,