

Syllabus

IN THE MATTER OF
ROBERT M. LEASE COMPANY, INC., ET AL.¹

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914,
AS EXTENDED BY AN ACT OF CONGRESS APPROVED APR. 10, 1918

Docket 1276. Complaint, Feb. 4, 1925—Decision, Mar. 3, 1928

Where several corporations, engaged in the manufacture, sale and shipment of automobile trucks, chassis and auto parts, and directed and controlled by the same general officers; and said officers;

- (a) Shipped to foreign purchasers who had placed orders with them for new trucks, chassis and parts, complete with standard new factory equipment and right-hand drive, in reliance upon their advertisements and representations holding themselves out as willing and able to furnish the same promptly, in desired quantities, and so equipped, machines and parts which were neither new, complete nor equipped as desired and required, but were either incomplete, or old and rusty or rebuilt used or salvaged war equipment machines, and not fully equipped with standard parts, or with right-hand drive, or suited for the purposes for which purchased;
- (b) Accepted orders and payments on automobile trucks and a large number of chassis in utter disregard of their ability to furnish said chassis in the time and quantities ordered and without so furnishing the same;
- (c) Handled billing, payment and delivery to steamship companies, and loading in such a manner that export purchasers of machines were deprived of inspection before shipment, and forced to pay entirely in reliance upon their false representations and promises as to the character and completeness of the articles shipped; and
- (d) Failed to ship missing machines or parts to replace those which were non-standard and not desired, or to replace with machines so ordered and promised those not in accordance with their promise and undertaking, or to make satisfactory adjustment for their delinquencies, although repeatedly promising so to do and at times asserting that they had done so;

With the effect of bringing discredit and loss of business to all manufacturers and business concerns engaged in and/or seeking to engage in export trade, and with the capacity and tendency so to do, to the injury and prejudice of the public, and their export trade competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the Federal Trade Commission Act, and of said act as extended by the Export Trade Act.

Mr. Charles Melvin Neff and *Mr. W. T. Chantland* for the Commission.

Mr. H. Howard Babcock, of New York City, for Exporters and Importers Association of the World, and *John P. Agnew*.

¹ There is also included herewith (see page 99) order of dismissal in this case as to certain respondents, made as of Feb. 10, 1928.

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SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, as extended by the provisions of section 4 of the Webb Act, the Commission charged respondents with misrepresenting business status and nature, and products dealt in, offering deceptive inducements to purchase, entering into contracts with neither intent nor ability to carry out same, making and misrepresenting shipments, not conforming to contracts, and declining to make restitution of moneys to which not entitled, and to observe contractual undertaking when called upon so to do; in violation of the provisions of section 5 of said first named act, prohibiting the use of unfair methods of competition in interstate commerce, as extended by section 4 of said last named act.

Respondents are composed of six corporations organized under the laws of the State of New York, namely the Robert M. Lease Co., Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., Lease Motors Co., Inc., Lease Motors Export Sales Corporation, and Panther Motor Co., Inc.; of the Exporters and Importers Association of the World, the trade name employed by respondent John P. Agnew; and of the four following individuals, namely, Robert M. Lease, Irving Lease, Albert Lease, and John P. Agnew.

The aforesaid corporations constitute a series formed by respondent Leases, for "the ostensible purpose of manufacturing and selling new Ford and other motor trucks and automobiles in foreign commerce in competition with other persons, partnerships and corporations engaged in making and selling, either or both, motor trucks and automobiles in foreign commerce," but with the real purpose of assembling and putting together "trucks and automobiles, many of whose parts were old, rusty, used and second-hand, and to sell these trucks or automobiles so put together in foreign commerce in competition with other persons, partnerships and corporations engaged in making and selling, either or both, motor trucks in foreign commerce," and with the intent, as charged, of misleading, deceiving and cheating purchasers in foreign countries.

Respondents Robert M., Irving, and Albert Lease were the president and treasurer, the vice president, and the secretary, of all of the respondent corporations, excepting the Lease Motors Co., Inc., of which, however, respondent Robert M. Lease was president and treasurer, and said respondent Leases and respondent Agnew at all the times mentioned in the complaint were, in each case, either "an officer or director or a stockholder or person controlling or directing power in some position connected with one or more of the above-mentioned corporations and association, and during the times men-

tioned in this complaint, took a principal and responsible part in some or all of the acts hereinafter complained about in this complaint."

Respondent corporation Robert M. Lease Co., Inc., organized in 1918, was succeeded by respondent Lease Bros. Motor Co., Inc. Respondent Acoma Motors, Inc., is a subsidiary to said last-named corporation, with its business confined principally to acting as said corporation's sales agent or sales organization, and engaged in interstate and foreign commerce in competition with others similarly engaged, in the sale of the trucks and chassis herein concerned. Respondent Lease Motors Co., Inc., was organized to manufacture and sell motor trucks for the export trade. Respondent Lease Motors Export Sales Corporation had for its purpose the handling of the export business of the company last named, and respondent Panther Motor Co., Inc., was organized to engage generally in the manufacture and/or sale and distribution of automobiles, motor trucks and parts therefor, and goods and merchandise pertaining thereto. All of the corporations just named, with the exception of the last, have their office and principal place of business at 459 Vernon Avenue, Long Island City, Long Island, N. Y. Said last-named corporation has its principal office and place of business in the city, county, and State of New York.

Respondent Agnew does business, as above set forth, under the name of Exporters and Importers Association of the World, with office and principal place of business in New York City.

Respondents, as charged, conducting their said business in direct and active competition with others engaged in similar businesses in foreign trade, as a part of their plan and purpose to mislead, deceive and cheat customers and prospective customers falsely represented themselves through trade journals and otherwise, as manufacturers, vendors and distributors of new motor trucks and automobiles; thereby induced concerns and their brokers and agents in this and foreign countries to purchase and contract to purchase from them new Ford and new other motor trucks and automobiles complete with standard factory equipment and with right-hand drive,² respondents agreeing

² As to this, the complaint alleges "That, at all the times mentioned in this complaint, and for a considerable number of years immediately preceding, a general and well-known custom and law of the road throughout the British Empire, Continental Europe, India and those other parts of the world, to which the respondents made shipments of trucks, required and demanded that all motor trucks, operated on the public highways in said foreign countries, be equipped with a right-hand and not a left-hand drive."

"That at all of said times this said custom and this said law of the road was notorious and well defined and one generally conformed to, and observed by all of those engaged in this country in the business of manufacturing for, and selling motor trucks to purchasers and customers in said foreign countries".

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to deliver such vehicles, equipped as above set forth; and held themselves out to the foreign market, well knowing they would be unable to execute such agreements and contracts, and with no intent to fulfill their obligations according to the spirit and tenor thereof, as able and willing to furnish said market "with new Ford trucks and new Ford automobiles and other new trucks and automobiles modeled and built upon the Ford model complete with standard factory equipment and with right-hand drive, which they well knew they could not secure and, with the intent and purpose by such methods to defraud prospective purchasers and customers in foreign countries, they solicited customers and purchasers for new Ford trucks and new Ford automobiles, and new trucks and automobiles modeled upon the Ford model, representing and agreeing that they and all others would be new Ford or other trucks with new and standard factory equipment, with right-hand drive and in every respect fully adapted for use in the British Empire, in Continental Europe, in India, and other foreign countries."

Respondents' practice was, as alleged, in each and every case, to ship and tender for delivery to the aforesaid purchasers and customers in pretended and falsely claimed fulfillment of said agreements and contracts "motor trucks that were not new Ford or other new motor trucks, many of whose parts were not new but were old, used, rusted and second-hand parts, and motor trucks which were not complete with standard factory equipment but, on the contrary, had many of their parts missing, and motor trucks that did not have a right-hand drive and were not adapted for use in the British Empire, in Continental Europe, in India and in other foreign countries, all of which matters and things were well known to the said respondents before delivery".

Respondent, as charged, in further pursuance of their aforesaid plan and purpose, made it a part of the contracts and agreements that the purchase price must be paid to them upon the production and surrender to the banking representatives of the foreign purchasers and customers, of the ocean bills of lading and other usual accompanying documents covering respondents' shipment in pretended fulfillment of the agreements and contracts with the purchasers and customers, and, in order to deceive, mislead and cheat such customers and prospective customers afforded no opportunity to examine and inspect shipments and goods involved to determine whether they conformed to terms of sale and shipping documents—an inspection provided for by many, if not all of the contracts, before the motor trucks were placed on board ship—other than the opportunity offered to inspect the products and articles "after

their enclosure in packages, crates and boxes and after their delivery upon the dock in said packages, crates and boxes preparatory to and immediately before the sailing of the ocean vessels to said foreign countries. That the said respondents, in some instances and as a part of their plan and purpose to mislead, deceive and cheat the said purchasers and customers, persuaded the said purchasers or their brokers to waive opportunity for said inspection".

The purchasers and customers concerned, as alleged, relied upon the representations and contracts involved providing for the sale and delivery by respondents to them of new Ford or new other motor trucks with standard factory equipment complete in every respect and with right-hand drive, and, in accordance with the conditions of their contracts, duly paid to respondents, prior to the receipt of said trucks, "many thousands of dollars as and for the agreed purchase prices under the contracts above mentioned and referred to; no part of which payments was ever returned by any of said respondents though often requested by purchasers so to do", and although the persons and concerns involved, "immediately upon discovery of the fact that the motor trucks so tendered for delivery by the said respondents were not new Ford or new other motor trucks, and that many of their parts were not new but were, on the contrary, old, used, second-hand and rusted parts, and that they were not trucks equipped with complete standard factory equipment and did not have a right-hand drive, notified the said respondents and demanded that the missing parts be furnished and that the said respondents comply in every respect with the terms, covenants and conditions of the said contracts, and that thereupon the respondents promised and agreed to furnish the missing parts immediately and to make the said trucks above mentioned and referred to, complete and in accordance with the said contracts entered into, and that though all due demand has been made, the respondents herein failed, neglected and refused, and still fail, neglect and refuse, to obtain and ship and furnish to the said purchasers the said missing parts above mentioned, and have otherwise failed, neglected and refused to carry out, fulfill and perform the contracts entered into by the said respondents and the said purchasers".

As a result of respondents' failure and refusal to carry out their contracts herein concerned with purchasers and customers, the latter were unable to carry out contracts entered into by them with others, based upon the belief that respondents would carry out their (respondents') contracts and agreements with the purchasers and customers herein, and were sued on their, said purchasers' and customers', contracts with others, by the parties with whom they had contracted,

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and had judgments in large amounts entered against them through no fault of their own.

Respondents further, as charged, in at least one instance received "from a foreign purchaser a remittance in excess of the purchase price specified in the agreements and in addition to a failure to furnish and supply the goods named in the said contract, actually failed and refused to comply with repeated demands from the said foreign purchaser to refund to said foreign purchaser the said excess, but on the contrary retained and converted the same to their own use. And in another instance the said respondents received, on account of an order for goods from a foreign purchaser, the purchase price of said goods and failed, neglected and refused to furnish or supply said goods for the pretended reason that the entire purchase price had not been transmitted to the said respondents and neglected and refused to refund to said foreign purchaser the said purchase price or any part thereof, and still neglect and refuse so to do".

According to the complaint "such practices of the respondents, herein set forth, brought and have a tendency to bring, American trade into disrepute with the general buying public in the British Empire, in Continental Europe, India, and other foreign parts of the world. The general buying public in those countries are much more conservative in the matter of becoming customers of manufacturers than the general buying public in the United States. When the general buying public in the British Empire or in Continental Europe, or in said other foreign parts of the world, are deceived, either as to the quality, quantity or prices of the goods ordered or as to the services agreed upon in respect to said goods, the said general foreign buying public are not willing to overlook the said deception and to continue trading. That the failures on the part of manufacturers and exporters to carry out their contracts in respect to sales of goods to purchasers in the British Empire, or in Continental Europe, India or in other foreign parts of the world, affect generally and adversely the fair reputation and good-will enjoyed by those other manufacturers and exporters in the United States whose goods, prices and service conform to their agreements with their foreign customers.

That such deceptions and failures hinder, obstruct and prevent honest manufacturers and exporters in the United States engaged in foreign commerce from securing and retaining the same. For generations the general buying public in the British Empire and Continental Europe, India, and other foreign countries, have made a practice of buying raw materials and fabricated articles from manufacturers and exporters located elsewhere than in the United States.

It is the habit and character of the general buying public in Continental Europe, in India, and especially in the British Empire to be extremely conservative and loath to change their usual and established sources of supply. During the past few years, and especially since the year 1914, and because of the late world war, it became impossible for these usual sources to supply raw materials and fabricated articles to the general buying public in the British Empire, in Continental Europe, in India and other foreign parts of the world. Thereupon and by reason thereof the said general buying public sought manufacturers and exporters in the United States as new and additional sources of supply. Previous to this time manufacturers and exporters in the United States had long and with but limited success sought purchasers of their goods in said foreign countries. The acts and the practices and conduct of the respondents had and do now have the tendency and capacity to bring other and honest manufacturers and exporters in the United States into bad repute with the general buying public in the British Empire, in Continental Europe, in India, and in other foreign countries and caused and causes said purchasing public to reduce its use of sources of supply in the United States for raw materials and fabricated articles.

"That the methods employed by the respondents in the conduct of their business in export trade as hereinbefore set forth have the capacity and the tendency to injure and damage and have injured and damaged, generally, the reputation and the business of persons, firms and corporations of the United States lawfully competing with the respondents in export trade and have the capacity and tendency to bring and have brought the business of competitors of respondents into disrepute with purchasers in said foreign countries, and the acts, methods and practices of the respondents herein set out constitute unfair methods of competition in export trade, and are unfair to all manufacturers and exporters in the United States in that they tend to bring into disrepute among foreigners the business of said manufacturers and exporters in the United States."

Respondents, further, as charged, in the case of respondent Robert M. Lease and the Lease Bros. Motor Co., induced a certain concern, namely, the Gray-Andrews Corporation, a New York corporation, to enter into a contract with said Lease Co. for the purchase by said corporation of a large number of automobile chassis, through false statements and representations as to said Lease Co.'s ability to construct, complete and deliver the same, and false statements as to its ownership of the building in which its officers were located, and as to a contract entered into by it for the purchase of a certain factory building, payment of a substantial deposit thereon and other

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steps taken and contracts made by it incident to the manufacture and delivery of products involved in the contract with the said Gray-Andrews Corporation; with the result that said last named corporation paid to said Lease Co. many thousands of dollars as called for by the contract in question, none of which money following the rescission of the contract by the Gray-Andrews Co. on account of respondents' fraud and deceit and knowing false representations and statements and notwithstanding said Gray-Andrews Corporation's failure to receive any money or anything of value from said respondents, has been repaid to such corporation by said respondents who have refused said corporation's demand for the repayment of the money; said transactions being set forth in the complaint as follows:

PAR. 26. That the Gray-Andrews Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York.

PAR. 27. That at all the times hereinafter mentioned the respondent, Robert M. Lease, was the president of the various respondent corporations mentioned above, that he owned a considerable portion or amount of capital stock of each, that he controlled the business and management thereof, that he had personal charge in their behalf of the negotiations herein set forth, that in many instances he personally made the false and fraudulent representations herein set forth, and executed contracts herein involved, and as president of the said various corporations mentioned above.

PAR. 28. That prior to the 13th day of April, 1920, the said Gray-Andrews Corporation was negotiating with the respondent corporation, to wit, Lease Bros. Motor Co., Inc., through its said president, the respondent Robert M. Lease, for the purchase by the said Gray-Andrews Corporation from the respondent corporation, Lease Bros. Motor Co., Inc., of a large number of automobile chassis and for the making of a written contract between the Gray-Andrews Corporation and the said respondent, Lease Bros. Motor Co., Inc., with respect thereto; that the said respondent, Robert M. Lease, well knew that the said Gray-Andrews Corporation's purpose in entering into the said written contract was the desire to use the said automobile chassis for the purpose of foreign sale and shipment in foreign trade.

PAR. 29. That in the course of said negotiations the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., in order to convince the said Gray-Andrews Corporation of the said respondents' Robert M. Lease and Lease Bros. Motor Co., Inc., ability to construct, complete and deliver the automobile chassis, and of the said Lease Bros. Motor Co.'s, Inc., manufacturing and financial ability to perform the said intended contract, so far as the same was to be performed by it, and in order to induce the plaintiff to continue the said negotiations and to enter into said contract, stated and represented to the Gray-Andrews Corporation that said respondent corporation, Lease Bros. Motor Co., Inc., was the owner of the building where its officers were then located; that it had entered into a contract to purchase a factory building in Long Island City, with a floor space of approximately 200,000 square feet; that it had made a substantial deposit or down payment in cash on account of the purchase price named in said contract; that it had purchased suitable machinery for its factory; that it had purchased a foundry in the State of New York to be used for the purpose of casting cylinder blocks; that it had entered into contracts

with various manufacturers by which contracts said manufacturers had agreed to manufacture and deliver to it, said respondent, Lease Bros. Motor Co., Inc., the various parts necessary for the construction and completion of the automobile chassis, concerning which the said Gray-Andrews Corporation and the said respondent, Lease Bros. Motor Co., Inc., were then negotiating; and that it, the said Lease Bros. Motor Co., Inc., would be able in every respect to construct, complete and deliver to the said Gray-Andrews Corporation the said automobile chassis, and perform its part of the said proposed contract, and that it would perform the same in good faith.

PAR. 30. That the said Gray-Andrews Corporation believing said representations so made by the respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., to be true and relying solely and wholly thereon, concluded the said negotiations, agreed upon the form of the said contract, and, when and as soon as the same was reduced to writing, executed said contract in duplicate together with the said respondent corporation, Lease Bros. Motor Co., Inc., acting by its said president, the respondent Robert M. Lease.

PAR. 31. That a true copy of said contract is hereto annexed and marked Exhibit "A" and made a part hereof.*

PAR. 32. That on or about the 8th day of April, 1920, the said Gray-Andrews Corporation, believing said representations to be true and relying wholly and solely thereon, paid to the respondent corporation, the said Lease Bros. Motor Co., Inc., the sum of \$5,000 as part of the consideration agreed to be paid by the said Gray-Andrews Corporation to the said respondent Lease Bros. Motor Co., Inc., and on or about the 16th day of April, 1920, the said Gray-Andrews Corporation, still believing said representations to be true and relying wholly and solely thereon, paid to the said respondent, Lease Bros. Motor Co., Inc., the further sum of \$20,000 in accord with the provisions of the said contract.

PAR. 33. That the said Gray-Andrews Corporation was induced to enter into the said contract and to pay the said sum of \$25,000 solely and wholly by the said representations of the said respondents Robert M. Lease and Lease Bros. Motor Co., Inc., believing them and each of them to be true as aforesaid.

PAR. 34. That at the time the said representations were made by the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., the same were, and each of them was, wholly false and untrue, as the said respondents well knew, in that the said respondent Lease Bros. Motor Co., Inc., was not the owner of the said building; that it had not entered into a contract to purchase a factory as stated, that it had not made any down payment or deposit on account of the purchase price of the factory, that it had not purchased a foundry in New York State to be used in casting cylinder blocks, that it had not entered into contracts for delivery to it of the various parts necessary for the construction and completion of said automobile chassis; that it was not able in any respect to construct, complete and deliver said automobile chassis; that it was not able to perform its parts of the said contract; and that it did not at any time intend to perform the said contract.

PAR. 35. That the said representations and each of them were known by the said respondent, Robert M. Lease, and the said respondent, Lease Bros. Motor Co., Inc., to be false and untrue and the said representations and each of them were made by the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., for the purpose of defrauding and deceiving the said Gray-Andrews Corporation and inducing the said Gray-Andrews Corporation to enter into said contract and to pay the said sums of \$5,000 and \$20,000.

* Not published.

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PAR. 36. That the said Gray-Andrews Corporation has not received any money, property, or thing of value from the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., or either of them, on account of or arising out of said contract.

PAR. 37. That the said Gray-Andrews Corporation has heretofore and on account of said fraud and deceit of the respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., rescinded the said contract and notified said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., of such rescission, and has demanded that the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., repay to the said Gray-Andrews Corporation the said sum of \$25,000 but the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., and each of them has ever refused and still refuses to pay to the said Gray-Andrews Corporation the said sum of \$25,000 or any part thereof.

PAR. 38. That the said sum of \$25,000 is now due and owing by the said respondents, Robert M. Lease and Lease Bros. Motor Co., Inc., to the Gray-Andrews Corporation, together with interest on \$5,000 thereof from April 8, 1920, and on \$20,000 thereof from April 16, 1920, and no part thereof has been paid.

All of the acts charged against the respondents, as alleged, "are such acts as are not only injurious to the private parties directly concerned thereby, but are such acts as are calculated to bring, and do bring, discredit, dishonor and loss of business to all American manufacturers and business concerns seeking foreign trade, and causing those foreigners who, were it not for such acts, might purchase goods from American business concerns, to purchase those goods from business concerns in other and foreign countries, and this at a time above all others when foreign markets are ready and willing to buy from American manufacturers and business concerns," and said acts and things "done by respondents, and by each of them, are all to the prejudice of the public and respondents' competitors, and the competitors of each respondent, and constitute unfair methods of competition in commerce in violation of section 5 of an act of Congress entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914."

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, as extended by an act of Congress approved April 10, 1918, the Federal Trade Commission issued and served a complaint upon respondents herein charging them with unfair methods of competition in export trade in violation of the provisions of said acts.

The defendants, John P. Agnew and Exporters & Importers Association of the World, having entered their appearances by their

attorney and having duly filed their answer and the remaining defendants, to wit: Robert M. Lease Co., Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., Lease Motors Export Sales Corporation, Panther Motor Co., Inc., Robert M. Lease, Irving Lease, and Albert Lease, not having answered but being in default, hearings were held before an examiner of the Commission theretofore duly appointed, and counsel for the Commission offered evidence in support of said charges of the complaint, which evidence is recorded, duly certified and transmitted to the Commission, including exhibits, and none of the respondents offered any evidence in their defense, but respondents John P. Agnew and Exporters & Importers Association of the World were present by counsel and cross-examined witnesses testifying for the Commission, and at the close of such testimony stated in open court before the examiner that there would be no testimony introduced on behalf of said respondents but that they would rest their case entirely on the evidence brought out by the Government, and respondent Robert M. Lease was present in person at certain of the hearings and cross-examined certain witnesses. Thereupon this proceeding came on for decision on the record, briefs for the Commission and exceptions of respondents John P. Agnew and Exporters & Importers Association of the World to the trial examiner's report upon the facts, and the Commission being fully advised in the premises, now makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Robert M. Lease Co., Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., and Lease Motors Co., Inc., were at all times covered by this proceeding corporation organized and existing under the laws of the State of New York, with the office and principal place of business of each at 459 Vernon Avenue, Long Island City, Long Island, N. Y.; that the principal business of each was the manufacture sale and shipment in interstate and foreign commerce of automobiles, trucks, chassis, and auto parts in competition with other concerns similarly engaged. That respondent Robert M. Lease was the president of each of said four corporations and also the treasurer of the first named three, that respondent Irving Lease was the vice president of the first named three and secretary of the last named, that respondent Albert Lease was secretary of the three first-named corporations. That the acts and policies of all of said corporations were actively directed and controlled by said respondent Robert M. Lease, Irving Lease, and Albert Lease

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and each of them took a substantial and responsible part in the acts and practices described in paragraphs 2 to 5 hereof.

PAR. 2. That induced by, and relying upon, circulars and advertisements issued and published by respondents, Robert M. Lease, Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., Lease Motor Co., Inc., Robert M. Lease, Irving Lease, and Albert Lease, and other representations of fact made both in writing and orally by said respondents, by which said respondents held themselves out as willing and able to furnish promptly according to their said promises, representations and undertakings made in pursuance therewith, new Ford and other trucks and chassis in quantities as desired and fully equipped with standard parts and with right drive, for export trade, certain persons, partnerships and corporations during the year 1920 and thereafter located as follows: Two in England, one in Ireland, one in Norway, one in Sweden, one in Holland, one in Spain, one in Santo Domingo, four in India, one in Philippine Islands, so induced and so relying, placed orders with said respondents and said respondents agreed to sell and undertook to ship to said purchasers in said countries certain new Ford and other automobiles and motor trucks, chassis, and automobile parts, which machines or chassis were to be complete with standard new factory equipment and right hand drive. Instead of fulfilling their said promises, undertakings, and agreements, said respondents knowingly and willfully disregarded their representations, promises, undertakings, and agreements and shipped to said purchasers and places during the years of 1920 and 1921 on said purchases so made, machines and parts that were neither new, complete nor equipped as desired and required, but which were as to each of said purchases, either incomplete machines or used or salvaged war equipment machines, old and rusty, some rebuilt, others not fully equipped with standard parts nor equipped with right-hand drive. All of the shipments so made were deficient in one or more of the respects above enumerated and were not complete new machines equipped and suited for the purposes for which they were so purchased.

PAR. 3. Said respondents, in utter disregard of their ability to furnish machines and chassis in the time and quantities as ordered, knowingly and willfully accepted orders and payments on automobiles, trucks and a large number of chassis and failed to deliver the same either in the time as promised and undertaken and as required by the purchaser, or to deliver the same at all in the quantities ordered.

PAR. 4. By said respondents' method of handling the billing and payment and delivery to steamship companies and loading, their

purchasers in export of said machines were deprived of inspection before shipment and forced to pay entirely in reliance upon respondents' said false representations and promises as to the character and completeness of the articles shipped.

PAR. 5. Although repeatedly promising so to do and at times asserting that they had done so, said respondents failed to ship missing machines and parts, or parts to replace the nonstandard and undesired parts, or to replace with machines as ordered and promised, the ones not in accordance with such promise and undertaking or to make satisfactory adjustment for their delinquencies.

PAR. 6. The record does not disclose that the respondents Panther Motor Co., Inc., or the Lease Motor Sales Corporation had any part in said transactions.

PAR. 7. The exceptions of respondents John P. Agnew and Exporters & Importers Association of the World to the trial examiner's report are well taken.

CONCLUSION

The acts and practices of respondents, Robert M. Lease, Inc., Lease Bros. Motor Co., Inc., Acoma Motor Co., Inc., Lease Motor Co., Inc., Robert M. Lease, Irving Lease and Albert Lease, as above set forth in paragraphs 2 to 5, inclusive, of the foregoing findings of facts, in the circumstances therein set forth are to the injury and prejudice of the public, and to respondents' competitors engaged in export trade and said acts and practices are calculated to and do bring discredit, dishonor, and loss of business to all American manufacturers and business concerns engaged in and/or seeking to engage in export trade, and said acts and practices of each of said respondents constitute unfair methods of competition in violation of section 5 of the act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, and of said act as extended by the provisions of an act of Congress entitled "An act to promote export trade and for other purposes," approved April 10, 1918.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of respondents John P. Agnew and Exporters & Importers Association of the World (the other respondents being in default), oral testimony and documentary exhibits, the trial examiner's report upon the facts, the

exception of counsel thereto, and upon briefs submitted by counsel for the Commission, none having been tendered by counsel for any of the respondents, and the Commission having made its findings as to the facts and having entered its order of dismissal as to certain respondents, and having reached its conclusion that the remaining respondents have violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," as extended by an act of Congress approved April 10, 1918, entitled "An act to promote export trade, and for other purposes,"

Now, therefore, be it ordered, That respondents Robert M. Lease, Irving Lease, Albert Lease, Robert M. Lease Co., Inc., Lease Bros. Motor Co., Inc., Acoma Motors Co., Inc., and Lease Motors Co., Inc., and their agents, representatives, and employees cease and desist directly or indirectly from pursuing or continuing the unfair methods of competition in export trade for the purpose or with the effect directly or indirectly of injuring the public and competitors, and bringing into disrepute the export trade of the United States in the course of trade in automobiles, trucks, and auto parts, by the following methods, or any one or more thereof, to wit:

1. From in any manner either by circular, advertisement, or other publication, or other representation, oral or written, representing themselves as willing and able, or promising or undertaking to furnish in and for export trade, automobiles, motor trucks, or chassis in quantities greater than they can furnish in the time and manner called for by their promises and undertakings; and from so representing themselves as willing and able to furnish, or promising or undertaking to furnish in export trade, automobiles, motor trucks, or chassis, as and for new and complete and fully equipped machines with standard parts, when and if in fact respondents are not properly equipped or do not intend to furnish such machines or parts in exact accordance with their representations and undertakings including the time, quantity and character of articles.

2. From demanding or exacting payments in advance of receipt, or opportunity for full inspection by purchasers of the articles furnished, or from in any manner so conducting their said export trade as to cause such payments to be made without opportunity for inspection, when and if the said articles so furnished in export trade are not in exact accordance with the representations and undertakings of respondents, including time, and quantity and character of articles.

3. From by any device, means, or method similar to those hereinbefore set out so to conduct their export trade as to tend to prejudice the public and competitors and others engaged in the American export trade,

It is further ordered, That the respondents against whom this order is directed shall within 60 days 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 in which they have complied with the order to cease and desist hereinbefore set forth.

ORDER OF DISMISSAL AS TO CERTAIN RESPONDENTS

This proceeding having come on for final hearing before the Federal Trade Commission, and it appearing:

1. That as to the respondents Panther Motor Co., Inc., and Lease Motor Export Sales Corporation, there is no evidence that either of said concerns took part in any of the transactions complained of, and,

2. That as to respondents, John P. Agnew and Exporters & Importers Association of the World, there is no evidence sufficient to sustain the charges of the complaint,

It is hereby ordered, That the complaint be dismissed as to the respondents Panther Motor Co., Inc., and Lease Motor Export Sales Corporation, John P. Agnew, and Exporters & Importers Association of the World.

IN THE MATTER OF
MORRIS STEINBERG, AN INDIVIDUAL DOING BUSINESS
UNDER THE NAME AND STYLE OF MARVEL DRESS
COMPANY

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

Docket 1466. Complaint, June 13, 1927—Decision, Mar. 17, 1928

Where an individual engaged in the sale of women's dresses direct to the consumer; in advertising the same in newspapers and periodicals of national circulation, applied the words "wool embroidered serge dress rayon silk trimmed" to a dress composed entirely of cotton, with cotton and rayon trimming, and the words "wool embroidered serge dress", "silk hand-embroidered wool finish serge dress", "silk embroidered pongee", "pongee dress, silk hemstitched" and "silk lustre pongee dress", to all-cotton garments containing neither wool nor silk; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into believing said dresses to be composed of wool or of silk and to induce the purchase thereof in such belief, and with the effect of diverting business from and otherwise injuring and prejudicing competitors dealing in dresses of pongee fabric embroidered with silk material, and in those composed of wool fabric, and truthfully describing and representing the same:

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

Mr. William A. Sweet for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at Philadelphia in the sale direct to consumer purchasers in States other than Pennsylvania, of women's dresses upon orders solicited through advertisements and received through the mails, with 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.

Respondent, as charged, in his aforesaid advertisements in newspapers and periodicals of general circulation throughout the United States or in certain sections thereof, described and represented dresses composed of cotton cloth and containing no silk whatsoever as "Genuine silk lustre pongee dress trimmed with silk embroidery" and "Silk embroidered pongee"; dresses composed almost entirely