

Syllabus

IN THE MATTER OF
SAMUEL BREAKSTONE

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

Docket 1457. Complaint, Apr. 20, 1927—Decision, Sept. 14, 1928

Where spark plugs conspicuously bearing the capital letters "AC" on the exposed part of the porcelain cores thereof, sold in individual cartons and containers bearing said letters or symbol, and nationally advertised thereunder, and made under patented processes, had long been manufactured and come to be well and favorably known to the trade and consuming public by such brand, and as the product of the particular manufacturer, which had long made the same, and to constitute nearly half of all spark plugs made and sold in the United States, to be in great demand among the trade and consuming public, and to be standard equipment for a large number of automobiles of various makes; and thereafter an individual, engaged in the sale in various States of automobile parts, supplies, and accessories, who had purchased several hundred thousand cores made by such manufacturer (who made cores for its own plugs only and did not market the same separately in the case of its one-piece plugs), for airplane motors, bearing its trade-mark "AC", and sold by the Government after the war,

- (a) Sold said cores so branded, in spark plugs not made by said manufacturer, for use in automobile motors, in competition with it and its dealers, and with manufacturers of and dealers in other plugs, and through numerous wholesale and retail dealers, who marketed the same in competition with dealers handling not only the genuine AC plugs, but those of others also without removing or attempting to remove the aforesaid symbol or trade-mark, or disclosing directly or indirectly that such plugs were not the product of said manufacturer, and that the cores were not adapted or intended for use in automobiles; with the capacity and tendency to mislead and deceive a large and substantial part of the trade and consuming public into buying and selling said inferior and poorly functioning plugs as and for genuine AC plugs made by the aforesaid manufacturer (from which they were indistinguishable by the purchasing public in the ordinary course of trade), for use in automobile motors, and with the effect of so doing; and
- (b) Sold cartons and containers bearing conspicuously thereon the brand "AC Spark Plug", originally the property of and intended by the aforesaid manufacturer for use in the sale of its own product (and of the type familiar to the trade and consuming public in such connection), but discarded and sold by it for junk and eventually purchased by him, to spark plug dealers, and supplied the same to dealer-purchasers of his spurious AC plugs for their use in packing and marketing said plugs; with the intent and effect of furthering his false and misleading practices in the sale of said plugs, through being packed and marketed therein, and with the capacity and tendency thereby to mislead and deceive a large and substantial number of dealers into buying and selling, and consumers into

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purchasing, said plugs as and for the genuine AC plugs, of said manufacturer, and with the effect of so doing, and of supplying to the trade a means and instrumentality for committing a fraud upon the purchasing public, whereby dealers could and did sell and distribute the spurious plugs as and for the genuine;

With the capacity and tendency to unfairly divert trade and business from, and lessen the market for, the aforesaid manufacturer, and for numerous dealers in its genuine AC plugs, and for manufacturers of and dealers in competing plugs, and to prejudice and injure dealers in and consumers of said spurious plugs, and with the effect of so doing, and of constituting a fraud upon the purchasing public:

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

Mr. Henry Miller for the Commission.

Haight, Adcock & Banning, of Chicago, Ill., for respondent.

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 in the sale of automobile parts, supplies, and accessories to wholesale and retail dealers and directly to consumers in sundry States, and with place of business in Chicago, with passing off or misrepresenting source or origin of product, misbranding or mislabeling and advertising falsely or misleadingly in regard thereto, 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, engaged as above set forth, for about two years last past sold as and for genuine AC spark plugs made by the AC Spark Plug Co., for use in automobile motors, spark plugs with cores, (1) originally made for the Government for use in airplane motors (and not properly effective in automobile motors), by the aforesaid AC Spark Plug Co., and stamped with its long theretofore well and favorably known symbol "AC", (2) later sold by the Government as surplus property, and (3) subsequently purchased by respondent to the extent of many thousands and by him mounted in spark plug shells procured by him for such purpose,¹ with said symbol "AC" conspicuously stamped upon the exposed part of the core, respondent, in connection with the sale and distribution of said spark plugs to his aforesaid wholesaler, retailer and consumer vendees falsely and misleadingly representing, in advertising, in written correspondence, and orally that said spark plugs were the

¹ And neither made by nor for said AC Spark Plug Co.

aforesaid AC spark plugs manufactured by said competitor and designed and intended for use in automobile motors.²

Said representations and the appearance of the symbol "AC" upon the exposed portion of the cores of respondent's spark plugs, as above set forth, as alleged, "have the capacity and tendency to and do cause many of said dealers and many of the consuming public to purchase respondent's said spark plugs for use in automobile motors in the belief that respondent's said false and misleading representations are true".

Respondent further, as charged, in connection with the sale of his said spark plugs under such false and misleading representation, and to further the same, sold and delivered many of such spark plugs packed and delivered in individual containers which formerly belonged to and were used by said AC Spark Plug Co. for its said AC plugs and bore thereon the symbol "AC" and words "Spark Plugs" in large and conspicuous letters, were later sold and delivered by said competitor to another as waste material, and were procured in large numbers by respondent for the use and purpose immediately above set forth; respondent further selling and supplying said cartons to sundry of his dealer vendees by whom, in accordance with respondent's intent, respondent's said plugs were packed and sold in such cartons to other dealers and to the consuming public.

Respondent, as charged, by and through said acts and practices "places in the hands of his said wholesale and retail dealer vendees an instrument and means of committing a fraud upon retail dealers and upon the consuming public, respectively, by enabling said dealers to represent, offer for sale and sell respondent's said spark plugs as said "AC" spark plugs manufactured by respondent's said competitor, the AC Spark Plug Co.", and said acts and practices "tend to and do divert business from respondent's said competitor, the AC Spark Plug Co., and further, because respondent's said spark plugs

² Allegations of the complaint as relating more particularly to such competitor AC Spark Plug Co., and its product, as set forth therein, allege that among respondent's competitors is "the AC Spark Plug Co., a corporation organized under the laws of the State of Michigan, with its principal office and place of business in the city of Flint in said State, and during all of said times engaged in the manufacture and sale of spark plugs for internal-combustion motors, to wholesale and retail dealers located at points throughout the United States. At a time prior to the commencement of the acts and practices of respondent * * * set out, said competitor chose as a symbol and trademark for its said spark plugs the device 'AC' and for many years and during all times * * * mentioned has caused and now causes said symbol to be stamped in conspicuous letters upon the exposed porcelain portion of the cores of its said spark plugs, and said spark plugs have been, and are now, supplied to wholesale and retail dealers and by them to the consuming public with said symbol still so stamped upon said spark plugs. Said spark plugs have for many years and during all times * * * mentioned enjoyed and still enjoy a great and widespread popularity, good will and demand among the trade and the consuming public and are identified in the minds of the trade and consuming public with said symbol 'AC' appearing upon said spark plugs as above set out."

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do not properly function when applied to automobile motors", tend to and do otherwise injure and prejudice said competitor; all to the prejudice of the public and of 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 a complaint upon the respondent, Samuel Breakstone, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered his appearance herein by counsel and filed his answer to said complaint, hearings were had at which testimony was taken and evidence introduced by counsel for the Commission in support of the allegations of the complaint and by counsel for respondent in opposition thereto before an examiner of the Commission, theretofore duly appointed. Said evidence, including a transcript of testimony taken, was filed of record in the office of the Commission, and thereafter briefs and oral argument were submitted by counsel for the Commission and for the respondent.

Thereupon this proceeding came on regularly for decision, and the Federal Trade Commission, having duly considered the record and being now fully 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 Samuel Breakstone, an individual having his office and place of business in the city of Chicago, State of Illinois, is, and for more than three years last past has been, engaged in the business of selling and distributing automobile parts, supplies and accessories, including spark plugs, to wholesale and retail dealers and to the consuming public throughout the United States. Said business is, and throughout the course thereof has been, conducted by respondent as follows: He offers for sale and sells his products through the personal solicitation of himself and other salesmen traveling into the several States of the United States who take orders for his merchandise which are transmitted to his place of business in Chicago, Ill. Respondent also solicits orders for his merchandise in States other than Illinois by means of advertisements and written communications and the orders for his goods given in response to such solicitation are likewise transmitted to respondent's place of business in Illinois from States other than Illinois; and respondent receives such orders and causes the merchandise so or-

dered to be transported from his place of business in Chicago, Ill., to the respective purchasers thereof in States other than Illinois; and in so carrying on said business respondent is and throughout the course and conduct thereof has been, continuously engaged in interstate commerce, and in direct, active competition with many other individuals, partnerships and corporations similarly engaged in the sale and distribution of automobile parts, supplies, and accessories, including spark plugs, in commerce in, between and among the several States of the United States.

PAR. 2. Among the competitors of respondent referred to in paragraph 1 hereof is the AC Spark Plug Co., a corporation of Flint, Mich. (formerly and prior to July, 1922, named Champion Ignition Co.), which for many years has been engaged in the manufacture, sale and distribution in interstate commerce of spark plugs for internal combustion motors, including automobile motors, to wholesale and retail dealers and users throughout the United States. At a time long prior to the commencement of the acts and practices of respondent hereinafter set out, said AC Spark Plug Co., formerly Champion Ignition Co., adopted and used as its symbol and trade-mark for said spark plugs which it manufactures, sells, and distributes, the device consisting of the capital letters "AC" (being the initials of Albert Champion, its president), and for about twenty years last past has caused and still causes said symbol and trade-mark to be conspicuously stamped upon the exposed portion of the porcelain cores of its spark plugs; and said spark plugs have been and still are sold and distributed in the trade and to users with said symbol and trade-mark still so stamped thereon. Likewise said spark plugs manufactured by said corporation are sold and distributed in the trade and to the consuming public in individual cartons and containers of said corporation which bears said distinguishing trade-mark and symbol "AC". The spark plugs so manufactured and sold by said AC Spark Plug Co., formerly Champion Ignition Co., are marketed, known, and referred to by the manufacturer, the trade, and the consuming public as AC Spark Plugs. And said trade-mark and symbol "AC" in connection with spark plugs signifies and indicates to the trade and consuming public that such spark plugs have been manufactured by said AC Spark Plug Co., formerly Champion Ignition Co. The spark plugs manufactured, branded, sold, and distributed by said AC Spark Plug Co. (formerly Champion Ignition Co.) as above set forth are hereinafter referred to as "genuine AC spark plugs". Said genuine AC spark plugs are manufactured by patented processes and have a high reputation for quality and dependability; and for many years they have en-

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joyed a great and widespread popularity, good will, and demand among the trade and consuming public. The annual sales of such genuine AC spark plugs in the United States amount to approximately 25,000,000, or 45 per cent of the total number of all makes of spark plugs consumed; and they are standard factory equipment for a large number of automobiles, including such cars as the Cadillac, LaSalle, Buick, Nash, Oldsmobile, Pontiac, Chevrolet, Hudson, Essex, Chandler, Peerless, Overland, and Chrysler. Said spark plugs are nationally advertised throughout the United States as AC spark plugs, on which advertising in excess of \$600,000 per annum has been expended by the AC Spark Plug Co. Said genuine AC spark plugs and the porcelain cores thereof are and have been manufactured by said AC Spark Plug Co. in many different designs and styles to meet the particular requirements and needs of the various types of motors in which they are to be used, all of which plugs, however, bear said trade-mark and symbol "AC" and are known, designated and referred to by the manufacturer, dealers and consumers as AC spark plugs. Said AC Spark Plug Co. manufactures porcelain cores for use in said genuine AC spark plugs only, and the porcelain cores manufactured by it for its one-piece spark plugs are not marketed separately.

PAR. 3. In October, 1918, said AC Spark Plug Co. (then named Champion Ignition Co.) began the manufacture of genuine "AC" spark plugs for the United States Government under a contract with the United States Director of Aircraft Production, War Department, whereby the Government agreed to purchase 2,500,000 spark plugs to be designed and manufactured by said company for service in aircraft motors used by the Government in the prosecution of the World War. Before all the spark plugs so agreed to be purchased by the Government had been manufactured, and after the Armistice of November 11, 1918, was signed and the hostilities of the World War ceased, the Government exercised its right under said contract of terminating the same; and, in addition to the spark plugs already manufactured it thereupon took over and acquired title to and possession of the spark plugs and spark plug parts in process of manufacture under said contract. In the year 1920 a large quantity of said spark plugs and spark plug parts so acquired by the Government was sold by it "as is" and as surplus war property to one Symonds, who immediately caused the same to be shipped to and stored in a public warehouse in Chicago, Ill. Said material with the exception of some finished spark plugs which said Symonds withdrew and sold from time to time, was allowed to remain in such storage until on or about April 3, 1925, when the operators of said warehouse sold the entire lot remaining "as is" to respondent for

the sum of \$225. Said material so purchased by respondent consisted of a quantity of spark plugs, estimated to be approximately 40,000, and a large quantity of spark plug parts including about 300,000 or more porcelain spark plug cores designed and manufactured by the AC Spark Plug Co. for use in airplane motors and all bearing the aforesaid "AC" trade-mark placed thereon by the AC Spark Plug Co. in the processes of manufacturing said spark plugs for airplane motors under the above-mentioned contract with the Government. Said AC porcelain cores, having been designed and manufactured for use in airplanes, were neither designed nor suitable for use in automobile motors as such motors require, for proper functioning, a spark plug containing a core of a different design and style. Respondent resold said spark plugs contained in said material purchased and thereafter in or about July, 1925, began and for many months following continued to manufacture or assemble at his place of business in Chicago, Ill., certain one-piece spark plugs (hereinafter referred to as "spurious AC spark plugs") for use in automobile motors in which plugs respondent used as the porcelain cores thereof the above-mentioned porcelain cores acquired by him and bearing said "AC" trade-mark and symbol of the AC Spark Plug Co. All other parts of said spurious AC spark plug so manufactured by respondent were procured by him from dealers or manufacturers, but were not manufactured or ever owned, controlled, or dealt in by said AC Spark Plug Co. By the use of said AC porcelain cores respondent caused his spurious AC spark plugs to bear conspicuously said trade-mark and symbol AC in the customary and familiar place where the manufacturers of spark plugs, including the AC Spark Plug Co., cause their respective trade-marks or distinguishing symbols to be affixed. Said spurious AC spark plug so manufactured or assembled by respondent, are a close imitation of and so similar in general appearance, size and style, color, materials, and brand or trade-mark to said genuine AC spark plugs manufactured for automobile motors by said AC Spark Plug Co. as to be indistinguishable by the purchasing public in the regular and ordinary course of trade.

PAR. 4. Among the products dealt in and sold by respondent, as set forth in paragraph 1 hereof, were said spurious AC spark plugs which he manufactured or assembled at his place of business in Chicago, Ill., as set forth in paragraph 3 hereof. Beginning in or about July, 1925, and for many months thereafter respondent offered for sale, sold and distributed in excess of 250,000 of said spurious AC spark plugs with said "AC" trade-mark and symbol thereon to wholesale and retail dealers and the purchasing public generally in

various States of the United States. In accordance with respondent's plan of distribution and in the regular course of business, said spurious AC spark plugs were marketed in and by the trade and to the consuming public under said trade-mark, symbol, and brand "AC" contained thereon. In the course of having been so marketed to, in and through the trade and to the consuming public, said spurious AC spark plugs were offered for sale, sold, and distributed, (1) by respondent in competition with the AC Spark Plug Co., manufacturers and sellers of the genuine AC spark plugs, and numerous dealers of such genuine AC spark plugs, as well as in competition with numerous manufacturers and dealers of other makes of spark plugs for automobile motors; (2) by numerous wholesale and retail dealers in competition with many other wholesale and retail dealers marketing not only the spark plugs manufactured by the AC Spark Plug Co., but also marketing spark plugs of numerous other manufacturers and sellers of spark plugs for use in automobile motors. In offering for sale, selling, and distributing said spurious AC spark plugs as aforesaid respondent, (1) did not remove or obliterate, or attempt to remove or obliterate said "AC" symbol or trade-mark from said spurious AC spark plugs, but caused same to be offered for sale, sold and distributed to, in and by the trade and to the consuming public under and branded with said trade-mark and symbol "AC"; (2) did not disclose directly or indirectly to his customers or to the purchasing public that said spurious AC spark plugs were not genuine AC spark plugs or that they were not manufactured by the AC Spark Plug Co. or that the porcelain cores of said spurious AC spark plugs were designed, manufactured, or intended for use in airplane motors and not for automobile motors, of all of which facts respondent had knowledge prior to and during the time of his manufacture and sale of said spurious AC spark plugs as set forth above; and (3) caused said spurious "AC" spark plugs to be represented, offered for sale, sold and distributed to, in and by the trade and to the consuming public as spark plugs designed, intended and proper for use in automobile motors.

PAR. 5. Respondent's use of said trade-mark and symbol "AC" upon said spurious AC spark plugs, and his representing and marketing of such spurious AC spark plugs for use in automobile motors, all as hereinabove set forth, were false and misleading, had the capacity and tendency to and did mislead and deceive a large and substantial number of the trade and consuming public into buying and selling said spurious AC spark plugs in, and because of, the following erroneous beliefs:

(1) That said spurious AC spark plugs were genuine AC spark plugs.

(2) That said spurious AC spark plugs were manufactured by said AC Spark Plug Co., of Flint, Mich.

(3) That said spurious AC spark plugs were designed, intended and proper for use in automobile motors.

In truth and in fact, (1) said spurious AC spark plugs were not genuine AC spark plugs, and were not manufactured by said AC Spark Plug Co. nor any part thereof excepting the porcelain cores, which were designed and manufactured for use in airplane motors and not automobile motors, as hereinabove set forth; (2) said spurious AC spark plugs were inferior in quality to said genuine AC spark plugs, and were not of a design or style suitable for, nor would they properly function in automobile motors.

PAR. 6. On or about August 21, 1925, and for the purpose of procuring the spark plug cartons hereinafter mentioned, respondent purchased a carload of miscellaneous scrap paper containing among and as part of said scrap paper a large quantity, approximately 1,000,000, individual AC spark plug cartons and AC spark plug containers, each having printed thereon in large and conspicuous letters the brand "AC Spark Plugs" with the letters and symbol "AC" in large type conspicuously displayed in numerous places. Said cartons were the regular AC spark plug cartons formerly the property of said AC Spark Plug Co. and were the type of cartons in which the genuine AC spark plugs manufactured by the AC Spark Plug Co. for automobile motors were for years packed and marketed through the trade and to the consuming public throughout the United States, and were of the type of carton familiar to the trade and consuming public as containers for said genuine AC spark plugs. Said cartons purchased by respondent had prior thereto been discarded, sold and delivered by the AC Spark Plug Co. as waste paper and as junk to a dealer in such materials doing business at Flint, Mich., under the name of Flint Scrap Iron & Metal Co., from which dealer they were purchased as scrap paper by a seller and buyer employed by the Aetna Auto Parts Co. of Chicago, Ill., who made said purchase without the knowledge of his employer, and after consultation with respondent as to the uses to which respondent could apply said cartons in his business as containers in which to market spark plugs. Said scrap paper so purchased by said buyer and seller and containing said AC spark plug cartons was shipped in a carload lot to Chicago, Ill., and immediately thereafter on or about August 21, 1925, was delivered intact to respondent who reclaimed said AC spark plug cartons from the rest of the scrap paper contained in said shipment.

PAR. 7. Throughout many months immediately following receipt of said AC cartons as set forth in paragraph 6 hereof, and having information of the fact that said AC Spark Plug Co. had discarded said AC spark plug cartons as scrap paper and junk, and intended that said cartons be not used commercially as containers for spark plugs, respondent nevertheless sold and distributed large quantities of said cartons from his place of business in Chicago, Ill., to spark plug dealers in various States of the United States for commercial use as containers in which to pack and market automobile spark plugs in the trade and to the consuming public. And respondent continued the sale and distribution of large and substantial numbers of said AC spark plug cartons subsequent to the issuance of said complaint herein. Further, with the purpose, intention, and effect of causing his said spurious AC spark plugs to be packed and marketed through the trade and to the consuming public in said AC spark plug cartons, and thereby furthering his false, deceptive, and misleading practices in the sale and distribution of said spurious AC spark plugs as hereinabove set forth, respondent supplied, sold, and distributed said AC spark plug cartons in large and substantial quantities to dealer-purchasers of said spurious AC spark plugs. Thereupon and in accordance with the respondent's purposes and plan, said dealer-purchasers or other dealers caused said spurious AC spark plugs to be packed, displayed, offered for sale, sold and distributed in said AC spark plug cartons among the trade and to the consuming public throughout various States of the United States. Respondent's sale and distribution of said cartons in connection with said spurious AC spark plugs as hereinabove set forth was with intent on the part of respondent to mislead and deceive, had the capacity and tendency to, and did, mislead and deceive a large and substantial number of dealers into buying and selling, and consumers into purchasing said spurious AC spark plugs as and for genuine AC spark plugs designed and manufactured for use in automobile motors by said AC Spark Plug Co. In and by the sale and distribution of said cartons and said spurious AC spark plugs under the conditions and circumstances hereinbefore set forth, respondent supplied to and introduced in the trade a means and instrumentality for committing a fraud upon the purchasing public whereby dealers could and did, in the ordinary course of trade and business, sell and distribute said spurious AC spark plugs as and for genuine AC spark plugs designed and manufactured by the AC Spark Plug Co. for use in automobile motors. Respondent's use of said "AC" trademark and symbol and said AC spark plug cartons in connection with the sale and distribution of said spurious AC spark plugs as above

set forth, were calculated to and did mislead and deceive a large and substantial number of dealers into buying and selling, and the consuming public into purchasing said spurious AC spark plugs as and for, and in the erroneous belief that they were genuine AC spark plugs designed and manufactured by said AC Spark Plug Co. for automobile motors.

PAR. 8. Respondent's acts and practices in the sale and distribution of said AC spark plug cartons for commercial use as containers for spark plugs, and his use of said trade-mark and symbol "AC" in connection with said spurious AC spark plugs, all as hereinbefore set forth, have the capacity and tendency to and did unfairly divert trade and business from, and lessen the market for, said AC Spark Plug Co., and numerous dealers of genuine AC spark plugs as well as other manufacturers and dealers of spark plugs for automobile motors who sell and distribute same in competition with respondent, or with the aforesaid dealers of respondent's spurious AC spark plugs. Likewise said acts and practices of respondent tended to and did prejudice and injure numerous dealers and consumers of said spurious AC spark plugs, and constituted a fraud upon the purchasing public.

PAR. 9. Respondent has the intention and purpose to, and there is danger and the probability that he will, unless permanently restrained, continue in whole or in part said false, misleading, and deceptive practices carried on by him as hereinabove set forth.

CONCLUSION

The acts and things done by the respondent in the sale and distribution of said AC spark plug cartons; and his use of said trade-mark and symbol "AC" in connection with said spurious AC spark plugs and the sale thereof as designed and proper for use in automobile motors, all as and under the conditions and circumstances set forth in the foregoing findings as to the facts, are to the injury and prejudice of the trade and consuming public, and respondent's competitors, are unfair methods of competition in interstate commerce and constitute a violation of the act of congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent thereto, the testimony, evidence, briefs, and argument of

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counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions 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",

It is now ordered, That respondent, his agents, representatives, servants, and employees, do cease and desist, in the course and conduct of interstate commerce—

(1) From using the letters or device "AC", or causing the same to appear, upon or in connection with any spark plugs or spark plug parts which have not been manufactured by the AC Spark Plug Co. of Flint, Mich., or its assigns;

(2) From selling and distributing to dealers or others any spark plug, the core of which is marked with the trade name AC unless said spark plug be entirely manufactured by the AC Spark Plug Co.

(3) From using any other letters, words, or device upon or in connection with any spark plug or spark plug parts which indicate, import, or imply to the purchasing public that such spark plugs or spark plug parts have been manufactured by the AC Spark Plug Co., if and when such is not true in fact.

(4) From representing in any manner whatsoever in the sale and distribution of spark plugs that such spark plugs were designed, manufactured, or are proper or suitable for use in automobile motors when such is not true in fact, or when the cores of such spark plugs have not been designed or manufactured, or are not suitable or proper, for use in such automobile motors.

(5) From selling and distributing, or otherwise supplying to dealers or others any spark plug containers, labels, or brands bearing the symbol or device "AC", or words or device of similar import, with the purpose or effect of thereby causing such dealers or other persons to use them, or to distribute the same for use, as commercial containers, brands, or labels for any spark plugs or spark plug parts which have not been manufactured by the AC Spark Plug Co. of Flint, Mich., or its assigns.

(6) From in any manner whatsoever making, or causing or enabling dealers to make, any false, misleading, or deceptive representations, statements, or assertions as to the origin, manufacture, quality, design, style, or uses of any spark plugs or spark plug parts.

It is further ordered, That respondent Samuel Breakstone shall within 30 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
BERKEY & GAY FURNITURE 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 1396. Complaint, July 27, 1926—Decision, Sept. 25, 1928

Where a corporation engaged in the manufacture of dining room, living room and bedroom furniture with solid mahogany, walnut or gumwood legs, posts, stretchers and rails, and with broad or flat parts of plywood of gumwood, poplar, chestnut or wood of similar grade, veneered with mahogany or walnut, where exposed to view, and in the sale thereof in competition with manufacturers of truthfully described veneered and solid furniture, to small town dealers who order by catalogues and price lists for their customers, and to dealers and department stores, who make their selection after personal inspection at its place of business, or from photographs or illustrations, after solicitation, and follow the practice of requiring manufacturers to describe furniture purchased upon invoices, tagging furniture displayed in accordance therewith, and so advertising the same in daily papers; described said furniture in catalogues, price lists, photographs, and illustrations furnished to wholesale and retail dealers, in invoices reflecting the sale thereof, and in advertisements in periodicals and trade papers of general circulation among the purchasing public, as "walnut", or "mahogany", or "walnut and gumwood", or "mahogany and gumwood", as the case might be, without disclosing its veneered composition, or the relatively small amount of mahogany or walnut used therein, and thereby led to the offer and sale of such furniture by the aforesaid dealers and stores (and probably by the ultimate purchaser or consumer, if resold by him) as mahogany, mahogany and gumwood, or walnut and gumwood; with the capacity and tendency to mislead and deceive purchasers and prospective purchasers of it and of its dealers into buying such furniture as and for furniture consisting entirely of mahogany or walnut or of the designated wood or woods, as above set forth, and not veneered:

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

Mr. James M. Brinson for the Commission.

Knappen, Uhl & Bryant and *Mr. Francis D. Campau*, of Grand Rapids, Mich., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Michigan corporation engaged in the manufacture and