

Complaint

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IN THE MATTER OF
NON-PLATE ENGRAVING COMPANY, INC.

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

Docket 1283. Complaint, Feb. 14, 1925—Decision, June 29, 1929

Where a corporation engaged in producing and selling business and social stationery, with imprints produced by a process which (1) involved sprinkling ordinary wet, type printing, with a chemical, followed by baking, and resulted in a raised letter effect so closely simulating genuine engraving as to be readily distinguishable only by an expert, and (2) was named "thermography" by an association of the trade;

- (a) Described its product as "Non-Plate Engraving" and set forth in its advertising matter, on letterheads, and on other literature the words "NON-PLATE ENGRAVING COMPANY, INC. Engraved and Embossed Effects Without Copper Plates or Steel Dies"; and
- (b) Represented that its said "Non-Plate Engraving" will meet all social requirements and result in a saving of half the time and cost of work done with a plate;

With the capacity and tendency to deceive the public into the mistaken belief that the stationery in question was genuine engraved stationery, i. e., as long known and understood by the public, stationery upon which impressions had been made from inked engraved plates or dies:

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

Mr. Richard P. Whiteley for the Commission.

Mr. George Seagrave Franklin, of New York City, 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 New York corporation, engaged in printing social and business stationery, including invitations, announcements, calling and business cards, letterheads, envelopes, and allied products, by a special process, and in the sale of its said stationery products to persons, firms, and corporations in various States, and with principal office and printing plant in New York City, with using misleading corporate name and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged, as above set forth and producing letters, words, or designs upon its stationery by a process which involves the placing of said letters, etc., upon the stationery through use of inked type or cuts, and the application thereto while the ink is wet of a powdered chemical, followed by the baking of the stationery, with a resulting raised letter effect so closely resembling "engraved" products in appearance, feel, and finish that persons that are not experts are unable to distinguish between respondent's products and "engraved" products, features its corporate name, together with the statements "Non-plate Engraving", "Engraved Effects", "Non-plate Engraved", "We Specialize in Copper Plate and Steel Die Effects" and other similar statements as descriptive of its business and products, in advertisements in newspapers of general circulation throughout the United States and in letters, price lists, sample books, pamphlets, folders, and other advertising literature, notwithstanding the fact that the letters, words, or designs upon respondent's said stationery are not the result of "engraving", nor "engraved" according to the trade and public understanding of the term, that is to say, stationery containing "letters, words, or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application, under pressure, of metal plates which have been specially engraved, cut, or carved for, and are used in, the production of such stationery".

The use by respondent of the word "engraving" in its corporate name, and of words and phrases, as above set forth, in advertising, offering, and selling its said products, as charged, "were and are calculated to, and had and have the tendency and capacity to, and did and do mislead and deceive the purchasing public into the erroneous belief that respondent is an engraving company, and that respondent is engaged in the business of producing and selling engraved stationery, and that the letters, words, or designs contained upon the stationery products offered for sale and sold by respondent, were and are engraved."

The use by respondent of the word "engraving" in its corporate name and use of the aforesaid words and phrases in its advertising literature, and the placing of such literature "in the hands of agents, representatives, and dealers", further, as charged, "enables unscrupulous agents, representatives, and dealers to mislead and deceive customers and prospective customers into the erroneous belief that respondent is an engraving company, and that respondent is engaged in the business of producing and selling engraved stationery products, and that the stationery products offered for sale and sold by respondent are engraved products."

Findings

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Such alleged acts and practices, as charged, divert trade from and otherwise prejudice and injure competitors, many of whom produce engraved stationery products, for business and social purposes and sell the same to purchasers in other States, and others of whom manufacture and sell in interstate commerce, stationery for business and social purposes which is not engraved and do not in any manner hold themselves out or represent themselves as manufacturers of or dealers in engraved stationery products; 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Non-Plate Engraving Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before an examiner of the Federal Trade Commission duly appointed.

Whereupon, this proceeding came on for a final hearing on the briefs and oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Non-Plate Engraving Co., Inc., is a corporation organized in 1916 under the laws of the State of New York, with its principal place of business in the city of New York, in said State. Upon its organization as a corporation it took over a business theretofore carried on, since 1913, by a partnership trading under the name and style of "Non-Plate Engraving Co."

PAR. 2. Since 1916, and at all times herein mentioned, respondent has been engaged in the business of producing and selling stationery, including invitations, announcements, greeting cards, calling cards, business cards, letterheads, and similar items of business and social stationery, and has caused said stationery, when sold, to be transported from its said place of business in the State of New York through and into various other States of the United States to the respective purchasers thereof. In the course and conduct of its said business, respondent at all times since its organization has been in

active competition with various persons and partnerships and other corporations also engaged in the production and sale of commercial and social stationery, invitations, announcements, greeting cards, business cards, letterheads, and similar items of business and social stationery, in commerce among the several States of the United States.

PAR. 3. Respondent, in the course of its business, as set out in paragraphs 1 and 2 hereof, produces imprints by type presses on the stationery sold by it by the following process:

Ordinary type is used to print upon paper. While the ink is still damp it is sprinkled with a chemical in powdered form and then baked; which causes the chemical to melt, fuse with the ink, become solid and present a raised letter effect.

Printing by this process raises the lettering above the surface of the paper, closely simulates genuine engraving, and only an expert can readily distinguish it from engraving. Respondent describes its product as "Non-Plate Engraving," and upon its advertising matter, letterheads, and other literature, there appears the following caption:

NON-PLATE ENGRAVING COMPANY, INC.

ENGRAVED AND EMBOSSED EFFECTS WITHOUT
COPPER PLATES OR STEEL DIES

The advertising matter of respondent is distributed by it among its customers and prospective customers in various States of the United States, and in one piece of advertising matter the claim is made that its product, "Non-Plate Engraving" will meet all social requirements, and that its use will result in a saving of half the time and half the price of work done with a plate.

PAR. 4. For a number of years prior to September, 1928, a group of members of the New York Employing Printers' Association, who produced stationery imprinted by a process similar to that used by the respondent in the manufacture of its products, endeavored to reach an agreement as to a proper descriptive name for the raised printing produced by such process, and in September, 1928, as the result of said efforts they selected the name "Thermography." Notice to this effect was contained in a leaflet which the members of this group caused to be published for general distribution, and which has been and is now being distributed among customers and prospective customers of respondent.

PAR. 5. The word "engraving", as it is used in the graphic arts, may be applied either to an engraved intaglio plate upon which words, letters, designs, etc., have been incised or cut, or to impressions made from such a plate. Such plates are cut or incised by hand, by

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machine, by etching with acid, by a transfer from other engravings, and by other means, but in all cases the words, letters, designs, etc., sought to be produced upon stationery, cards, etc., are cut below the surface of the plate. To make impressions from such a plate the ink is applied, then the plate is wiped, so that the ink remains only in the lines cut below the surface. The inked plate is then put upon the piece of stationery or other article to be engraved and pressure is applied sufficient to force the surface of the stationery into the lines cut in the plate, causing the ink in such lines to adhere to the paper or other material on which the impression is to be made.

PAR. 6. The word "engraving", when applied to business and social stationery, has been well known and understood by the public for a long period of years to include only stationery upon which impressions have been made from inked engraved plates or dies, upon which plates or dies there have been made lines, letters, designs, or inscriptions, by cutting or otherwise producing same below the surface of such plates or dies. The stationery produced and sold by respondent, as set out in paragraph 3 hereof, closely simulates engraved stationery in appearance and finish, and when designated and advertised under a name consisting of a combination of words which includes the word "engraving", or the word "engraved", has had and has the capacity and tendency to deceive the public into the mistaken belief that the same is engraved stationery.

CONCLUSION

The practices of the respondent, under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon answer of the respondent filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent above named, Non-Plate Engraving Co., Inc., its officers, agents, representatives, and employees, do cease and desist from using the word "engraving" or "engraved" in its corporate name, business signs, or advertising matter used in the offering for sale or sale of stationery in interstate commerce, upon which the words, letters, figures, and designs have not been produced from metal plates, into which such words, letters, and designs have been cut.

PLATELESS ENGRAVING Co., INC., Docket 1330. The Commission as of the same date made substantially similar findings and order in the case of the aforesaid respondent (against whom complaint was issued as of July 2, 1925), it appearing that said respondent, a New Jersey corporation with principal place of business and office in New York City, in its advertising matter, letterheads, and other literature employed the caption "Plateless Engraving Co., Inc.", "Engraved and Embossed Effects Without Copper Plates or Steel Dies", though it does not appear that respondent, as in the preceding case, made any claim as to its said so-called engraving meeting all social requirements, and advantages thereof in time and price of work done, as compared with work done with a plate; the Commission being represented by *Mr. Richard P. Whiteley* and respondent by *Mr. George Seagrave Franklin*, of New York City.

IN THE MATTER OF
MARION BUTLER KIRTLAND AND ROY M. KIRTLAND
TRADING UNDER THE NAME AND STYLE OF RAY
LABORATORIES

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

Docket 1513. Complaint, May 10, 1928—Decision, June 29, 1929

Where a firm engaged in the sale and distribution of a so-called hair-color restorer, which (1) was and acted only as a dye, (2) was apt to be harmful to the body, (3) produced a color which was impaired by shampooing or bathing in salt or fresh water and wore off, and (4) was not a stimulant to hair growth nor effective in any degree as a remedy or cure for dandruff; in its advertisements of its said so-called "Youthray",

- (a) Falsely represented that the same neither was nor acted as a dye, but permanently restored gray hair to its original and natural color through its action through the hair channels in supplying natural-color pigment to the inside of the hair through the roots thereof, and thus caused nature to assimilate such coloring matter and to replenish the color glands with the original coloring;
- (b) Falsely represented that the color thus produced, since within the hair itself, neither came off, nor was impaired in any way by shampooing or bathing in salt or fresh water; and
- (c) Falsely represented that said preparation should be frequently applied, and that so applied, it was not only harmless, but a distinct benefit, aside from its restoration of the natural color, and constituted a stimulant to hair growth and an effective remedy and cure for dandruff;

With the effect of misleading and deceiving large and substantial numbers of the consuming public into purchasing said lead-and-sulphur dye in reliance on the truth of the aforesaid statements and representations, and with the capacity and tendency so to do, all to the prejudice and injury of the public and of its competitors from whom trade was thereby unfairly diverted:

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

Mr. Henry Miller for the Commission.

Nugent & O'Hara, of Washington, D. C., and *Church, Traxler & Kennedy*, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, Marion Butler Kirtland and Roy M. Kirtland, engaged as partners in the sale of a hair color restorer under the name of