

Syllabus

IN THE MATTER OF

UNIVERSAL LOCK-TIP CO., A CORPORATION, AND
KATHERINE GAY, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE, UNIVERSAL LOCK-TIP
CO., AND EMILE W. S. GAY, OTHERWISE KNOWN AS
WILLIAM S. GAY, EACH INDIVIDUALLY AND AS AN
OFFICER OF UNIVERSAL LOCK-TIP CO., A CORPORA-
TION

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

Docket 1578. Complaint, Mar. 9, 1929—Decision, Feb. 4, 1930

Where a corporation with neither assets of any practical value, nor business, organized to exploit a patented shoe-lace fastener; the organizer of said corporation, president thereof, and owner of the patent concerned; and said organizer's wife, acting as dummy director of the corporation; in soliciting through letters, circulars, etc., sale of shoes, laces, and/or other merchandise, and certificates of stock or interest in the corporation and their individual businesses, and with intent to defraud and deceive members of the public,

- (a) Represented that the purchaser of a pair of shoes or other merchandise at certain assigned prices would be given free a certain number of shares of preferred and common stock in the corporation, the fact being that consideration for the stock was included in the price of the shoes or other merchandise;
- (b) Falsely represented that the corporation was engaged in the manufacture of the patented shoe laces concerned, had no indebtedness, owned free and clear assembling machinery with a capacity of 300 gross per day, and that there were orders on hand "for over 3,000,000 gross of lock tip laces", and represented that said corporation had been assigned the patent rights covering said fastener, for 51 per cent of its common stock, the fact being that its aforesaid president and organizer had assigned to it only a non-exclusive license to use the patent involved;
- (c) Set forth upon their letterheads depictions of a 2-story building as the factory of said corporation, represented as owned by it free and clear, and the words "Reference any bank in Boston or any mercantile agency", the facts being that the building at the address given, that of said corporation and the aforesaid individuals, was a 4-story structure in which they occupied only 3 to 5 rooms and that neither said corporation nor said president and organizer ever owned any building in Boston or elsewhere, and that the corporation had no financial standing or reputation which would permit a reputable bank or mercantile agency to recommend it in answer to inquiries and that its aforesaid president and organizer refused to give pertinent information on behalf of the public, to the state department of public utilities and to representatives of local mercantile agencies;
- (d) Falsely stated that they had been successful in solving every financial problem to date, that they had "the money assured for the automatic

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tipping machines" and "orders on hand right now that will make the common shares worth several hundred dollars each the minute production is started on a scale", that dividend checks would come to purchasers by reason of the acquisition of the stock offered, that the shares would be listed on the Boston and New York stock exchanges, and that the offer of the stock, along with the shoes or other merchandise, presented "an opportunity to make \$20,000 within the next few months without the investment of a single penny", by reason of the alleged glowing prospects for the patented shoe lace, represented as bound to become a bigger success than any other industry founded upon a patented idea; and

Where said individuals,

- (c) Filed certificates and did business under the same trade name as that of said corporation and at the same address, in connection with the sale of shoes, shoe laces, and/or other merchandise, and purported certificates of stock or interest in said corporation, and/or patent, or similarly entitled corporation (no longer in existence) through false statements and representations such as above set forth;

With the tendency and capacity to mislead and deceive members of the public into purchasing shoes and shoe laces and other merchandise from them in reliance on such statements and with the effect of so doing:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors in the sale of shoes, shoe laces, and other merchandise, and constituted unfair methods of competition.

Mr. Edward E. Reardon for the Commission.

Mr. Joel Eastman, of Boston, Mass., 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 respondent Universal Lock-Tip Co., a Massachusetts corporation with principal place of business in Boston, respondent Katherine Gay, a married woman, doing business on her separate account as Universal Lock-Tip Co. and also a director of respondent corporation, and respondent Emile W. S. Gay, president and treasurer of said corporation, with offering false and deceptive inducements to purchase products dealt in, in combination and cooperation with one another, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, engaged in the sale of shoes with "Lock-Tip Shoe Laces", i. e., shoes laces equipped with a patented fastener covered by patent owned by respondent Emile Gay, at a price of \$6.50 per pair, with which respondents include 25 shares of the preferred stock and 250 shares of the common stock of the aforesaid corporation (without good will and substantially without assets and with the

sales of its share certificates enjoined in several States), as charged, make and have made extravagant and fraudulent statements, representations, and promises concerning the aforesaid shares, some of which statements, etc., "are false in fact and others of which are known by respondents at the time they are made to be impossible of fulfillment, as inducements to the public to purchase the shoes and shoe laces".

Among the statements and representations thus referred to, made to the public through circulars and circular letters and verbally through agents and employees to purchasers and prospective purchasers throughout the various States, as set forth in the complaint, "are statements that the respondents have on hand orders for shoe laces supplied with the patented string fastener, that will make the common shares of respondent corporation worth several hundred dollars each the minute production is started on a scale; that one of the leading department stores in Boston has sold over 100 gross of the said shoe laces; that the said shares will be listed on the Boston and New York stock exchanges, when there is no apparent or reasonable ground or basis for such representation; that the said shares of stock, alleged to be given free with the purchase of each pair of shoes, represent shares in the patent above mentioned, which representation is false in that the said respondent corporation is not the owner of the patent or any part thereof; that a large chain store corporation will sell 10,000,000 pair a year; and the following: Reference: Any bank in Boston or any mercantile agency"; the fact being that no banking institution in Boston and no mercantile agency in the United States could reasonably since on or about March, 1925, when respondents commenced their operations herein concerned, to the "date hereof, on an inquiry, recommend said corporation, as to its financial soundness or standing, to anyone desiring to enter into business relations with said corporation"; and also made similar other such statements as: "I offer you an opportunity to make \$20,000 within the next few months without investing a single penny".

The use, as alleged, "by respondents in combination and in co-operation with each other of the above-mentioned statements and representations concerning the shares of the respondent corporation and concerning the shoes and shoe laces sold by them as above, and the sale of said shoes in the manner above described, has the tendency and capacity to mislead and deceive purchasers thereof into the belief that the said statements and representations are true; among others that the said shares of respondent corporation are shares in the said patent and that they are given free with the purchase of the

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shoes and shoe laces, when in fact the price of \$6.50 which is paid by members of the public for each pair of the shoes includes more than a reasonable profit to the respondents in the sale thereof, and includes a consideration for the said shares; and, relying upon that belief, into purchasing shoes from respondents in preference to shoes fairly represented and sold at a reasonable profit by respondents' competitors"; all to the injury and prejudice of the public and of said competitors, engaged in the sale and delivery of shoes and shoe laces to members of the public.

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 respondents, Universal Lock-Tip Co., a corporation, and Katherine Gay and Emile W. S. Gay, otherwise known as William S. Gay, charging the said corporation and the said Katherine and Emile W. S. Gay, each individually and as an officer of the said corporation with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having filed their answers herein hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and briefs having been filed on the part of the Commission and counsel for the Commission having been heard on oral argument, and no one appearing for the respondents, 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. Respondent, Universal Lock-Tip Co., is a corporation, organized on or about January, 1924, under the laws of the Commonwealth of Massachusetts, having at all times since its organization a principal place of business in Boston, in said Commonwealth.

PAR. 2. Respondent, Emile W. S. Gay, sometimes known as William S. Gay, is the president and treasurer of respondent corporation. Respondents William S. Gay and Katherine Gay are directors of respondent corporation.

PAR. 3. On February 10, 1920, respondent William S. Gay was granted Letters Patent No. 1,330,256 by the United States Patent Office for a string fastener, and he has been ever since and is now the owner and holder of said patent.

The said string fastener is adapted for use as a tip on the ends of shoe laces to keep the ends in a fixed point.

PAR. 4. Since on or about February, 1920, respondent William S. Gay has made various efforts to utilize said patent and the rights thereunder, so that it would be profitable in use on shoe laces tipped with said fastener, when sold in competition with laces sold otherwise tipped that are now and have been in satisfactory use since many years prior to and since said respondent's patent was granted. All of said respondent's said efforts have been unsuccessful.

PAR. 5. Respondent, William S. Gay, caused the respondent corporation to be organized in January, 1924, for the purpose of exploiting his said invention as a shoe-lace fastener and he assigned to the said corporation a license to use his said patent for the consideration to him of 51 per cent of its common stock. No other shares of the capital stock of the corporation were sold for cash except \$100 worth, and this money was later refunded to the purchaser of the stock. The corporation has never done any business.

PAR. 6. Each year since its organization the respondent corporation has filed in the office of the secretary of the Commonwealth of Massachusetts, as required by the laws of that State, a certificate of its condition, signed by its officers. Each year the said certificate has been a duplicate of the one filed the previous year.

PAR. 7. In the certificate of the condition of respondent corporation filed as above, March 2, 1929, the only assets of the corporation are stated to be: Claim, \$2,000; good will, \$20,400; profit and loss, \$2,700. The liabilities are stated as, capital stock, \$25,000 for shares of capital stock with par value; 13,572 shares without par value and \$100 received for stock subscription.

PAR. 8. The respondent corporation has never done business and has no such asset of value as good will. The above-mentioned claim for \$2,000 has been abandoned as to collection for at least approximately four years or more and the said claim is conceded by respondent, William S. Gay, to be practically worthless. The license above mentioned, assigned to the corporation to use the said patent, is not an exclusive license and is practically of no value as an asset.

The respondent corporation has not had since its organization and has not now any assets of any substantial value.

PAR. 9. The only officers of respondent corporation are the respondent, William S. Gay, and his wife and daughter. His wife and

daughter are what are known as dummy directors of respondent corporation and they have never known anything of the corporation or of its affairs.

PAR. 10. November 5, 1924, respondent William S. Gay filed in the office of the city clerk of Boston, Mass., a married woman's certificate, purporting to be signed by respondent, Katherine Gay, to do business on her separate account at No. 168 Dartmouth Street in said Boston, the proposed business to be that of a mail order business (shoes) under the name Good Heart Shoe & Last Manufacturing Co.

May 26, 1925, respondent, William S. Gay, filed in the office of the said city clerk another married woman's certificate purporting to be signed by respondent Katherine Gay to do business on her separate account at No. 168 Dartmouth Street, Boston, the proposed business to be that of mail order, shoes and shoe laces, under the name of Universal Lock-Tip Co.

Respondent, William S. Gay, also filed on October 2, 1926, in the office of the said city clerk, a certificate to do business as an individual under the name, Universal Lock-Tip Co., at said No. 168 Dartmouth Street. April 24, 1929, the last-mentioned certificate was still in force.

No. 168 Dartmouth Street in said Boston is also the address of the principal place of business of respondent corporation, Universal Lock-Tip Co.

On April 8, 1929, subsequent to the service of the complaint and answer herein, respondent, William S. Gay, filed in the office of said city clerk certificates purporting to be signed by respondent Katherine Gay withdrawing the above-mentioned married woman's certificates.

PAR. 11. Respondent, Katherine Gay, wife of respondent, William S. Gay, testified as a witness in this proceeding and stated that she was accustomed to sign whatever papers respondent William S. Gay presented to her for signature and that she never asked or knew what the contents of the papers were that she so signed; that she did not know whether or not she had signed the above married woman's certificates or any of respondent corporation papers and that she did not know whether or not she was an officer of respondent corporation; that she might have heard of respondent corporation but that she did not know that she had heard of it; that she never had anything to do with the sale of or delivery of shoes or shoe laces from No. 168 Dartmouth Street, in said Boston, and knew nothing about any such business in the sale of shoes and shoe laces.

PAR. 12. At all times since November 5, 1924, the respondent William S. Gay has been and now is engaged in the business of the sale of

shoes and shoe laces, both as a business purporting to be conducted in the name of respondent Katherine Gay under the above-mentioned married woman's certificates and on his own account under the same name as respondent corporation and all at the same address in said Boston.

PAR. 13. In the course of respondent William S. Gay's said business he has sent letters to members of the public throughout the United States offering to sell shoes in connection with the sale of which he offered to give with each pair of shoes, sold at \$6.50, 25 shares of the preferred capital stock and 250 shares of the common stock of respondent corporation. The said letters were written on printed letterheads carrying the name, Universal Lock-Tip Co., 168 Dartmouth Street, Boston, Mass., and the statement thereunder "*Reference any bank in Boston or any mercantile agency*" and were signed "William S. Gay, President."

PAR. 14. Among the statements made to members of the public in the letters above referred to were the following, in a letter sent by mail, dated, May 22, 1926:

I offer you an opportunity to make \$20,000 within the next few months without investing a single penny.

I have invented and obtained a very valuable United States patent for a new shoe lace. Examine the tip of the attached sample and see what you think of the new invention.

This patent will make more millions in the long run than Henry Ford did with the automobile—and you have a chance to share in this money without it costing you a cent. You can't begin to imagine how readily tremendous large orders for these improved shoe laces can be secured from shoe manufacturers (*Five and ten thousand gross at a time*) at from three to four hundred per cent profit.

To increase production and market this invention on a large scale requires just about \$2,500. To raise this amount without losing control of the business I am selling 1,000 pairs of high grade men's shoes, which I pay for with the patented laces instead of money. To those that send me an order for a pair of shoes I give, *absolutely free, 275 shares in my patent*, that is, in the company, to which I have assigned the patent rights for 51 per cent of its common stock.

It is the profit on the sale of the shoes that supplies the capital, which is fast being raised thanks to the unanimous response to the few letters I sent out. *The shares given are 25 eight per cent preferred and 250 common shares. The par value of the preferred shares is \$10 each—the shares will be listed in the Boston and New York stock exchanges.—Then watch them jump in value.* I have orders on hand right now that will make the common shares worth several hundred dollars each the minute production is started on a scale. I am putting within your reach a businesslike opportunity to make \$20,000 within the next few months, *that-much-sure*, possibly a great deal more. *Nothing-can-stop-it. It is the small, used every day, inexpensive article that makes the biggest fortune, and this improved shoe lace is such a positive success that they will never be made fast enough.*

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The minute your order gets here you become one of the fortunate shareholders in an enterprise that is bound to become one of the biggest successes America has ever seen. *Yes—bigger than Gillette safety razor or Eastman kodak, or any other industry founded upon a patented idea.* It is very important that you send in the order immediately, as the number of letters sent out is limited.

I strongly urge you to make it at least two pairs—more if you can—but get at least 550 shares and you will have a real worth-while investment. Just think of the income—at least several hundred dollars a month, based on facts, figures, and thousands of orders that I have on hand. I am so sure of it that I positively guarantee big dividends within three months of starting production.

This is the one big chance of your life * * * it means a beautiful home, a first-class automobile, trips to Europe with your family and best of all an income that will make you independent of the whole world. *But-you-must-act-now* * * * to-morrow may be too late, and for you to participate in this extraordinary opportunity your order can't arrive too soon. For your convenience an envelope already addressed is inclosed. If you use it—*right away—this instant* * * * you will never worry again for the future. Come in on this patent for all you can and make a fortune—*But-you-must-mail-your-order in-to-day.*

Sincerely yours,

(Signed) WILLIAM S. GAY, President.

PAR. 15. The said respondent William S. Gay sent out with the letters, referred to above, circulars containing statements, among others, as follows:

UNIVERSAL LOCK-TIP CO.

(Incorporated under the laws of the State of Massachusetts)

Capital Stock, \$250,000

DIVIDED AS FOLLOWS

25,000 shares 8 per cent preferred of the par value of \$10 each and 500,000 common shares. The company reserves the right to purchase back the preferred shares on any interest day, paying for same at the rate of \$12 per share.

The Universal Lock-Tip Co. is engaged in the manufacture of the patented Lock-Tip Shoe Laces, the only adjustable shoe laces in the world and conceded to be the best tip known.

The said circular contained also a letter signed, William S. Gay, president in which, among others, were the following statements:

The Universal Lock-Tip Co. is engaged in the manufacture of Lock-Tip Shoe Laces, the only adjustable and wear proof laces on the market.

There are over 3,000 traveling shoe salesmen waiting for samples and ready to give us a countrywide distribution, they are more than glad to carry the Lock-Tip as a side line on a straight commission basis.

The company has no indebtedness and owns free and clear assembling machinery of a capacity of 300 gross per day.

PAR. 16. The letters containing the circular referred to and the above-mentioned statements were sent out to the general public from

on or about May 22, 1926, in very large number until July 14, 1928. After June 14, 1928, other forms of letters were sent out in large number to the general public, including letters such as those referred to below.

PAR. 17. Among the letters sent out to the general public by respondent William S. Gay was a letter dated January 26, 1929, containing, among others, statements as follows:

MY DEAR FRIEND MR. (———):

You are indeed to be congratulated on your good judgment in backing the Lock-Tip patent. *We have been successful* in solving every financial problem to date. *We now* have the money assured for the automatic tipping machines.

We are obliged, however, to delay for a little while the carrying out of the plans, but I assure you that this is done to protect your interest. *I respectfully call your attention as a shareholder to the following:* We are still obliged to have the Tips turned out by two outside firms, and we must at once become independent of them. One is the United Shoe Machinery Corporation, here in Boston, that turns out for us the little sleeve or tube that goes on the lace. It is made on the same machine that makes eyelets for shoes. The other is the Hartford Machine Screw Co., of Hartford, Conn., which makes the tips with the threaded part. The reason that we must delay starting volume operations until we are independent of these corporations is that they can arbitrarily raise the price and so increase the cost as to render us unable to produce the lace in competition with other laces.

There are two courses open to us: One is to go ahead and take the risk of making a misstep after having surmounted almost unsurmountable obstacles. The other, and it is the course it has been decided upon, is to purchase two Browne & Sharpe automatic screw machines, costing \$3,100, and also one eyelet-making machine to make the tube part, involving a cash payment of \$1,400—making a total of \$4,500 necessary to assure us of an unlimited production of tips and independence of increased cost for all times.

We are at present making a little money by filling a few orders for Lock-Tips, but at this rate it would take too long to accumulate \$4,500. Following the urging of a substantial number of shareholders who have called here at the factory of late, it has been decided as a last recourse, to submit the situation to the shareholders and make one more and final appeal to their loyalty for immediate action.

To obtain quicker results, I have added to the number of articles that you may purchase as follows:

Shoes	\$6.50
A carton of 50 pairs Lock-Tip laces, assorted.....	5.00
Two beautiful white broadcloth shirts, your size.....	5.50
Six pairs gents' silk stockings.....	5.00
Three pairs ladies' silk stockings.....	5.00

You will receive 275 shares, common and preferred as before, and in the same proportions.

PAR. 18. The above letter dated January 26, 1929, and signed, William S. Gay, was on a printed letterhead carrying the name and address, Universal Lock-Tip Co., 168 Dartmouth Street, Boston,

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Mass., and the statement thereunder, "Reference, any bank in Boston or any mercantile agency." To the left of the corporation name on the said letterhead was a picture of a 2-story building, on the roof of which extending across the entire top of the building was a large sign with the words "Universal Lock-Tip Company" and underneath the picture of the said building was the statement: This modern factory owned free and clear by the Universal Lock-Tip Co.

PAR. 19. Among the letters sent out by respondent William S. Gay on letterheads of the respondent corporation and having thereon the picture of a factory with the sign Universal Lock-Tip Co. thereon and the statement underneath the picture, This modern factory owned free and clear by the Universal Lock-Tip Co., were letters sent by mail to members of the public in the form of a letter sent dated February 9, 1929, signed William S. Gay and containing, among others, the following statements:

MY DEAR MR. (—):

It would give me the greatest of pleasure if I could inclose a dividend check with this letter, the dividend checks that are coming to you, and that in my enthusiasm I promised a little too soon, just because I felt at the time that I had my hand on them. I assure you, however, that I will send you dividend checks, many and many of them, and big ones, soon.

We have made wonderful progress (we now own a modern factory, free and clear, fully equipped—have orders on hand for over 3,000,000 gross of Lock-Tip laces—and are about to engage in such intensive distribution that will put Lock-Tip laces in every pair of shoes in America). *But we must first finance the payment of six power automatic double-speed tip-attaching machines now being built.* The cost of this absolutely necessary equipment is \$3,800. Rather than run the risk of losing everything, of mortgaging the factory and patents, as a last step, I have secured authorization to double our capitalization and have started to sell the present shareholders another 1,000 pair of shoes on the same basis as before.

More than ever, I can positively state that *we will make millions and millions of dollars and I am right glad to know that you are going to share in this wealth.*

Loyal shareholders, and their friends, that send in an order *now* for a pair of shoes will receive, as before, *absolutely free* 275 shares, consisting of 25 eight per cent preferred and 250 common. *I take full personal responsibility for guaranteeing that they will be listed on the Boston and New York Stock Exchanges.*

Send in your order *now*. You relied on your judgment before when you backed this wonderful little patent. So much more reason why you should do so now that we are sure of success. I appeal to you as an intelligent man not to postpone a decision that involves the welfare of the rest of your life. *Not to postpone! Not to delay! But for your own sake. To send in your order this very minute. Do so now.*

Yours for the biggest industrial success of this generation.

(Signed) WILLIAM S. GAY.

PAR. 20. The Department of Public Utilities of the Commonwealth of Massachusetts received the above-mentioned letter, dated February 9, 1929, signed, William S. Gay, inclosed in a letter from the addresses in California dated February 12, 1929. The letter of the said addressee was directed to the Finance Department, State of Massachusetts, and was as follows:

Please give me some information in regards to a company under the name of the Universay Lock-Tip Co., 168 Dartmouth Street, Boston, Mass. What I would like to know if that company is a legitimate firm and if it is not, why are they allowed to sell stock in the manner that they do. If your department is not prejudiced against the firm that I have named above, I would like to know if I should put any more money into that scheme. I am inclosing a letter that I just received from Mr. William S. Gay treasurer and president of the Universal Lock-Tip Co. Please give me your opinion the way you see that proposition. My name and address:

(—— ———.)

Any information that you can give me will be appreciated very much. Do they really have a plant of some kind and are they really producing what the advertisement calls for. Hoping to hear from you in the near future I am

Yours truly,

(—— ———.)

The Department of Public Utilities of Massachusetts has received by mail many letters, or complaints, similar to the above letter of February 12, 1919, from California, the Middle West, the South, and from practically the entire country during the last four or five years and the Department of Public Utilities has investigated the financial standing and method of the respondent corporation in disposing of its shares of stock and has been refused pertinent information respecting the subject of its inquiry by William S. Gay, its president and respondent herein.

PAR. 21. In response to orders received from addressees of letters located in States other than Massachusetts, such as those described in paragraphs 13, 14, 15, 16, 17, 18, and 19 hereof, respondents through said William S. Gay have sent to said addressees from Boston, Mass., by mail or express shoes ordered by them and have delivered therewith certificates for shares of the preferred and common stock of the respondent corporation purporting to be under the seal of the respondent corporation and purporting to be signed by its president and treasurer, William S. Gay.

Some of these stock certificates when so delivered by respondents had the word "incorporated" deleted from the seal impressed on them and had the additional statement printed on their face: "Which shares of capital stock represent undivided shares in United States Patent No. 1,330,356 and in all earnings present and future of said

patent." In some instances certificates of shares of capital stock signed "E. Wm. S. Gay, president and treasurer", in another corporation, a corporation organized under the laws of the State of Maine, called Universal Lace Co., which is now dissolved and has ceased to exist, were sent to purchasers of shoes by said William S. Gay.

PAR. 22. The filing of the certificates mentioned in paragraph 10 hereof, under which the individuals Gay, referred to therein, were represented to be doing business at No. 168 Dartmouth Street, Boston, under the same name as the respondent corporation, was fraudulent and done with the intent to confuse and deceive members of the public regarding the identity of the person or corporation with whom they were corresponding and dealing in connection with the sale of shoes or other merchandise and the shares of stock delivered therewith.

PAR. 23. The statements in letters such as referred to in paragraphs 14 to 19 hereof, "Reference any bank in Boston or any mercantile agency", constituted the representation that the respondent corporation was engaged in business and had a financial ability and standing on account of which it would be recommended by banks or mercantile agencies in Boston as a proper and reliable concern for members of the public to enter into business relations with. Such representation was untrue. The respondent corporation was not engaged in business. It had no financial standing or reputation which would permit a reputable bank or mercantile agency to recommend it in answer to any inquiries made of them concerning the respondent corporation. Its president, said William S. Gay, refused to give information on behalf of the public to the Department of Public Utilities of Massachusetts and to representatives of mercantile agencies in Boston, which were pertinent to such representations by respondent. Such representations were made with the fraudulent intent to deceive members of the public and to cause them to believe that respondent corporation was of such financial standing and ability with regard to the representations and with regard to respondents, their integrity and financial standing that the members of the public to whom the said letters were addressed would believe the statements and have confidence in the integrity and financial standing of respondents and, relying thereon, to become purchasers of the merchandise and shares of stock in connection therewith offered in said letters.

PAR. 24. The statements in letters to members of the public referred to in paragraph 14 hereof, "I offer you an opportunity to make \$20,000 within the next few months without investing a single

penny," were representations of a material fact, made by respondent corporation and respondent William S. Gay with reasonable cause to know that they were untrue and that they were false representations of a material fact and with the intent to defraud and deceive members of the public. The statements in such letters that the shares of capital stock of the respondent corporation which were represented to be given "free" were false. The consideration for such shares was included in the price charged for the shoes with which said shares were delivered, and the shares were not given free.

PAR. 25. The statements in such letters that the shares of capital stock represented to be given free with the purchase of shoes were in a company to which respondent William S. Gay had assigned patent rights for 51 per cent of the company's common stock were false and made with the intent to deceive members of the public. The respondent William S. Gay at no time assigned the patent rights in his said patent to the respondent corporation. He assigned to said corporation and it had only a nonexclusive license to use the said patent in the manufacture and sale of shoe laces.

PAR. 26. The statements in such letters that the shares of capital stock referred to therein of the respondent corporation would be listed in the Boston and New York stock exchanges were false and were made with the intent to deceive and defraud members of the public. The respondent William S. Gay made such statements in the name of respondent corporation with knowledge that there was no reasonable basis for believing that the said shares would be so listed, but, on the contrary, well knowing that it was reasonable to believe that such shares would not be listed at any time by said stock exchanges.

PAR. 27. The statements made in letters and circulars referred to in paragraph 15 hereof, that the Universal Lock-Tip Co. was engaged in the manufacture of the said shoe laces were false and were made with knowledge of their falsity, in that the said respondent corporation was never engaged in business of any kind and the statement in letters and circulars referred to in paragraph 15 hereof, that the respondent corporation had no indebtedness and owned free and clear assembling machinery were false and made with fraudulent intent in that the said company did have indebtedness and did not own any machinery.

PAR. 28. The statements made in letters such as those described in paragraph 17 hereof, on letterheads purporting to be of the respondent corporation that, "We have been successful in solving every financial problem to date. We now have the money assured for the automatic-tipping machines," were false and were made with knowl-

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edge of their falsity on the part of the respondent corporation and respondent William S. Gay. The said statements were contrary to fact.

PAR. 29. The representations on letterheads, purporting to be of the respondent corporation, of a 2-story building as the factory of the respondent corporation which it was represented to own free and clear were false and made with fraudulent intent to deceive the public in that the building which it purported to represent was a 4-story building at No. 168 Dartmouth Street, Boston, and was the business address of the respondent corporation and of respondent William S. Gay who occupied only three to five rooms in said building. Neither respondent corporation nor respondent William S. Gay ever owned any factory building in Boston or elsewhere.

PAR. 30. The representations made in the letters referred to in paragraph 19 hereof, that dividend checks are coming to members of the public referred to in said letters because of their acquisition of capital stock in respondent corporation, in connection with shoes which they had purchased, were false representations of material facts in that the respondent corporation was not doing business, had never done business, had no reasonable prospect of doing business, and had never earned dividends on its capital stock.

PAR. 31. The statements made by respondents in the letters above referred to in paragraphs 14 and 19 hereof, that the respondents "Have orders on hand right now that will make the common shares worth several hundred dollars each the minute production is started on a scale", and "We * * * have orders on hand for over 3,000,000 gross of Lock-Tip laces" were untrue and were false representations of a material fact affecting the purchase of the shoes and affecting the value of the shares of capital stock of the respondent corporation which were offered to the public and sold and delivered in interstate commerce from the place of business of the respondents in Boston, Mass., to addressees of the said letters, purchasers of the said shoes and shares of stock, located in various States of the United States other than the State of Massachusetts.

PAR. 32. The use by respondents of the above false and fraudulent statements in letters to members of the public in connection with the sale of shoes and shoe laces and shares of capital stock of respondent corporation delivered in connection therewith by respondents had the tendency and capacity to mislead and deceive members of the public as aforesaid and members of the public were misled and deceived thereby into purchasing shoes and shoe laces and other merchandise from the respondents in reliance thereon.

CONCLUSION

The practices of the respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondents' competitors in the sale of shoes, shoe laces, and such other merchandise 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 the answer of the respondents filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That the respondent corporation, Universal Lock-Tip Co., and respondents Katherine Gay and Emile W. S. Gay, do cease and desist from representing, in commerce between the various States of the United States or between any of the States and the District of Columbia, to the members of the public in letters or circulars sent through the United States mail or otherwise or in any other manner:

1. That the respondent corporation is engaged in the business of selling shoes or shoe laces or other merchandise or that the said corporation has any asset, as good will, by reason thereof, unless and until such is the fact.

2. That, in connection with such business aforesaid, the respondent corporation is the assignee of the patent rights of respondent William S. Gay for a patented string fastener or shoe lace tip, unless and until such is the fact.

It is further ordered, That respondents William S. Gay and Katherine Gay, in commerce between the various States of the United States or between any of the States and the District of Columbia, do cease and desist from:

1. Doing business on their separate individual accounts under the name Universal Lock-Tip Company or Universal Lock-Tip Co. while the respondent corporation is in existence under said name.

2. Making statements in letters or circulars addressed to members of the public, or otherwise, concerning the respondents or any of

Order

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them in connection with such business aforesaid, in which banks or mercantile agencies are given as references unless and until such bank or agency has given, in writing, to said respondents, its consent to the use of such statement.

3. Using the certificates of stock of respondent corporation or other corporation in connection with such business aforesaid and falsely representing that such shares represent an undivided or other interest in, or under any patent rights not belonging to such corporation.

4. Making and publishing statements or representations in letters to members of the public, or otherwise in connection with such business, that the shares of capital stock of respondent corporation will be or may be listed on the New York, Boston, or other stock exchanges unless and until such statements or representations are duly authorized by the officials thereof.

5. Representing in statements published in letters or otherwise that respondent corporation has, in connection with such business, orders on hand for the sale of shoes or other merchandise or that dividends have been earned by it on its shares of capital stock unless and until such statements or representations are true, and from making any other such false or misleading statement as a statement of fact or as to the happening of any future event concerning such business of the respondent corporation or its said capital shares or of the said business of the respondents Gay or either of them unless and until the said statement of fact is true, or the happening of such future event is reasonably based upon facts set forth by respondents in connection therewith and such future event is clearly and unmistakably shown not to be an already accomplished fact.

It is further ordered, That the respondent corporation, Universal Lock-Tip Co., Katherine Gay and Emile W. S. Gay, shall, within 80 days after the service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with the above order to cease and desist.

Syllabus

IN THE MATTER OF

NOAH ROARK, FRED VEST, AND T. ARNOLD, KNOWN
AND DOING BUSINESS AS THE MERCHANTS' COOP-
ERATIVE ADVERTISING SERVICE, AND W. M. MASON,
AND F. E. PHILLIPS, EMPLOYEES OF SAID CO-
PARTNERSHIPCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1534. Complaint, Apr. 25, 1929¹—Decision, Feb. 6, 1930*

Where a firm engaged in the sale to merchants of silverware, and coupons for redemption by it, in articles thereof, for said merchants' customers, under a plan in accordance with which the merchants were to give customers coupons in proportion to purchases made; and said firm's salesman; in soliciting the sale of said coupons and silverware,

- (a) Falsely represented the firm as connected with a certain manufacturer of silverware, and operating an advertising campaign therefor in lieu of previous advertising conducted through high-priced magazines, in the expectation that introduction of high-grade silverware in the homes would increase greatly public appreciation thereof and the market therefor, and their silverware as "1847 Rogers" and of high quality and like that displayed, the facts being that its goods, made by a concern with the name "Rogers", were greatly inferior in value and public esteem, and in quality, to said "1847" ware, and also to samples exhibited;
- (b) Represented price of coupons to retailers as merely sufficient to cover cost of printing retailer's name, and the silverware as donated by the manufacturer, and that retailers purchasing as many as 10,000 coupons would be furnished with a 26-piece set for exhibition, and for their personal property, the facts being that said cost was much less than the charges made, sums thus received exceeded the retail price of comparable ware, and there was furnished such purchasers only a 6-piece set of inferior quality, in a pasteboard box unfit for exhibition;
- (c) Represented retailers' customers as entitled to select any desired piece covered by necessary coupons, and that 1,000 would secure a full set of silverware, the facts being that delivered coupons showed reservation by the company of right of substitution and that several thousand coupons were necessary for the set referred to;
- (d) Represented that advertising matter would be furnished and that redemption of coupons would be absolutely "free", the facts being that quantity and quality of advertising matter furnished was not as represented and that charges were made to those desiring to redeem coupons, in accordance with a specification upon a portion thereof not displayed to retailers at time of sale, and, while represented as merely to cover costs of package and delivery, equaled or approximated cost of silverware actually delivered;

¹ Supplemental complaint.