

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;

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- (e) Represented that silverware supplied in redemption would be sent to retailer of particular customer for delivery to customer in retailer's store, and that inspection of coupons and of said display set would be permitted before payment of balance due on coupons, the facts being that redemption was made at the firm's own office only, and that coupons and silverware were sent C. O. D., with no inspection permitted; and
- (f) Falsely represented certain retailers as purchasers of coupons in accordance with plan herein, and that use of coupons and subsequent delivery of premiums would be a sales asset to the retailer purchasers and reflect credit upon them;

With the intent and result of bringing about purchase by numerous retailers in various States of said coupons in reliance upon said false representations, or a part thereof; and

- (g) Refused to deliver coupons after full payment therefor, in some cases, and in others refused, neglected or omitted either to deliver premiums upon receipt of coupons or to respond to correspondence demanding the same;

With the result that certain retailers who had given out said coupons with goods sold, were injured in the confidence and good will of their customers and suffered financial losses, as did others who decided not to distribute the same, customers were induced to buy goods in the hope of obtaining the premiums in question and suffered loss through failure and refusal to deliver the same or through delivery of premiums of much less worth than they had been led to believe would be given to them, and with the direct tendency to lessen and destroy the confidence of the purchasing public in the giving of premiums in connection with the competitive distribution of goods and to prevent and hinder concerns doing a legitimate coupon and premium business and their agencies, from securing distribution and sales by employing said method of competition in business; and

Where an individual engaged as The Merchants' Cooperative Premium Association in the furnishing of coupons to retail merchants, to be given to their customers with purchases made, as a means of building and stimulating the merchants' trade through subsequent redemption, by such merchants, of coupons for cash, or for silverware purchased from said individual; and thereafter the aforesaid firm, a competitor,

- (h) Adopted the trade name The Merchants' Cooperative Advertising Service, with the result that the close resemblance in sight, sound and meaning, and character of business, caused, and was calculated to cause, confusion in the minds of customers and prospective customers of both concerns; and
- (i) Represented to prospective purchasers that its firm was consolidated or affiliated with or identical with the aforesaid older concern, and in other respects confused the identity of the two organizations or falsely alleged the discontinuance of the older;

With the capacity and tendency to create confusion in the minds of retail merchants, customers or prospective customers of said firm, and in the minds of such portion of the public as purchased of such merchants, and with the unfair intent and effect of misleading and deceiving such merchants and customers into the mistaken belief that in dealing with said firm they were dealing with the aforesaid older concern; in derogation of the public interest:

Held, That such acts and practices unfairly diverted trade from competitors, to their prejudice and that of the public and constituted unfair methods of competition.

Mr. Henry Miller for the Commission.

Mr. Noah Roark, of Dallas, Tex., 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 Noah Roark, T. Arnold, and Fred Vest, partners, competitively engaged as the Merchants' Cooperative Advertising Service, at Dallas, for upwards of two years last past, in the sale to retail merchants of coupons to be given by them to their customers, and to be redeemed by said partnership in certain articles of silverware, and respondents W. M. Mason and F. E. Phillips, with misrepresenting business connections and nature of operations, and source or origin and quality of products dealt in, offering deceptive inducements to purchase through misrepresenting nature, terms and value of premiums, claiming indorsements or successes not secured, declining unfairly performance of its undertakings, simulating trade name of competitor, and misrepresenting own business as competitor's, and misrepresenting competitor's business, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, engaged as above set forth, selling their coupons for from \$3 to \$4 a thousand, to be redeemed in articles as specified, "absolutely free," after distribution to the customers of respondents' merchant vendees, at the rate of one coupon to each 25-cent purchase, knowingly misrepresent their business connections, operations and premiums, with intent and effect of inducing retailers to purchase their coupons in reliance upon their said false representations, as follows:

- (a) Alleged connection with a specified manufacturer;
- (b) Their plan being that of said manufacturer;
- (c) Their silverware as of high quality and as "1847 Rogers" silverware;
- (d) Price of coupons covers merely cost of printing with name of retailer, and silver donated by the manufacturer;
- (e) Retailer to receive, after purchase of 10,000 coupons or more, 26-piece set of silverware for exhibition and his personal property;

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(f) Silverware given in redemption of same quality as that displayed to retailers by respondents;

(g) Retailer's customers entitled, within number of coupons necessary, to any piece of silverware selected;

(h) 1,000 coupons suffice to secure a full set of silverware;

(i) Certain specified retailers had purchased coupons in accordance with respondents' offer;

(j) Respondent to supply advertising matter;

(k) Redemption of coupons to be "absolutely free";

(l) Charges of 7 cents for 50 coupons and 1 cent per coupon merely to cover package and delivery cost of premiums to persons redeeming.

(m) Silverware supplied in redemption to be sent to the retailer from whom coupons received by the customer;

(n) Inspection of coupons and of set of silverware for display purposes to be permitted after initial cash payment and before payment of balance due;

(o) Use of coupons and subsequent delivery of premiums to be a sales asset to retailers buying same; and

(p) Other false and misleading statements not otherwise specified.*

Respondents further, as charged, in certain cases refused to deliver coupons after full payment had been made therefor, and in other cases refused delivery of premiums upon receipt of coupons or neglected or omitted either to deliver premiums or to respond to correspondence demanding same. As a result of such failure of respondents to fulfill their obligations and honor their representations retailers who had given out the coupons were injured in the confidence and good will of their customers and, further, suffered financial losses, as did other retailers who decided not to distribute the coupons, and as did customers of retailers concerned, who were induced to buy goods at certain stores in the hope of obtaining the premiums offered, and either failed to receive the same or received premiums of far less worth than they had been induced "by the representations of respondents and by those of retail dealers made in reliance upon respondents' representations, to believe would be given to them."

The acts and practices of respondents, as alleged, "as hereinabove set out had a direct tendency to, and in part did, lessen and destroy the confidence of the purchasing public in methods of competing

* Full and substantially identical statement of the allegations contained in paragraphs (a) to (o) inclusive may be found in the findings at page 223, statement of facts having been stipulated.

in the distribution of goods by the giving of premiums and to prevent and hinder concerns doing a legitimate coupon and premium business and their agencies from securing distribution and sales by employing the said method of competition in business."

Respondents further, as charged, in adopting their said trade name of the Merchants' Cooperative Advertising Service adopted a name resembling that of a senior concern, a competitor, the Merchants' Cooperative Premium Association, trade name of one W. F. Sims, theretofore engaged in a coupon and premium business. The close resemblance of the name of the junior organization to that of the senior concern "in sight, sound, and meaning * * * together with the circumstance that both concerns deal in coupons represented as a means of stimulating trade" of retail merchant customers or prospective customers of said concerns, and the further fact that "the premiums receivable by the customers of said retail merchants are articles of silverware exclusively in the case of customers of said Sims, and in the case of customers of respondents are silverware in the main, are calculated to cause and have caused confusion in the minds of customers and prospective customers of both concerns in this paragraph named."

"Moreover," as charged, "respondents through their salesmen have untruthfully represented to merchants at points in Texas, Oklahoma, and New Mexico, prospective purchasers of redeemable coupons, that the said respondents are consolidated or affiliated with, or were the same concern as, the said so-called Merchants' Cooperative Premium Association," sometimes stating, furthermore, that the silverware was to be shipped from the Dallas office to the retail merchants' customers instead of being shipped from the office at Hillsboro to the retail merchant direct; and have at times declared that the said Merchants' Cooperative Premium Association had discontinued business.

"The acts of respondents and the similarity of the trade name of respondents to that of the aforesaid Sims", as alleged, "have the capacity and tendency and have been done and adopted with the intent, to create for the benefit of respondents a confusion in the minds of retail merchants, customers or prospective customers of respondents, and in the minds of such portion of the public as buy from said retail merchants, to the end that said retail merchants and their said customers shall be misled and deceived, and substantial numbers of the same have been misled and deceived, into the mistaken belief that they have been dealing with the aforesaid so-called Merchants' Cooperative Premium Association, whereas as a matter of fact they have been dealing with respondents. These said aims, results and ends

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are unfair and contrary to the interests of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 24th day of September, 1928, issued and thereupon served its complaint herein, and thereafter on April 25, 1929, issued its supplemental complaint against, and caused same to be served as required by law upon, Noah Roark, Fred Vest, T. Arnold, W. M. Mason, and F. E. Phillips, respondents above named, in which supplemental complaint it is charged that respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearances herein and filed answers to said complaint and supplemental complaint, hearings were had at which testimony was taken and evidence introduced by counsel for the Commission in support of the allegations of said supplemental complaint. At said hearings and before completion of the taking of such testimony and evidence, respondents entered of record herein their stipulation and agreement whereby, in lieu of further testimony and evidence in the proceeding and for the purpose of expediting the final disposition of the case, respondents admit all the allegations of said supplemental complaint and agree that said allegations may be accepted as true and that the Commission may so find them to be true and issue its order against respondents requiring them to cease and desist from the practices charged in the supplemental complaint. Respondents then waived their privilege of filing briefs and submitting argument to the Commission, and expressed their desire to have the Commission proceed to final disposition of the matter without further hearings; whereupon hearings for the taking of testimony and evidence were closed. The testimony and evidence received and said stipulation and agreement of respondents were reduced to writing and filed of record in the office of the Commission.

Thereupon this proceeding came on for decision upon the entire record, including the pleadings, testimony, evidence, and said stipulation and agreement of respondent; and the Federal Trade Commis-

sion, having duly considered the same, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Noah Roark, Fred Vest, T. Arnold, W. M. Mason, and F. E. Phillips, are persons who are, or respectively have been as hereinafter set forth, engaged in carrying on jointly, and with their office and place of business in the city of Dallas, State of Texas, the business of selling and distributing, in commerce among the States to members of the consuming public and to merchants in various lines of trade, silverware and coupons, the latter to be given by such merchants to their customers upon making purchases and to be redeemed by respondents at specified values in certain articles of silverware. In the course and conduct of said business respondents Vest and Roark cause, and all respondents at all times while connected with said business, as set forth below, have caused, said silverware and coupons, including advertising placards and leaflets, to be offered for sale and sold through traveling representatives or agents and by means of interstate correspondence with customers, to numerous purchasers located at divers points throughout various States; and in completing such sales cause and have caused said silverware and coupons, including said advertising placards and leaflets, to be shipped and transported from their place of business in Dallas, Tex., through and into other States of the United States to the respective purchasers thereof in such other States. In and while so carrying on said business all respondents have been, and respondents Vest and Roark still are, engaged in interstate commerce and in direct, active competition with many other persons, partnerships, and corporations also engaged in the sale and distribution of silverware and similar coupons and advertising matter between and among various States of the United States. Said business of respondents was conducted in and under the trade name "Merchants' Cooperative Advertising Service" from March, 1925, until May 7, 1929, when the trade name for said business was changed by respondents Vest and Roark to "Southwestern Sales Service", under which name said business is now and, since May 7, 1929, has been conducted. From March, 1925, to November 15, 1928, respondents Mason, Vest, Arnold, and Roark were copartners owning and operating said business under said trade name "Merchants' Cooperative Advertising Service", and respondent Phillips was during said time employed by said copartners as salesman in said business, and was

actively engaged therein as such salesman. On or about November 15, 1928, said partnership of respondents Mason, Vest, Arnold, and Roark was dissolved; whereupon a new partnership of respondents Vest and Roark was formed to take over and carry on said business, which new partnership is and, since on or about November 15, 1928, has been engaged in managing and operating said business in and under the name "Merchants' Cooperative Advertising Service", used until May 7, 1929, and thereafter in and under the name "Southwestern Sales Service", as hereinabove set forth. Since the inception of said partnership of respondents Vest and Roark and until March 1, 1929, respondent Arnold continued to be actively engaged in the operation of said business as a clerical employee of the new partnership. Respondent Phillips continued as a salesman actively engaged in carrying on aforesaid business and in offering for sale and selling said silverware and coupons, including advertising matter, until April, 1929, he being employed as such salesman by respondents Vest and Roark from the inception of their partnership until April, 1929. Throughout his connection with the business hereinabove described it was the duty of respondent Phillips and within the scope of his employment as salesman of both partnerships, to advertise, describe, represent, offer for sale, and sell said products for and on behalf of the respective partnerships conducting the business.

PAR. 2. The plan under which the above-described business is operated has been adhered to in principle since March, 1925, and is as follows: The respondents sell their said coupons to retail dealers at prices ranging from \$3 to \$4 per thousand, according to the number of said coupons purchased, upon terms of a substantial cash payment and the balance on delivery of the coupons, and contract with the said retail dealers to redeem said coupons "absolutely free," after the same have been distributed to customers with each cash purchase in the regular course of the retail dealer's business at the rate of one coupon to each 25-cent purchase, respondents promising to give, by way of redemption, certain specified articles of silverware or other specified articles, in return for specified numbers of coupons respectively. Respondents purchase their silverware, with a few exceptions, from jobbers located at Dallas, Tex., and from St. Louis, Mo., and purchase other goods for premium purposes from jobbers in various parts of the United States.

PAR. 3. In the solicitation of trade and for the purpose of selling said coupons and silverware certain representations were made by and on behalf of respondents, among which representations, made in part by written and printed matter including their form of contract, and in part by the oral statements of their representatives,

agents, and employees at various times, particularly during the course and conduct of the business prior to November 15, 1928, and to various retailers who were customers or prospective customers, were the following:

(a) That respondents were connected with a specified concern manufacturing silverware, sometimes informing retail dealers that the connection was that of the advertising department, and sometimes that the connection was that of advertising agency, whereas in truth they were and are wholly unconnected with any business house manufacturing silverware.

(b) That the plan offered by respondents was one adopted by the said silverware manufacturing concern strictly as an advertising campaign for the purpose of advertising its silverware in lieu of advertising theretofore conducted through high-priced magazines, and in the expectation that, by introducing high-grade silverware into homes, the public appreciation and the market therefor would be greatly increased. This representation was wholly untrue.

(c) That the said silverware was of a high quality and was "1847 Rogers" silverware, whereas in truth the silverware delivered was of low quality and made by a concern having in its corporate title the name "Rogers" but manufacturing goods greatly inferior to and having far less value and public recognition and esteem than "1847 Rogers" silverware.

(d) That the price of the coupons to the retail dealers was merely sufficient to cover the cost of having the coupons printed with the name of the individual retailer thereon and that the silverware was donated by the manufacturer, whereas the cost of printing the coupons was far less than the charge made therefor, and the sums received by respondents under their said plan exceeded the retail price of the same grade of silverware.

(e) That the individual retail dealers would be furnished free by respondents with a 26-piece set of silverware in case they severally bought 10,000 coupons or more, which sets of silverware were to be used for exhibition purposes and then become the property of the said respective retail dealers, whereas in truth only a 6-piece set of inferior quality in a pasteboard box unfit for exhibition was delivered to retail dealers purchasing 10,000 coupons and upward.

(f) That the silverware to be given in redemption of coupons and as special premiums to the retail dealers was of the quality displayed by respondent or their agents, whereas the quality of silverware delivered by the company to retail dealers and their customers was of far inferior quality to the sample displayed.

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(g) That the customers of the retailers were entitled to any piece of silverware they might select within the number of coupons necessary for its redemption, whereas the coupons when delivered showed that the company reserved the right to substitute other articles for the one ordered by the customer.

(h) That 1,000 coupons would suffice to secure to a person redeeming a full set of silverware, whereas several thousand such coupons were necessary for such purpose.

(i) That certain specified retail dealers had purchased coupons in accordance with respondent's offer, whereas many of said specified dealers had not so purchased.

(j) That advertising matter would be furnished by respondents which as a matter of fact was not furnished in the quantity and quality represented.

(k) That the redemption of the coupons would be "absolutely free" by respondents, whereas a charge of 7 cents per 50 coupons was and is made by respondents to some persons desiring to redeem and a charge of 1 cent per coupon has been made to other persons desiring to redeem. These respective charges were and are specified upon a portion of the coupons not displayed to certain retail dealers when said coupons were sold to them by respondents.

(l) That the said charges of 7 cents per 50 coupons and of 1 cent per coupon were merely to cover the costs of package and delivery of the premiums to the persons redeeming, whereas the said charges were equal to or approximated the cost of the silverware as actually delivered by respondents.

(m) That the silverware to be supplied by the company in redemption of its coupons was to be sent to the retailer from whom the coupons had been received by the respective customers and that the delivery thereof to the customers was to be performed in the retailer's own store, whereas redemption was made only at the respondent's home office.

(n) That inspection of the coupons and of the aforesaid set of silverware for display purposes by the retail dealer purchasing same would be permitted before payment of the balance due upon the coupons, whereas the said coupons and silverware in truth were sent by respondents C. O. D., and no inspection thereof permitted.

(o) That the use of the coupons and the subsequent delivery of the premiums would be a sales asset to the retail dealers buying the said coupons and reflect credit upon them, which was in fact untrue.

PAR. 4. All of the representations specified in paragraph 3 hereof were made with the purpose and intent of inducing retailers to pur-

chase said coupons in reliance thereupon, and numerous retailers located in various States of the country actually purchased said coupons in reliance upon said representations, or part of them, which representations were in fact false and were known by respondents to be false.

PAR. 5. Respondents in certain cases refused to deliver coupons after full payment had been made therefor, and in other cases refused to deliver premiums upon receipt of coupons, or neglected or omitted either to deliver the premiums or to respond to correspondence demanding the same.

PAR. 6. Certain retail dealers gave out the said coupons with goods sold and by reason of the failure or refusal of respondents to fulfill their obligations and to honor their representations, as hereinabove set forth, were injured in the confidence and good will sustained toward them by their customers, and suffered moreover, financial losses. Other retail dealers decided not to distribute the said coupons and also suffered financial loss thereby. Customers of retail dealers were induced to buy goods at certain stores in the hope of obtaining the premiums so offered by respondents and suffered loss by the failure and refusal in certain instances of respondents to deliver the premiums, and in other instances by a delivery of premiums of far less worth than said customers had been induced, by the representations of respondents and by those of retail dealers made in reliance upon respondents' representations, to believe would be given to them. The acts and practices of respondents as hereinabove set out had a direct tendency to, and in part did, lessen and destroy the confidence of the purchasing public in methods of competing in the distribution of goods by the giving of premiums and to prevent and hinder concerns doing a legitimate coupon and premium business and their agencies from securing distribution and sales by employing the said method of competition in business.

PAR. 7. Respondents began their business under the said name of Merchants' Cooperative Advertising Service in March, 1925. Prior thereto, to wit, in the spring of 1923, one W. F. Sims organized, at Hillsboro, Tex., a business under the name and style of Merchants' Cooperative Premium Association, whereby said Sims furnished coupons to retail merchants to be given to the customers of said merchants with purchases made by said customers, as a means of building and stimulating trade of the said retail merchants, the said coupons to be redeemed by the said merchants for cash or for silverware which said merchants purchased from the said Sims trading as aforesaid. Said Sims, since the summer of 1923, has been

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continuously engaged in said described business under the said name of Merchants' Cooperative Premium Association, and the said business has necessitated and has resulted in the shipment of coupons, display and advertising matter and silverware from Hillsboro, Tex., to retail merchants located at points in the States of Oklahoma and New Mexico, as well as to various points in the State of Texas. At various points in all the said States the said Sims competes with the respondents. The aforesaid trade name of respondents, the junior concern, closely resembles the said Merchants' Cooperative Premium Association, the senior concern, in sight, sound, and meaning, and this together with the circumstance that both concerns deal in coupons represented as a means of stimulating trade of retail merchants, customers, or prospective customers of either or both of said concerns, and that the premiums receivable by the customers of said retail merchants are articles of silverware exclusively in the case of customers of said Sims, and in the case of customers of respondents are silverware in the main, are calculated to cause and have caused confusion in the minds of customers and prospective customers of both concerns in this paragraph named. Moreover, respondents through their salesmen have untruthfully represented to merchants at points in Texas, Oklahoma, and New Mexico, prospective purchasers of redeemable coupons, that the said respondents are consolidated or affiliated with, or were the same concern as, the said so-called Merchants' Cooperative Premium Association, sometimes stating, furthermore, that the silverware was not to be shipped from the Dallas office to the retail merchants' customers instead of being shipped from the office at Hillsboro to the retail merchant direct; and have at times declared that the said Merchants' Cooperative Premium Association had discontinued business.

PAR. 8. The acts of respondents and the similarity of the trade name of respondents to that of the aforesaid Sims, as in paragraph 7 hereof alleged, have the capacity and tendency, and have been done and adopted with the intent, to create for the benefit of respondents a confusion in the minds of retail merchants, customers or prospective customers of respondents, and in the minds of such portion of the public as buy from said retail merchants, to the end that said retail merchants and their said customers shall be misled and deceived, and substantial numbers of the same have been misled and deceived, into the mistaken belief that they have been dealing with the aforesaid so-called Merchants' Cooperative Premium Association, whereas as a matter of fact they have been dealing with respondents. Those said aims, results and ends are unfair and contrary to the interest of the public.

CONCLUSION

The false, misleading and deceptive acts and practices of respondents and the use by them of said trade name "Merchants' Cooperative Advertising Service" in simulation of the said trade name "Merchants' Cooperative Premium Association" of said Sims, all as and under the conditions and circumstances set forth in the foregoing findings as to the facts, unfairly divert trade from respondents' competitors, are to the prejudice and injury of said competitors and of the public, and constitute unfair methods of competition in 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 entire record including the pleadings, testimony, and evidence taken, and the stipulation and admission of respondents of all the allegations of the supplemental complaint; and the Commission having made its findings as to the facts with its conclusion that respondents have 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 respondents Noah Roark, Fred Vest, T. Arnold, W. M. Mason, and F. E. Phillips, their agents, representatives, servants, and employees, cease and desist in connection with the sale and distribution in interstate commerce of silverware or coupons or similar products—

1. From making or causing to be made any false, misleading, or deceptive representation, statement or assertion, in any manner whatsoever, to the effect (a) that respondents, or their business, are connected or affiliated in any particular with a manufacturer of silverware; (b) that respondents plan of sale and distribution has been adopted, approved or recommended by the manufacturer of such silverware for advertising purposes or for any other purpose; (c) that said silverware is "1847 Rogers" silverware; (d) that the price of said coupons to the purchaser is merely sufficient to cover the cost of having the coupons printed with the name of the individual retailer-purchaser thereon, or that the silverware to be supplied in connection with said coupons is donated by the manufacturer thereof; (e) that the purchaser of said coupons will be furnished free any certain specified set of silverware for display or other purposes; (f)

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that said silverware is of a certain specified quality or standard; (g) that the selection of silverware made by those returning said coupons for redemption is not subject to change by respondents; (h) that a specified number of coupons will suffice to secure a certain set or certain specified pieces of silverware to the person returning same for redemption; (i) that certain specified retail dealers have purchased coupons in accordance with respondents' plan or offer; (j) that a specified quantity or quality of advertising matter will be furnished by respondents to the purchaser of said coupons; (k) that respondents will redeem said coupons absolutely free or without any additional sums of money to be paid by the person returning said coupons for redemption; (l) that any sums of money required to be paid by the persons returning said coupons for redemption is merely to cover the costs of package and delivery of the premiums to such persons; (m) that delivery of the premiums to the persons returning said coupons for redemption will be made in the store of the retailer who purchased said coupons from respondents; (n) that inspection of the silverware to be delivered to the retailer-purchaser for display purposes will be permitted before such retailer will be called upon to make payment of the balance due upon said coupons; or (o) that said coupons or premiums to be supplied by respondents will be a sales asset to and reflect credit upon said retailer-purchaser.

2. From making or causing to be made any other false, misleading, or deceptive statement, representation, or assertion of or concerning said products, the plan or the methods used by respondents in the sale and distribution of said silverware and coupons and in the redemption of said coupons.

3. From making or causing to be made any false, misleading, or deceptive representation, statement or assertion, by means of the simulation of trade name or by any other means, to the effect that said business of respondents is connected or affiliated with the silverware and coupon business of W. F. Sims of Hillsboro, Tex., known by and conducted under the trade name "Merchants' Cooperative Premium Association".

It is further ordered, That respondents Noah Roark, Fred Vest, T. Arnold, W. M. Mason, and F. E. Phillips, shall within 30 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

NATHANIEL ABRAHAM, AN INDIVIDUAL, TRADING
UNDER THE NAMES AND STYLES N. ABRAHAM COM-
PANY AND WAREHOUSECOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1707. Complaint, Oct. 21, 1929—Decision, Feb. 12, 1930*

Where an individual engaged in his own behalf in the sale of paint and other articles of merchandise to dealers and to the consuming public in various States, advertised certain paints, automobile oils, and varnishes under the captions "Army and Navy Surplus Supplies" and as "offered for sale at warehouse", notwithstanding the fact that said paints, etc., were not Army and Navy merchandise but ordinary commercial products purchased by him from manufacturers in the ordinary course of business; with the effect of misleading many dealers and many of the consuming public into believing that in dealing with him they were dealing directly with and purchasing said paints, etc., directly from the Government and/or that the merchandise was the property of the Government, made in conformity with its specifications and requirements and declared and sold by it as surplus property, and with the capacity and tendency so to mislead dealers and the consuming public and into purchasing said paints, etc., in that belief; all to the prejudice of the public and competitors:

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

Mr. A. T. Lundquist for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in San Francisco under the trade names and styles "N. Abraham Company" and "Warehouse" in the sale of paint and other articles of merchandise to dealers and to the consuming public, with using misleading trade name and advertising falsely or misleadingly as to business status or advantages, and source of products dealt in, 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, falsely advertises certain paints as Army and Navy surplus supplies, together with the words, at the bottom thereof "This merchandise is now offered for sale at warehouse, 701 Battery Street, Corner Pacific."