

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."

The use, as charged, "by the respondent of the word 'warehouse' in connection with the phrase 'Army and Navy surplus supplies' or similar phrases has the capacity and tendency to and does mislead many dealers and many of the consuming public into the belief that in dealing with the respondent they are dealing directly with and purchasing said paints and other merchandise directly from the United States Government, and/or that the said merchandise is the property of the United States Government made in accordance and conformity with the specifications and requirements of said Government and declared and sold as surplus property by it, and to purchase respondent's said paint and other merchandise in that belief"; the fact being the paint in question "is not and never has been the property of the United States Government but is purchased by respondent from others and in the ordinary course of trade, and the respondent in offering for sale and selling the other merchandise is acting in his individual capacity and not for or on behalf of the United States Government"; to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon Nathaniel Abraham, an individual, trading under the names and styles N. Abraham Company and Warehouse, hereinafter referred to as respondent, charging him with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Thereupon the respondent entered his appearance herein and an agreed statement of facts was made, executed, and filed in this proceeding in which it is stipulated and agreed by and between respondent and counsel for the Commission that the Federal Trade Commission may take such agreed statement of facts as the facts in this proceeding before the Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto; and that said Commission may proceed upon said statement of facts and make its report in said proceeding, stating its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and the Federal Trade Commission having duly considered the same makes this its report stating its findings as to the facts and conclusions as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Nathaniel Abraham, an individual, trading under the names and styles "N. Abraham Company" and "Warehouse," with his place of business in the city of San Francisco, State of California, is engaged in selling paint and other articles of merchandise to dealers and to the consuming public located and residing at points in various States of the United States. He causes the said paint and other merchandise, when so sold, to be transported from his said place of business in the city of San Francisco, State of California, into and through other States of the United States to purchasers thereof located in the States of Nevada, Oregon, Washington, and other States, and has been doing same for more than one year last past. In the course and conduct of his said business respondent is in competition with other individuals, partnerships, firms, and corporations also engaged in the sale, distribution, and transportation of like merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 thereof, respondent in soliciting the sale and offering the same for sale, has caused to be inserted in the San Francisco Examiner, a daily newspaper, and in the Pacific Rural Press, a farmers' periodical, publications having general circulation between and among various States of the United States, certain advertisements offering certain supplies for sale as Army and Navy surplus supplies. At the heading of said advertisements in large type appear the words

ARMY & NAVY SURPLUS SUPPLIES

At the bottom of said advertisements appear such notices as the following:

THIS MERCHANDISE IS NOW OFFERED FOR SALE AT
WAREHOUSE
701 BATTERY STREET, CORNER PACIFIC
WAREHOUSE
701 BATTERY STREET, SAN FRANCISCO
MAIL ORDERS PROMPTLY ATTENDED TO

Among the merchandise or supplies so offered for sale as Army and Navy surplus supplies are certain paints, automobile oils, varnishes, and other merchandise which in truth and in fact are not Army and Navy paints, automobile oils, and varnishes, or Army and Navy merchandise or supplies, but are ordinary commercial

Conclusion

13 F. T. C.

paints, automobile oils, varnishes, merchandise, and supplies purchased by respondent from manufacturers in the ordinary course of business. As a result of such advertising and the use of the words "Army and Navy Surplus Supplies" and the word "Warehouse" in connection with the words "Army and Navy Supplies" in said advertising, respondent has received from customers and prospective customers located and residing at points in various States of the United States, a considerable number of orders for said products, which have been filled and transported from said place of business in the city of San Francisco, Calif., into and through other States of the United States to said vendees at their respective points of location.

PAR. 3. On or about October 10, 1928, a questionnaire by the Federal Trade Commission was directed to purchasers of respondent's goods, inquiring whether or not they thought they were dealing directly with a Government warehouse in making their purchases. Replies were received from a number of said purchasers answering in the affirmative.

PAR. 4. The use by the respondent of the words "Army and Navy Surplus Supplies", and the word "Warehouse" in connection with the words "Army and Navy Supplies" has the capacity and tendency to and does mislead many dealers and many of the consuming public into the belief that in dealing with the respondent they are dealing directly with and purchasing said paints and other merchandise directly from the United States Government, and/or that the merchandise is the property of the United States Government, made in accordance and conformity with the specifications and requirements of said Government, and declared and sold as surplus property by it, and to purchase respondent's said paint and other merchandise in that belief. In truth and in fact the paint so offered for sale by respondent is not and never has been the property of the United States Government, but is purchased by respondent from others and in the ordinary course of business, and the respondent, in offering for sale and selling the other merchandise, is acting in his individual capacity and not for or on behalf of the United States Government.

PAR. 5. The acts and practices of respondent, as described in paragraphs 2 and 3 hereof, are to the prejudice of the public and respondent's competitors.

CONCLUSION

The practices of respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of

229

Order

section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and the statement of facts agreed upon by respondent and counsel for the Commission, and the Commission having made its findings as to the facts with 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 Nathaniel Abraham, individually, and trading under the names and styles N. Abraham Company and Warehouse, his agents, servants, and employees cease and desist:

From employing or using or displaying in newspaper or other advertising matter or on circulars, billheads, labels, or containers, or otherwise, the words "Army and Navy Surplus Supplies" or the word "Army" or the word "Navy" standing alone or in conjunction or in connection with the word "Warehouse" or with any other word or words, unless in truth and in fact paints, automobile oils, varnishes, and other merchandise advertised, offered for sale and sold by respondent in interstate commerce was purchased from the United States Government or manufactured by or for the United States Government.

It is further ordered, That respondent shall within 60 days after the service upon him of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
DIXIE PECAN GROWERS EXCHANGE, 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 1548. Complaint, Nov. 8, 1928—Decision, Feb. 15, 1930

Where a corporation engaged as an ordinary commercial enterprise in the purchase of pecans from the growers and in the sale thereof direct to consumers and to wholesale and retail dealers, and, excepting a negligible quantity, neither growing nor producing said nuts directly nor through officers or stockholders but purchasing same from independent growers in due course of trade and commerce, and conducting its said business in competition with (1) those similarly engaged, without using the words "grower" or "exchange" as a part of their trade names, or any other words or pictorial arrangements importing that they were growers or cooperative associations thereof, and (2) cooperative grower associations engaged under State law in the sale of pecan nuts to wholesalers and jobbers and through the mails, under trade names including the aforesaid words, known to the industry and a substantial part of the consuming public as meaning such organizations;

- (a) Used the words "growers' exchange" as a part of its corporate name and displayed the same on letters, and, in connection with advertising conducted by it at large expense, on circulars, advertising matter, and other literature soliciting sale of its said pecans, and upon the bag containers in which it shipped the same; and
- (b) Used and displayed such slogans in its trade literature, blotters, and other advertising matter as "direct from the groves", and/or "direct from the growers", together, in some cases, with a panoramic view of a large pecan orchard;

With the tendency and capacity to deceive the purchasing public by inducing purchase of nuts from it as and from a cooperative association of pecan growers, selling the same at prices below those at which comparable products would sell to the public after passing through usual course of trade from grower to wholesaler to retailer to public, and saving the public the wholesaler's and retailer's profits, and to injure growers selling direct to the public and dealers reselling to the public nuts purchased from growers:
Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. E. J. Hornibrook for the Commission.

Watkins, Asbill & Watkins, of Atlanta, Ga., 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