

Syllabus

IN THE MATTER OF

L. A. CRANCER AND G. B. FLEISCHMAN, TRADING
UNDER THE FIRM NAMES AND STYLES OF ALLE-
GHENY TUBE & STEEL COMPANY, ETC.

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

Docket 1848. Complaint, June 19, 1930—Decision, Oct. 31, 1930

Where certain large corporations had long engaged as Allegheny Steel Co., Erie Iron & Steel Co., Illinois Steel Co., Westinghouse Electric Co., Pittsburgh Valve & Fittings Co., and National Plumbing Supply Co., in the manufacture and sale of pipe, castings, etc., as the case might be, and had come to be widely and favorably known for the quality of their output and character of their organizations; and thereafter a firm dealing in pipe, nipples, couplings, plugs, and other products comparable to or associated by the public with those offered and sold by said corporations, in pursuance of a method of conducting its business under various trade names simulating names of such corporations and purporting to represent distinct, independent business organizations, uncontrolled by it and competing with one another and all others similarly engaged,

- (a) Adopted trade name Allegheny Tube & Steel Co. and employed same in catalogues and price lists and represented such company as operator of a large and extensive plant making pipe and pipe fittings sold by it under such name, affording purchasers opportunity to secure products directly from the manufacturer without paying profits of jobbers or middlemen, and employed in advertising matter and other literature the words "From mill to you", "Tubular Division", and "Plant No. 3"; the facts being that it owned no manufacturing plant of any kind until recent incorporation under said name and acquisition of machinery and equipment for limited nipple manufacture;
- (b) Adopted and employed trade name Coupling Manufacturing Co. and represented said company as having made large purchases of pipe, at low prices, for manufacture into nipples of characteristic Coupling quality, affording opportunity for saving through purchase directly from the manufacturer, and over fictitious signatures wrote prospective purchasers of the alleged advantages thus to be derived; fact being that said nipples, couplings, and other products, excepting a small quantity made by said Allegheny Co., were manufactured in plants or mills with which it was neither directly nor indirectly connected and purchase of said products from it or said fictitious Coupling Co. saved purchasers no profits of jobbers or middlemen;
- (c) Adopted trade name Erie Iron & Tube Co., and employed same in price lists, quotations, etc., with words "University city", and displayed legend "Pipe fabricating department", and name "Walter King, division manager", on business stationery; fact being it had no such department at said place or elsewhere and said name was one of the fictitious names employed by it in conducting business as said Erie Iron & Tube Co.;

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- (d) Falsely represented said company as manufacturing new and unused nipples, couplings, etc., under such exceptionally favorable conditions that prices offered saved buyers profit or expense ordinarily sustained through purchase from jobbers or other distributors, fact being that said company's business was sale of used couplings as new, and sale of nipples made by aforesaid Allegheny Co. from old pipe as made from new pipe, and offered couplings and nipples under said name at reduced prices to prospective customers theretofore unsuccessfully solicited in the name of said Coupling Co. or said Allegheny, etc., Co.;
- (e) Adopted trade name "Illinois Steel Products Co." and employed same in stationery, price lists, etc., and gave fictitious names and addresses for said company's places of business, and the fictitious name "George Bancroft" as its purchasing agent, and falsely represented said company as maker of steel pipe fittings offered and sold by it, affording purchasers opportunity to obtain products at manufacturer's prices, without paying distributor's profit;
- (f) Adopted trade name "Westinghouse Union Co." and distributed price lists and other advertising matter and literature thereunder, notwithstanding it had no connection with Westinghouse Electric & Manufacturing Co. or subsidiaries thereof or related companies, and products thus offered had not been made by any of such companies, but were purchased from manufacturers and offered as made by said Westinghouse Union Co., and at prices enabling buyer to save distributor's profit;
- (g) Adopted trade name Pittsburgh Malleable Fittings Co. in offering and selling fittings such as elbows, etc., in competition with aforesaid Pittsburgh Valve & Fittings Co., with effect of enabling it so to confuse purchasing public as to be able to sell such products as and for those of said last named company; and
- (h) Employed trade name "Plumbers' National Supply Co." for offer and sale of pipes and pipe fittings in competition with aforesaid National Plumbing Supply Co., with result that confusion was created in minds of purchasers and prospective purchasers of said last-named company and its products were purchased as and for those of said company;

With intent and effect of creating and maintaining appearance of keen and active competition between independent manufacturers, offering products dealt in by it at competitive prices, and with capacity and tendency to mislead and deceive the public into purchase of aforesaid products as and for those of the aforesaid widely and favorably known Allegheny Steel Co., Erie Iron & Steel Co., and other aforesaid corporations, bought at such competitive prices and directly from the manufacturer with a saving of the usual profits of middlemen or jobbers;

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. James M. Brinson for the Commission.

Mr. Harvey D. Jacobs, of Washington, D. C., *Fordyce, Holliday & White* and *Mr. Louis Mayer*, of St. Louis, Mo., 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 L. A. Crancer and G. B. Fleischman, engaged at St. Louis in the sale and transportation to purchasers in various States of pipe, nipples, couplings, plugs, unions, and various other articles known as pipe fittings, and doing business under the trade name Allegheny Tube & Steel Co., and various other trade names, with assuming and using misleading trade names, misrepresenting business status, advantages and connections, simulating trade or corporate names of competitors and/or well-known concerns, operating and holding out business as ostensibly independent and competing enterprises, misrepresenting used products as new, and advertising falsely or misleadingly in said respects, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, made use of such trade names in catalogues, letters, and in the conduct, generally, of apparently independent businesses as Allegheny Tube & Steel Co., simulating the name of the well and widely known Allegheny Steel Co., Coupling Manufacturing Co. (purportedly representing a well-known manufacturing organization), Erie Iron & Tube Co. simulating the name of the well and widely known Erie Iron & Steel Co., etc., as hereinafter more fully set forth, and made claim of direct dealing from factory to consumer, used fictitious names, titles, and pretended divisions, plant numbers, etc., on letters, and offered ostensibly lower competitive prices under one of such trade names to customers theretofore unsuccessfully solicited under another, and represented used products or products made from used raw material, as new.¹

Respondents' practice, as alleged, of using such trade names as Allegheny Steel & Tube Co., Coupling Manufacturing Co., Erie Iron & Tube Co., Illinois Steel Products Co., Westinghouse Union Co., Pittsburgh Malleable Fittings Co., and Plumbers National Supply Co., in simulation of the names of the Allegheny Steel Co., Illinois Steel Co., Erie Iron & Steel Co., Westinghouse Electric & Manufacturing Co., Pittsburgh Valve & Fittings Co., and National Plumbing Supply Co., without disclosing their connection therewith, or that the designations used were trade names only, enabled them, through catalogues, letters with fictitious names as officials, plant divisions, etc., and general conduct of apparently independent

¹ The practices charged in the allegations of the complaint are set forth, substantially verbatim, in the findings, respondents having failed to avail themselves of the opportunity to be heard on the complaint or to make answer to the charges therein, within the time provided and in response to notice, pursuant to Commission rules of practice that failure to file answer within such time should "be deemed an admission of the allegations of the complaint and authorize Commission to find them to be true and to waive hearing on the charges" therein set forth. See pages 259 et seq.

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businesses under such names, "to create and maintain in the trade and among the public, the appearance of competition, between ostensible manufacturers" of the products concerned and had the capacity and tendency "to mislead and deceive the public into the belief that the prices offered them for such products by respondents, through such apparently separate, distinct, and independent corporate agencies, have been and are the effect of active competition between them and to induce the purchase of products so offered by respondents in reliance on such erroneous belief", and also the further capacity and tendency to mislead and deceive the public into purchase of the products in question as and for those of the Allegheny Steel Co., Illinois Steel Co., and other well-known organizations, whose names were thus simulated as above set forth.

Respondents' false representations, furthermore, as alleged in catalogues, letters, and otherwise, to the effect that the Allegheny Tube & Steel Co., Coupling Manufacturing Co., and other trade names employed by respondents, as hereinabove set forth, "have been or are manufacturers of the products offered for sale by, or under such trade names, and that purchase of such products so offered for sale under such names would be, or is, directly from mill or factory, have had and have, and each of the several representations in respect to each of said so-called companies has had and has the capacity and tendency to mislead and deceive the public into the belief that there would be, and is, saved to purchasers from said so-called companies, or any or either of them, the usual profit of the middlemen or jobbers, and into the purchase of such products in reliance on such erroneous belief"; all to the prejudice of the public and respondents' 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, 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 19th day of June, A. D. 1930, issued its complaint against L. A. Crancer and G. B. Fleischman, respondents above named trading under the firm names and styles of the several companies above mentioned, and on June 24, 1930, caused the same to be served upon each of the said respondents as required by law, in which 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. By notice contained in said complaint respondents were notified and required

to file with the Commission an answer to said complaint on or before July 25, 1930; and in said notice respondents were further notified of the provisions of the Commission's Rules of Practice with respect to answer and failure to answer, said provisions being set forth in haec verba in said notice and providing in part as follows (Rule III, subdivision 3):

(3) Failure of the respondents to appear or file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondents thereafter appeared by their attorneys and made application for an extension of time from July 25 to October 15, 1930, for filing answer; whereupon the Commission by order dated August 5, 1930, extended the time for filing answer until September 15, 1930, and served copy of such order on the attorneys for the respondents on August 8, 1930. No answer having been filed by respondents or either of them, the Commission issued on September 18 and served on the attorneys for the respondents on September 23 and 24 a notice which (omitting the formal parts) read as follows:

Please take notice that the respondents in this case are hereby required to file answer to the complaint of the Commission, filed in this case on June 24, 1930, within five days after receipt of this notice. Failure of the respondents to file answer within said time shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondents have not within the time provided for answer as extended, or within the five days provided for in the said notice, or at any time, made or filed any answer to said complaint; and have wholly failed to avail themselves of the opportunity to be heard on, or to make answer to, the charges set forth in said complaint, or with respect to the aforesaid notice as to answer and failure to answer.

Thereupon this proceeding came on for decision; and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid Rules of Practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents L. A. Crancer and G. B. Fleischman are now and for several years last past have been engaged in the business, in St. Louis, Mo., of offering for sale and selling in commerce among and between the various States of the United States,

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and of transporting when sold to purchasers in the various States of the United States, pipe, nipples, couplings, plugs, unions, and various other articles or commodities known as pipe fittings.

In the course and conduct of their said business they have been and are in competition with individuals, partnerships, and corporations similarly engaged in like commerce.

Respondents have adopted, and for several years last past have used, and now use, as their method of business, or one of them, the fabrication and employment of numerous trade names, each and all of them closely resembling the names of large corporations engaged for a long period of time prior to the adoption or use of said names by respondent, in the manufacture and sale in commerce among and between the various States of the United States of products adapted to the same purpose and use as those offered for sale and sold by respondents, or engaged in the kind of manufacture or business naturally associated by the public with the manufacture and sale of products similar to those offered for sale or sold by respondents.

It has been, and is the practice of respondents to offer their said products for sale under, by, or through such various trade names as hereinafter set forth in succeeding paragraphs, without disclosing that they have been and are trade names only, or that there has been, or is, any relationship between the business represented, or purporting to be represented by said trade names, or between those controlling or conducting the business represented, or purporting to be represented by said trade names. They have represented the various businesses described by said trade names to be separate, distinct, independent organizations unrelated to, or controlled by, respondents, and that they have been and are in competition with each other and all others engaged in the manufacture and sale of similar commodities in commerce among or between the various States of the United States. Respondents have distributed or caused to be distributed among purchasers and prospective purchasers in the various States of the United States, catalogues, price lists, illustrations, pamphlets, price quotations, letters circular and otherwise, purporting to be issued, published and distributed by the various organizations which they have represented to the purchasing public as competitors of each other, and from time to time in soliciting business from purchasers and prospective purchasers in the various States of the United States, they have caused competitive prices of the products offered for sale and sold by them to be quoted by two or more of the fictitious organizations employed by them to create and maintain such appearance of competition. Respondents, in pursuance of such method of business have sub-

scribed or caused to be subscribed, and now subscribe, or cause to be subscribed, false and fictitious names to letters, bearing their said trade names, purporting to be managers, purchasing agents, sales agents, or other officials or executives of the various organizations designated by such trade names, all for the purpose, and with the effect of misleading purchasers and prospective purchasers into the belief that the various products offered for sale or sold by respondents have been, were and are offered for sale and sold by independent competitors at prices resulting from keen and active competition.

PAR. 2. Respondents for several years prior to 1929, used as the trade name, by and through which they offered for sale and sold their pipe and pipe fittings, Allegheny Tube & Steel Co. There has been for a long period of time prior to the adoption and use of such trade name by respondents, a corporation known as Allegheny Steel Co. Its executive offices have been and are located at Breckenridge, Pa., but it maintained offices or warehouses in the cities of New York and Buffalo, N. Y., Chicago, Ill., Detroit, Mich., Milwaukee, Wis., Cincinnati, Ohio, Boston, Mass., Newark, N. J., and Los Angeles, Calif. It had been manufacturing and selling in interstate commerce for many years before respondents adopted their trade name, various kinds of pipe, steel castings, boiler tops, electric sheets, steel sheets, mechanical furniture, etc. It had established, maintained, and at the time respondents adopted the trade name Allegheny Tube & Steel Co., the Allegheny Steel Co. had, and ever since has had, a wide and extensive reputation and good will among the purchasing public for the excellence and general utility of its product. It was, and is, widely and favorably known as a company conducted by an efficient and reliable executive organization.

After their adoption of the name Allegheny Tube & Steel Co. for the business conducted by them respondents offered for sale and sold pipes and pipe fittings such as nipples, couplings and other commodities usually known as pipe fittings, under and by the representation made to the purchasing public through catalogues, price lists, circulars and other letters, advertisements and traveling solicitors, that Allegheny Tube & Steel Co. had and operated a large and extensive plant wherein were manufactured such products; and that by purchasing such products or any of them from said Allegheny Tube & Steel Co. the purchasers would be securing such products directly from the manufacturer and would thereby save any and all profit that otherwise would accrue to jobbers or middlemen. They used on stationery, advertising matter, and other literature distributed among purchasers and prospective purchasers in the various States of the United States such words as "From mill to you", "Tu-

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bular division", and "Plant No. 3", thereby representing that such respondents operated a large and extensive plant enabling it to manufacture and sell its products at a price satisfactory to the ordinary purchaser without the service of, or profit to, intermediaries of any kind.

In truth and in fact neither respondents L. A. Crancer nor G. B. Fleischman at any time, or the Allegheny Tube & Steel Co. until 1929, owned, operated, or conducted any mill or other plant of any kind, and its products generally, so offered for sale and sold, had been and were manufactured by or at mills with which neither of said respondents had any connection whatever. All of the products offered for sale and sold by respondents as Allegheny Tube & Steel Co. were purchased by them for such purpose from other manufacturers.

Some time in 1929 respondents L. A. Crancer and G. B. Fleischman caused to be incorporated under the laws of the State of Missouri the Allegheny Tube & Steel Co., the trade name theretofore used by them in the conduct of their said business. They thereafter continued to sell their products, or some of them, under and by the name Allegheny Tube & Steel Co. They were the officers of, and controlled, conducted, and dominated the corporation, using it as a corporate medium for the conduct of the business theretofore conducted under the trade name Allegheny Tube & Steel Co. Some time in 1929 they caused such company to acquire machinery and other equipment for manufacture of nipples to a very limited extent, and thereafter a small proportion of the nipples sold by respondents was, in fact, manufactured by them, but they have at no time manufactured, as Allegheny Tube & Steel Co., or otherwise, any of the other commodities sold by them.

PAR. 8. Respondents L. A. Crancer and G. B. Fleischman for more than a year last past have also conducted business under the name of Coupling Manufacturing Co. They have caused to be distributed among purchasers and prospective purchasers, advertising matter and other literature including catalogues, price lists, and letter quotations bearing the name Coupling Manufacturing Co., manufacturers of pipe coupling, and as inducement to the purchase of couplings and nipples said respondents, under the name of Coupling Manufacturing Co., have represented to purchasers and prospective purchasers that Coupling Manufacturing Co. had purchased large stocks of pipe at low prices which it had manufactured into nipples of characteristic Coupling quality, and that by reason of such success in securing such stock of pipe, purchasers could save money by procuring nipples direct from respondent Coupling Manufacturing Co. Respondents have transmitted to, and distributed among pur-

chasers and prospective purchasers in support of their representation that the Coupling Manufacturing Co. was, and is, the manufacturer of nipples, letters setting forth in detail the alleged advantages to be derived from the purchase of nipples manufactured by the Coupling Manufacturing Co., and in order to conceal and withhold from prospective purchasers the fact that respondents were controlling the Coupling Manufacturing Co., and that it and the Allegheny Tube & Steel Co. are operated by respondents, they caused fictitious names to be subscribed to such letters transmitted by them to purchasers.

In truth and in fact the nipples, couplings, and other products offered for sale by Coupling Manufacturing Co., ostensibly, but in fact by respondents L. A. Crancer and G. B. Fleischman, were not manufactured by them or either of them, but were fabricated, except a small quantity of nipples by Allegheny Tube & Steel Co., in plants or mills with which neither of them was, or is, directly or indirectly connected, and in which neither of them had any interest whatever, and the purchase of such products from respondents, or the fictitious Coupling Manufacturing Co. did not and does not enable purchasers to save the jobbers' or middlemen's profit. Respondents L. A. Crancer and G. B. Fleischman were and are themselves jobbers and middlemen, and not manufacturers.

PAR. 4. There is now and for several years last past has been, a corporation known as Erie Iron & Steel Co., which has engaged, and now engages in the general steel manufacturing business at Erie, Pa., with branch offices over the Central West or that portion of the United States in which respondents offer for sale and sell their various products. The Erie Iron & Steel Co. manufactures and sells a pipe, among other things, and this company now is, and for many years has been, widely and favorably known for the quality of its products, the reasonableness of its prices and the character of its organization.

Respondents L. A. Crancer and G. B. Fleischman are now using, and for more than a year last past, have used as one of their trade names, Erie Iron & Tube Co., a name which clearly resembles and simulates, and suggests to the purchasing public the Erie Iron & Steel Co. They have used and distributed among purchasers and prospective purchasers in the various States of the United States price lists and price quotations, stationery, and other literature in which they have referred, and refer to name of Erie Iron & Tube Co., at University City, Mo. Such price lists, stationery, and other literature carry the legend, appearing in connection therewith "Pipe fabricating department", and with the name "Walter King, division manager", appearing therein. In fact neither respondents,

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nor the so-called Erie Iron & Tube Co. has had, or has any mill or plant, or any pipe fabricating department, at University City or elsewhere, and the name Walter King has been, and is, one of the fictitious names employed by respondents in conducting the business as the so-called Erie Iron & Tube Co. Any and all mail or matter addressed to Erie Iron & Tube Co. at University City, has been and is forwarded at the instance of respondents to them at their regular place of business in the city of St. Louis, Mo.

Respondents have represented and represent to the purchasing public that Erie Iron & Tube Co. has been and is manufacturing nipples and couplings under such conditions exceptionally favorable that it has offered and offers them for sale at prices which save to the purchasers any profit or expense that would be sustained from purchase of such products from or through jobbers or other distributors.

They have represented and represent that the nipples and couplings so offered and sold, have been and are new and unused nipples and couplings. In truth and in fact the business of respondents conducted under the name of Erie Iron & Tube Co. has been and is the sale of used couplings purchased for the purpose as and for new couplings, and of nipples manufactured from old pipe by Allegheny Tube & Steel Co. as and for nipples manufactured from new pipe. It has been, and is the practice of respondents, whenever unable to sell couplings to prospective customers among whom they have distributed circulars and price quotations, purporting to be from the Coupling Manufacturing Co., to circularize or distribute circulars among such prospective customers purporting to be from Erie Iron & Tube Co., offering couplings at lower prices than the couplings offered for sale by the so-called Coupling Manufacturing Co., which respondents cause falsely to appear as a separate and distinct entity.

When respondents have been or are unable to sell nipples offered for sale by Allegheny Tube & Steel Co. or Coupling Manufacturing Co., it circularizes or distributes circulars among the customers or prospective customers previously circularized by them under the name of Allegheny Tube & Steel Co. or Coupling Manufacturing Co., or both, purported to come from Erie Iron & Tube Co., offering nipples for sale at reduced prices, or prices lower than designated by Allegheny Tube & Steel Co. or Coupling Manufacturing Co., and when orders are thereupon, or thereafter, received by Erie Iron & Tube Co. for nipples so offered in its name respondents transport, or cause to be transported, and delivered to purchasers, nipples which they have caused to be made from old pipe on the machines of the Allegheny Tube & Steel Co.

PAR. 5. The Illinois Steel Co. is a subsidiary of the United States Steel Corporation. It had, long prior to the adoption of the name, hereinafter mentioned, by respondent as a trade name, and now has a wide reputation, and its steel products, had been, and are favorably and extensively known in the United States. For more than a year last past respondents L. A. Crancer and G. B. Fleischman have used and now use as one of the trade names for their business, Illinois Steel Products Co. They have employed, in conducting such business, stationery and price lists and advertising literature containing fictitious names and addresses such as Granite City, Ill., as the place of business of said company, and George Bancroft as its purchasing agent, when in fact, Granite City is a short distance from St. Louis, although located in Illinois, and mail addressed to such place is forwarded to respondents at St. Louis, Mo., and the name George Bancroft is another false and fictitious name employed by respondents or one of them in conducting the business of, or purporting to conduct the business of, the so-called Illinois Steel Products Co.

Respondents, for more than a year last past have represented and now represent that the Illinois Steel Products Co. has manufactured and manufactures steel pipe fittings, and it has offered such products for sale and now offers for sale and sells them as products manufactured by Illinois Steel Products Co. As inducement for their purchase respondents have represented and represent that by direct purchase from Illinois Steel Products Co. purchasers have been, and are enabled to obtain its products at the manufacturer's prices, thereby avoiding jobbers' profits, or that of any other distributor.

In truth and in fact neither the Illinois Steel Products Co. nor respondents, or either of them, at any time have manufactured any of the products offered for sale or sold by them under the name of Illinois Steel Products Co. and purchasers from them as Illinois Steel Products Co., or otherwise, have not saved, and do not and can not thereby save the middleman or jobber profit.

PAR. 6. There is now and for many years last past has been a corporation known as the Westinghouse Electric & Manufacturing Co. engaged in the manufacture of electrical devices and equipment. This company has maintained and now maintains plants located in various parts of the United States, with branch offices in the principal cities of the United States and foreign countries. It is one of the largest corporations in the United States and bears a world wide reputation. Its generally known products are of a different character from those offered for sale and sold by respondents, but its business generally has been and is of such comprehensive character that it is associated by the purchasing public with the manufacture and sale of

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a wide and extensive variety of products favorably known to the public. Respondents, for more than a year last past have used, and now use, as a trade name Westinghouse Union Co., and have distributed and now distribute among purchasers and prospective purchasers of the products offered for sale by them, price lists, advertising matter and other literature including stationery bearing the name Westinghouse Union Co., as inducements for the purchase of its products.

In truth and in fact neither of the respondents has or at any time heretofore has had, any connection or relationship to the Westinghouse Electric & Manufacturing Co. or any of its subsidiaries or allied companies, and none of the products offered for sale or sold by respondents under and by the name Westinghouse Union Co. has been manufactured by said so-called company, or by either of them, but have been purchased from the manufacturers thereof and have been and are offered for sale thereupon as if manufactured by Westinghouse Union Co. and at prices enabling the purchaser to avoid or save profits of jobbers or other distributors.

PAR. 7. There is now and for many years last past has been a company known as the Pittsburgh Valve & Fittings Co. It has offered for sale and sold in commerce, among and between the various States of the United States, malleable fittings, cast fittings, brass and iron valves. Its products are well and favorably known in the various States of the United States in which respondents offer for sale and sell their products.

Respondents L. A. Crancer and G. B. Fleischman are now engaged, and for more than a year last past have been engaged, under and by the name Pittsburgh Malleable Fittings Co., in offering for sale and selling in various States of the United States fittings such as elbows, tees, reducers, nipples, and plugs, in competition with the said Pittsburgh Valve & Fittings Co. Employment of such trade name has enabled and still and now enables respondent to so confuse the purchasing public that they have been and are enabled to sell such products as or for products of the Pittsburgh Valve & Fittings Co.

PAR. 8. There has been for several years last past and now is an organization at St. Louis, Mo., known as the National Plumbing Supply Co. It offers for sale and sells in the various States of the United States, plumbing and heating materials such as pipe-valves and fittings. It has always borne and now bears an excellent reputation and enjoys the good will of the purchasing public. Respondents are now using, and for more than a year last past, have used as one of its trade names, Plumbers National Supply Co., a name which clearly simulates that of the National Plumbing Supply

Co., and has been and usually is understood to mean National Plumbing Supply Co. It has offered for sale and sold and offers for sale and sells, pipes and pipe fittings in competition with the said National Plumbing Supply Co. in commerce in the various States of the United States, and by reason of the close resemblance there has been confusion among purchasers and prospective purchasers of said National Plumbing Supply Co., resulting in the purchase of products of respondents in the belief that they have been, or were, products of the National Plumbing Supply Co.

PAR. 9. The practice of respondents, as described in paragraph 1 hereof, in offering for sale and selling their products in the name of Allegheny Tube & Steel Co., Coupling Manufacturing Co., Erie Iron & Tube Co., Illinois Steel Products Co., Westinghouse Union Co., Pittsburgh Malleable Fittings Co. and Plumbing National Supply Co., without disclosing their connection therewith, or that such designations represented and represent no corporations, or separate entities, but have been and are trade names only, by means of which respondents have been and are enabled to create, and maintain, in the trade, and among the public, the appearance of competition, between ostensible manufacturers of such products, has had and has the capacity and tendency to mislead and deceive the public into the belief that the prices offered them for such products by respondents, through such apparently separate, distinct and independent corporate agencies, have been and are the effect of active competition between them and to induce the purchase of products so offered by respondents in reliance on such erroneous belief.

The practice of respondents in offering for sale and selling their products in the name of, and through Allegheny Tube & Steel Co. has had and has the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are the products of the Allegheny Steel Co.

The practice of respondents in offering for sale and selling their products in the name of and through Illinois Steel Products Co., has had and has the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are the products of the Illinois Steel Co.

The practice of respondents in offering for sale and selling their products in the name of and through Erie Iron & Tube Co. has had and has the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are the products of the Erie Iron & Steel Co.

The practice of respondents in offering for sale and selling their products in the name of, and through Westinghouse Union Co. has

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had and has the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are the products of the Westinghouse Electric & Manufacturing Co., or of some subsidiary company of the Westinghouse Electric & Manufacturing Co., or of some company allied therewith.

The practice of respondents in offering for sale and selling their products in the name of, and through Pittsburgh Malleable Fittings Co. has had and has the capacity and tendency of misleading and deceiving the public into the purchase of such products in the belief that they have been, were, or are products of the Pittsburgh Valve & Fittings Co.

The practice of respondents in offering for sale and selling their products in the name of, and through, the Plumbers National Supply Co. has had the capacity and tendency to mislead and deceive the public into the purchase of such products in the belief that they have been, were, or are products of the National Plumbing Supply Co.

The false representations of respondents to the effect that the Allegheny Tube & Steel Co., the Coupling Manufacturing Co., the Erie Iron & Tube Co., the Illinois Steel Products Co., or respondents L. A. Crancer or G. B. Fleischman, have been or are manufacturers of the products offered for sale by, or under such trade names, and that purchase of such products so offered for sale under such names would be, or is, directly from mill or factory, have had and have, and each of the several representations in respect to each of said so-called companies has had and has the capacity and tendency to mislead and deceive the public into the belief that there would be, and is, saved to purchasers from said so-called companies, or any or either of them, the usual profit of the middlemen or jobbers, and into the purchase of such products in reliance on such erroneous belief.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, and the Commission having made its report in which it stated its findings as to the facts and conclusion that

respondents, L. A. Crancer and G. B. Fleischman, trading under the firm names and styles of the companies above mentioned, 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 respondents, L. A. Crancer and G. B. Fleischman, and each of them, their agents, representatives, servants, and employees, cease and desist in the course or conduct of the sale of pipes, nipples, couplings, plugs, unions, elbows, tees, reducers, and/or other articles or commodities known as pipe fittings, in interstate commerce:

(1) From employing any trade name or company name which simulates the name of the Allegheny Steel Co., the Erie Iron & Steel Co., the Illinois Steel Co., the Westinghouse Electric & Manufacturing Co., the Pittsburgh Valve & Fittings Co., the National Plumbing Supply Co., or any of them, or of any other company with which respondents may now or at any time be engaged in competition in the sale of such articles or commodities; and particularly from employing in connection with such sales any of the following names:

Allegheny Tube & Steel Co., Erie Iron & Tube Co., Illinois Steel Products Co., Westinghouse Union Co., Pittsburgh Malleable Fittings Co., Plumbers National Supply Co.

(2) From representing through catalogues, price lists, circulars, letters, advertisements, traveling solicitors, or in any manner whatsoever, that the respondents, or any company the name of which may be employed by respondents, manufacture such articles or commodities, or own or operate mills or factories for the manufacture of such articles or commodities, when such is not the fact; and from using the word "manufacturing", or any word of similar import, as a part of any trade name or company name employed by respondents (and particularly from using the name Coupling Manufacturing Co.) unless and until the respondents and/or such company manufacture the articles or commodities so sold.

(3) From representing that by purchasing such articles or commodities from the respondents or from any company in the name of which respondents do business a purchaser will obtain the advantage of prices which will enable him to save the jobbers' or middlemen's profit, when such is not the fact.

(4) From representing that any of the several companies in the names of which respondents do business is a separate entity, distinct and apart from any other such company, or distinct and apart from the respondents, or that any such company is engaged in competition with any other such company or with the respondents;

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and from doing acts which simulate competition between two or more of such companies or between the respondents and any such company.

(5) From representing by means of stationery, price lists, advertising matter, false signatures, or in any manner whatsoever, that any person, real or fictitious, is an officer, agent, representative, or employee of the respondents or of any company in the name of which the respondents may be doing business, when such is not the fact; or that the office, place of business, or address of the respondents or of any such company is at any place where it is not in fact.

(6) From offering for sale or selling old or used nipples, couplings, or other articles or commodities, as and for new; and from offering for sale or selling nipples manufactured from old or used pipe as and for nipples manufactured from new pipe.

It is further ordered, That respondents, L. A. Crancer and G. B. Fleischman, shall within 30 days after service upon them of a copy 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 order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
PENICK & FORD, LTD., AND PENICK & FORD SALES
COMPANY, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1580. Complaint, Mar. 14, 1929. Decision, Nov. 17, 1930

Where a corporation engaged in sale of canned sirups and molasses to wholesale and retail grocers, largest packer-seller of canned cane sirups and one of the two largest packer-sellers of canned sirups in Mississippi, Louisiana, Arkansas, and Texas, and only "packer-seller" of a complete line of canned cane, corn, and blended sirups and molasses in Southern States; in pursuance of a "100 per cent sales policy" of limiting salesmen, in soliciting retailers for account of their wholesalers, to customers handling its sirups and molasses exclusively and giving it "their whole-hearted cooperation and support",

- (a) Made known adoption of said sales policy to wholesale grocer customers in its southern sales territory and repeatedly stated the same thereto, through letters, circulars, and salesmen;
- (b) Limited its said retail sales assistance to such wholesale grocer customers as sold its canned cane sirups and molasses and did not sell competitive products, and purchased a competitive sirup from a wholesale grocer customer, to secure said grocer's business exclusively; and
- (c) Refused or discontinued such assistance to wholesale grocer customers selling competitive products;

With the result that wholesale grocer customers sold its products and discontinued or failed to undertake sale of those of its competitors, an important competitive advantage in the sale of its merchandise was secured by wholesale grocers dealing exclusively therein, numerous wholesale grocers in several Southern States were caused to comply with said 100 per cent policy, public was deprived of a substantial proportion of previously existing competition between it and its competitors in numerous southern markets through the closing of the outlets for the class of merchandise concerned against its competitors, so large a proportion of the class A wholesale grocer outlets in certain southern jobbing centers was closed as to result in a direct tendency toward monopoly in the aforesaid products, and competition therein in several jobbing centers in the territory involved was lessened, and there was a capacity and tendency for competition to be substantially lessened in other localities:

Held, That such acts and practices under the circumstances set forth, substantially and dangerously lessened and hindered competition in certain localities and sections in the sale and distribution of canned sirups and molasses, to the injury and prejudice of the public, and constituted a violation of section 3 of the Clayton Act, and of section 5 of the Federal Trade Commission Act.

Mr. Eugene W. Burr for the Commission.

Mr. Charles Wesley Dunn, of New York City, for respondents.