

Complaint

14 F. T. C.

IN THE MATTER OF

FRANK W. BLACK, WALTER HOWTON, AND MAX LEONHART, INDIVIDUALLY AND AS PARTNERS DOING BUSINESS UNDER THE FIRM NAMES OF FRANK W. BLACK & CO. AND GRIFFITTS ENGRAVING CO.

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

Docket 1697. Complaint, Oct. 1, 1929—Decision, Feb. 10, 1931

Where a firm engaged in production and sale of visiting and business cards, Christmas cards, invitations, and similar products under its so-called Nu-Process method, involving application to type printing of powdered chemical and heat, and resulting in a raised letter effect very closely simulating engraving,

- (a) Employed the word "engraving" in their firm name, with capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that they were engravers instead of printers, and thereby divert trade to them from their competitors; and
- (b) Described themselves upon their letterheads and in advertising literature as "Commercial printers and copper-plate engravers" and as "Designers, printers, and engravers" and represented cards, etc., sold by them as engraved, with capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that the letters, words, etc., appearing thereon were produced through application under pressure of specially engraved, incised, cut, or carved metal plates and were genuinely engraved as understood by the trade and purchasing public and thereby to divert trade to them from their competitors:

Held, That such practices, under the conditions and circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair methods of competition.

Mr. Alfred M. Craven 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 respondents Frank W. Black, Walter Howton, and Max Leonhart engaged in Chicago in production of printed matter including visiting and business cards, wedding invitations, announcements, commercial announcements and invitations, Christmas cards, greeting cards and other stationery, under the trade name and style of Frank W. Black & Co. and Griffiths Engraving Co., and in the sale and transportation of the aforesaid products through the mails to customers in several of the States, with using misleading trade name and advertising falsely or misleadingly in violation of the provisions of

section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, for more than two years last past in the circulars, leaflets, and literature sent by them to persons and concerns in different States, together with samples of their printing, used such statements or communications as—

GRIFFITTS ENGRAVING CO.
DESIGNERS, PRINTERS, ENGRAVERS
432 SOUTH DEARBORN STREET, CHICAGO

THE NU-PROCESS METHOD

It would be to your advantage * * * if you would point out to your prospective customers the more reasonable cost of having cards made with the Nu-Process. This Nu-Process eliminates the necessity of having a plate made up which means a saving to your customers. * * * Also saves your customers money * * *. Cards shown in this portfolio are matched with type and engraved by the Nu-Process method.

FRANK W. BLACK AND COMPANY
COMMERCIAL PRINTERS—COPPER PLATE ENGRAVERS, ETC. * * *

Nu-Process name and cards
Old plate and cards
New plate to match and cards
Cards only

notwithstanding the fact that the letters, words, or designs produced upon respondents' stationery through application to inked type or cuts, while wet, of a powdered chemical and heat, with a raised letter effect so closely resembling true "engraving" products (i. e., products containing letters, words, or designs raised from the general plane of the stationery surface, resulting from application of an especially engraved cut or carved metal plate) in appearance, feel, and finish that persons not experts are unable to distinguish between respondents' products and engraved products.¹

The use by respondents, as alleged "of the word 'engraving' in the name of Griffiths Engraving Co. and the use by respondents of words and phrases, as set out * * * in advertising, offering for sale or selling their said products, were and are calculated to, and

¹As alleged by the complaint, "the words 'engraving' or 'engraved,' when used in connection with, or as descriptive of, business or social stationery, mean, and the trade and purchasing public understand them to mean, that the stationery products, so being referred to or described, contain letters, words, or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application, under pressure, of metal plates which have been especially engraved, incised, cut or carved for, and are used in, the production of such stationery."

had and have the capacity and tendency to, and/or did and do mislead and deceive the purchasing public into the erroneous belief that Griffiths Engraving Co. is an engraving company, and that respondents are engaged in the business of producing and selling engraved stationery, and that the letters, words, or designs contained upon the stationery produced by respondents and offered for sale and sold by them were and are engraved, and are manufactured by the process of producing upon stationery an impression from inked plates on which have been cut, incised, carved, or etched letters, words, or designs from which reproductions are made known as engraving."

Said acts and things, done by respondents, as charged, "are 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."

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" (38 Stat. 719), the Federal Trade Commission, on the 1st day of October, 1929, issued and served its complaint against the respondents, Frank W. Black, Walter Howton, and Max Leonhart, individually and as partners doing business under the firm names of Frank W. Black & Co. and Griffiths Engraving Co., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed their several answers to the said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter, this proceeding came on regularly for final hearing, and the Commission having duly considered the record 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. The respondent Frank W. Black was the owner of a business formerly conducted under the trade name of Frank W. Black & Co., which business was sold to the respondents Walter

Howton and Max Leonhart in November, 1927, and respondent Black does not now have, nor has he had since November, 1927, any connection with said business. The said Walter Howton and Max Leonhart, hereinafter referred to as the respondents, are now and have been since November, 1927, engaged in the printing business at Chicago, Ill., under the firm names of Frank W. Black & Co. and Griffiths Engraving Co., and, as part of said business, in the production and sale of visiting and business cards, Christmas cards, wedding invitations and announcements and other like articles, orders for which are solicited by the respondents by means of letters, leaflets, circulars, samples, and other advertising literature sent directly to prospective customers in various States of the United States, or shown to such prospective customers by agents of the respondents; and when orders are received in response to such solicitation, respondents cause the article or articles so ordered to be transported from Chicago, in the State of Illinois, by mail or otherwise, in interstate commerce, to customers at their various points of location in States of the United States other than the State of Illinois. In the course and conduct of their said business respondents have been and are in active competition with other individuals, partnerships, and corporations also engaged in the production and sale, or in the sale, of like commodities in interstate commerce among the several States of the United States.

PAR. 2. Upon the letterheads of the respondents, used in the solicitation of business as mentioned in paragraph 1 hereof, and in their advertising literature, respondents represent their business conducted under both of the said firm names used by them, to be that of "Commercial printers and copperplate engravers," and as "Designers, printers, and engravers," and represent that the cards, invitations, announcements, and other articles mentioned in paragraph 1 hereof are in whole or in part engraved. For example, in the circular addressed to their agents, respondents state:

THE NU-PROCESS METHOD

It would be to your advantage, however, and enable you to secure more orders, if you would point out to your prospective customers the more reasonable cost of having cards made with the Nu-Process. This Nu-Process eliminates the necessity of having a plate made up, which means a saving to your customers. The Nu-Process way also saves your customers money on running time. In other words, securing orders for Nu-Process will cost your customers less money and result in more business for you. Cards shown in this portfolio are matched with type and engraved by the Nu-Process method.

PAR. 3. The word "engraving," or "engraved," as the case may be, as descriptive of business or social stationery means, and the

Conclusion

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trade and purchasing public understand such words to mean, that the products of which the words are descriptive, contain letters, words, figures, or designs which are raised from the general plane of the stationery surface and are in relief, and that they are produced by the application under pressure of metal plates which have been especially engraved, incised, cut, or carved for the production of such stationery. The respondent's so-called "Nu-Process Method" is not a method of engraving, but is a method of printing. It does not require any engraving, incision, or cuts upon metal plates. The raised letters resulting from such method are produced by the application to type printing, while the ink is wet, of a powdered chemical, which chemical, by the application of heat is caused to melt and fuse, producing a raised letter effect simulating engraving so closely that even experts can not easily detect the difference. The use by respondents of the words "engraving" and "engraved" in their advertising, offering for sale and selling said products, has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that the letters, words, figures, or designs appearing upon the articles produced by respondents and purchased by the public are engraved, after the manner of engraving hereinabove mentioned, and thereby to divert trade to the said respondents, Walter Howton and Max Leonhart, from their competitors.

PAR. 4. The respondents have no machinery or tools in their establishment such as are used for the purpose of engraving, and while they do sell products which are in whole or in part really engraved, they procure such products from those conducting an engraving establishment and who may be properly called engravers. The use by respondents of the word "engraving" in the firm name "Griffitts Engraving Co." is misleading and has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that the respondents are engravers, whereas they are printers, and thereby to divert trade to the said respondents, Walter Howton and Max Leonhart, from their competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the testimony and evidence introduced, and brief of counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Walter Howton and Max Leonhart, individually and as partners, their officers, agents, and employees, in connection with the selling or offering for sale of printed matter in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from—

(a) Representing by means of a firm or partnership name, or otherwise, that respondents are engravers, unless and until such respondents actually do an engraving business.

(b) From using the word "engraved," or "engraving," as descriptive of the products offered for sale or sold by respondents, when all of the words, letters, figures, and designs upon such products have not been produced from metal plates into which such words, letters, figures, and designs have been cut.

It is further ordered, That the respondents shall file with the Federal Trade Commission, within 30 days from the date of the service of this order, their report in writing, stating the manner and form in which this order has been complied with, and shall attach to such report copies of all circulars, advertising, devices, or labels distributed or displayed to the public in connection with the sale of their product in interstate commerce subsequent to the date of this order.

It is further ordered, That this proceeding as to the respondent Frank W. Black be, and the same is hereby, dismissed.

Complaint

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IN THE MATTER OF
CURTISS CANDY COMPANY

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

Docket 1699. Complaint, Oct. 2, 1929—Decision, Feb. 10, 1931

Where a corporation engaged in the manufacture and sale of candy; in pursuance of a merchandising system directed to the fixing and maintaining of certain specified uniform prices at which jobbers should sell its "Baby Ruth" bar,

- (a) Fixed uniform minimum prices for resale by them to retailers and made it generally known to the trade that it expected and required all jobbers handling its said product to resell same at such fixed prices;
- (b) Entered into contracts, agreements, and understandings with jobbers for maintenance by them of its said resale prices as a condition of opening accounts, or continuing their supply of said product;
- (c) Procured and induced groups of jobbers in given localities to agree among themselves and with it to observe said resale prices; and
- (d) Sought and secured from its dealers information concerning and evidence of price cutting and secured from price cutters promises and assurances of future price maintenance or declined to supply them further;

With result of suppressing competition among jobbers in distribution and sale of its aforesaid product, restraining them to sell same at prices fixed by it and preventing them from selling same at such lower prices as they might desire, and of depriving purchasers of the product of the advantage in price which they would have otherwise obtained from a natural and unobstructed flow of commerce in said candy bar under methods of free competition:

Held, That such practices, under the conditions and circumstances set forth were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Irwin N. Walker, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture of candy and confectionery, and in the sale and distribution thereof from its factory at Chicago, to jobbers in other States, with maintaining resale prices, 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, in connection with the sale of one of its said products, to wit, a combination nut and candy bar, by it designated as "Baby Ruth" and long manufactured and sold and extensively so advertised, and very popular