

IN THE MATTER OF

JOHN MCGRAW, E. A. GLENNON, COPARTNERS DOING
BUSINESS UNDER THE NAME OF ROYAL MILLING
COMPANY, ETC., AND INDIVIDUALLY

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

Docket 1597. Complaint, Sept. 3, 1929¹—Decision, Apr. 16, 1931

Where a firm engaged in the purchase, mixing and sale of plain or phosphated, and self-rising, flour, to dealers in the southeastern States particularly, in competition with others similarly engaged, and also with those actually grinding wheat into flour and making and selling such products,

- (a) Adopted trade names including the word "milling", representing themselves as "Royal Milling Co.", "Richland Milling Co.", or "Empire Milling Co.", and as manufacturers of flour, with a daily capacity of 1,000 or 1,500 barrels, as the case might be, and displayed said names on the containers of their products, together with a brand name and designation of type of flour, such as "Silver Dawn. Superlative Self-Rising Flour", "Clover Leaf. Superlative Patent Flour", etc.; notwithstanding fact they ground no wheat and had no machinery or plant (with its many fold greater investment) for so doing and for carrying out the refined, complex and scientific processes involved in modern manufacture of flour, nor laboratory for ascertaining through chemical tests gluten, protein, and other content and characteristics thereof and maintaining the quality, standards, and uniformity of brands, but used regularly only the so-called inadequate and unscientific paddle test, and belonged to that class of concerns long known as blending plants, and were not mills, milling companies or manufacturers of flour, as long generally understood by dealers and consumers, many of whom believe that in purchasing flour directly from the concern grinding the wheat they secure a more uniform product or a better one for less money through elimination of middlemen's profits or costs, and prefer so to deal; and

- (b) Made such false and misleading statements in letters, circulars and literature distributed among the trade as " * * * Half your profit is in the buying; Order direct from the mill and save this yourself * * * ". "The scarcity of soft red wheat of good milling quality is becoming more acute each day * * * It has always been our policy to give our customers opportunity to take care of their requirements before an advance * * *. Nothing can be better than the best, and we handle only the best. This is not a mere dream, but an actual fact—based on chemical analysis * * * When you buy from us we save you money, as we do not sell through salesmen, brokers or jobbers, but go direct to the retail grocer and sell him at jobbing prices and you will find it much to your interest to buy on this plan";

With result that many dealers and consumers purchased their product as and for that of concerns grinding wheat into flour, and with capacity and tendency to divert trade to them from concerns actually so doing and selling their flour in the southeastern section of the United States, and

¹ Amended.

Complaint

from concerns engaged in the same character of business as themselves and selling their product in the aforesaid section without using such words or terms in the names under which they did business, or representing themselves as manufacturers of flour, and with effect of so doing;

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. Baldwin B. Bane for the Commission.

Mr. Thomas H. Malone of Nashville, Tenn., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged at Nashville in the purchase of wheat flour from millers in the Middle West, and in the blending and mixing thereof, and addition thereto, in some cases, of leavening agents, such as baking powder, to produce "self-rising flour," and in the sale of said products to dealers in various States, and largely to retail grocers, whose orders they solicit through the mail service, and with place of business in Nashville, with assuming or using misleading trade name, misrepresenting business status or advantages, advertising falsely or misleadingly, and misbranding or mislabeling, in regard thereto, 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, and neither owning nor operating any mill or machinery other than devices for blending or mixing lots and grades of flours purchased from millers, as above stated, and adding leavening agents, and manufacturing "no flour by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour," and owning or operating "no mill or machinery fitted for that purpose," operate under the trade names Royal Milling Co., Empire Milling Co., and Richland Milling Co., using such statements in the conduct of their business as "Royal Milling Co., Plain Patent Self-Rising. Daily Capacity 1,500 Barrels." "Richland Milling Co., Manufacturers of High Grade Flour, Nashville, Tennessee. Daily Capacity 1,000 Barrels." "Empire Milling Co., Manufacturers of High Grade Flour. Daily Capacity 1,500 Barrels," and in their letters soliciting orders "use other representations implying that they are manufacturers of flour as above described," further packing and delivering their aforesaid products in cotton or other bags upon which are conspicuously stamped their aforesaid trade names, together with such

descriptions of the contents as "Standard Patent Self-rising Flour", "Fancy Patent Self-rising Flour", "Best Patent Self-rising flour", "Superlative Self-rising Flour", "Superlative Patent Plain", and other similar descriptions.

Respondents, as alleged, in so carrying on their business, are in competition with others "likewise engaged in the business of selling wheat flour, either in plain or self-rising form, in interstate commerce who either manufacture the flour they sell by rolling or grinding or other process of crushing wheat and extract therefrom the product known as flour; or purchase the flour they offer for sale, whether in plain or self-rising form, and do not in their trade names or otherwise in the conduct of their business use the terms 'mill,' 'mills,' 'millers' or 'milling' or otherwise represent that they are engaged in the manufacture of flour as above described."

The use by respondents, as charged, "of the trade name 'Royal Milling Co.', 'Empire Milling Co.', and 'Richland Milling Co.' in their business and the representations in their business correspondence and otherwise as aforesaid have the capacity and tendency to lead dealers and prospective purchasers of plain or self-rising flour to believe that in purchasing their products they are buying direct from a miller or manufacturer of flour as above described and without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchases of their flour by dealers and consumers on that understanding and belief; and said representations constitute unfair methods of competition with millers or manufacturers of flour likewise engaged in interstate commerce who make as above described the flour they offer for sale and with sellers of plain and self-rising flour likewise engaged in interstate commerce who do not so manufacture but buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondents are false and misleading and tend to take away their business."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served an amended complaint upon respondents above named charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances and having filed their answer herein, a stipulation as to the facts was entered

into between counsel for the respondents and counsel for the Commission in which it was stipulated and agreed that the Federal Trade Commission should take such stipulation as to the facts in lieu of testimony.

Thereupon this proceeding came on for final hearing on the briefs submitted by counsel for the Commission and counsel for the respondents and argument by counsel for the Commission and counsel for the respondents, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, John McGraw and E. A. Glennon, are partners conducting business under the names Royal Milling Co., Richland Milling Co. and Empire Milling Co. In 1917 respondents bought the business of one R. C. Lindsey who operated under the trade name Royal Milling Co. They later adopted and used also the names Richland Milling Co. and Empire Milling Co. Respondents' place of business is located in Nashville, Tenn. Respondents are engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. They then pack the flour in bags under brands of their respective trade names, and sell it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondents buy the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to them at Nashville, Tenn., from which point they ship the flour to their customers. In the course and conduct of their business respondents are in competition with other co-partnerships, individuals and corporations engaged in the sale of flour in interstate commerce.

PAR. 2. Respondents put the flour which they buy from concerns located at various points throughout the United States in what is called a batch mixer, where it is stirred up and mixed together. Usually but not always two or more flours are so mixed or stirred up together. If the flour is to be self-rising there is added in this mixer the correct proportions of salt, soda, and phosphate. If it is not to be self-rising a little phosphate is added in the mixer. The flour is then run from this batch mixer into bins, from which it goes to a draver feeder which feeds the flour into elevator cups, which carry

it to the reel or sifter, from whence it goes after being sifted into hopper bins, and thence to the packer where it is packed into bags of the desired sizes. There is no grinding process in the operation. Respondents sell from five to eight brands under each trade name, but each brand does not represent a different grade or quality of flour. It takes from ten to fifteen minutes to run the flour through the equipment used by respondents. The cost of the machinery in such a plant as the respondents', having a capacity of 3,000 barrels a day on a 24-hour run is approximately \$20,000 to \$25,000, and the total investment approximately \$150,000 to \$200,000. The replacement value of respondents' plant and machinery is approximately \$40,000.

PAR. 3. The grinding of wheat into flour has developed by various steps until to-day it has become a refined, complex, and scientific process. Roughly, the operations which constitute the process are: (1) Cleaning and otherwise preparing the grain for grinding; (2) the grinding or reduction of the grain; (3) the bolting or sifting operation; (4) purification and preparation of the product by blowing air through it, adding phosphate, bleaching agents, etc. The modern method of grinding wheat substitutes for the single grinding between millstones a succession of grindings between several sets of iron or porcelain rollers. The wheat when received at the mill is unloaded into elevators or bins, and is thoroughly screened and dry cleaned and scoured by machines especially adapted for that purpose. This process itself is quite complicated, requiring a great deal of machinery. The wheat is analyzed and graded and then tempered and conditioned, preparatory to being ground. It is then passed through the rollers, each passage through a pair of rollers being called a break, and different concerns using different numbers of breaks. After each break the product is sifted or bolted, and the results of the siftings go into various streams, which are carried to other sets of rollers where they are again crushed or broken, the process being a continuous operation. A 5-break mill has 18 spans of rolls and 32 separations. Each break effects a mechanical separation. The bolting or sifting separates the results of the breaks into various streams and products, such as flour, middlings, offals, bran, shorts, etc. The bolting or sifting machine is commonly referred to as a reel. After the flour has gone through the rolls it is again bolted or sifted, and then sent to the packing room. The flour is milled to definite standards in order to insure uniformity. The wheats for the various brands of flour made by the mill are selected by the chemist and the superintendent from reports which are on file in the superintendent's and chemist's offices, showing the characteristics

and chemical constituents of the wheats. Concerns grinding wheat into flour are known as "Manufacturers of flour." Bolting or sifting has been done by the concerns grinding the wheat into flour in this country from the earliest times. The number of boltings or siftings differs in different mills, and is of importance in determining the appearance of the flour. Bolting or sifting is but a part of the process of preparing the flour. Concerns grinding wheat into flour bleach the flour, the bleaching agent being added on the mill stream. This bleaching matures or ages the flour, thus improving its baking qualities, and whitens it. Concerns grinding wheat into flour blend flours by a blending of the wheats after a chemical analysis of such wheats, and by blending the various streams of flour produced by the different breakings of the wheat berry between the various rolls in the mill. Concerns grinding wheat into flour maintain a laboratory and an experimental mill in charge of a chemist, in which the wheats and flours are analyzed and tested in order to determine their various characteristics, such as gluten content, protein content, moisture content, ash content, etc., in order to keep each of the brands of flour put out by such concerns uniform. It is only from chemical tests that such contents of the flour can be determined and the uniformity of each brand maintained. These characteristics determine the grade and quality of the flour. Unless these characteristics of the flour are maintained practically uniform in each brand of flour, the flour can not be kept up to one standard. Concerns grinding wheat into flour are very jealous of their grades and brands, and guard and protect them with great care. All mills in the process of grinding the wheat and preparing the flour make or produce several grades of flour. These are, in the order of the best and highest priced grades: Patent flour, which means that part of the stream of flour which is left after taking off a greater or less per cent of the inferior flour—it is the best flour made by the mill; straight flour, which means 100 per cent flour, all the flour that is extracted from the wheat berry; clear flour is the flour taken off by the mill after the patent flour has been removed; low-grade flour designates all of the lowest grades made by the particular mill. These terms indicate with different mills' flours of widely different qualities. The cost of the machinery for a concern grinding wheat into flour with a capacity of about 3,000 barrels a day is about \$600,000, and the total investment between \$1,000,000 and \$1,500,000. The time required for preparing the wheat and producing the flour by such a concern is from 8 hours to 50 or 60 hours, due to differences in time required for tempering the wheat. But if the tempering time is excluded, the time required is from a half hour to one and a half

hours, depending upon the number of breaks and boltings used by the concern.

PAR. 4. Practically all concerns grinding wheat into flour add phosphate to the flour on the mill stream, that is, as the flour is run through the mill. This addition is for the purpose of whitening the baked product and counteracting an overdose of soda. Self-rising flour is flour to which there has been added in correct proportions salt, soda, and phosphate, so that the flour is ready for use without the addition of baking powder by the cook. It is particularly adapted to the making of biscuits. A formula for mixing self-rising flour was discovered by Professor Liebig about 75 years ago. The self-rising flour business was originated or begun in Nashville, Tenn., by a Doctor Owsley. He operated under the name Owsley Flour Co. and sold through the Southeastern States. This company was succeeded by the Ford Flour Co. about 1897, which concern is still in existence and selling self-rising and plain or phosphated flour throughout the South. The concerns originating the mixing of self-rising flour in Nashville and not grinding wheat into flour did not call themselves mills or milling companies, or manufacturers of flour. Most of those actually grinding wheat into flour and selling in the Southeastern States mix and sell self-rising flour, and such is usually produced directly from the mill stream—that is, by running the mill stream directly into mixers where the self-rising ingredients are added before the flour is finally bolted and packed. Respondents sell in competition with those actually grinding wheat into flour, and in competition with those engaged in the same character of business as respondents and who do not represent themselves as mills or milling companies, or manufacturers of flour.

PAR. 5. Nashville, Tenn., is the center of the flour industry in the South. There are several concerns located there grinding wheat into flour, and other concerns used to be located there that ground wheat into flour. There are approximately 170 concerns actually grinding wheat into flour and selling in the Southeastern territory.

PAR. 6. Respondents do not have or maintain a laboratory for testing or analyzing the flours which they buy or sell. They use regularly only the so-called paddle test, which consists in simply putting the flour on a paddle and looking at it. By this test the characteristics or qualities of the flour, such as gluten content, protein content, moisture content, starch content, etc., can not be determined. Only the relative appearance of the two flours can be gotten from such a test, and this is of little value in approximating even the grade of the flour, because practically all concerns grinding wheat into flour add phosphate and a bleaching

agent to the flour on the mill stream. Different concerns add different amounts of such, and a greater amount of bleaching makes a lower grade of flour appear better. Practically no two concerns grinding wheat into flour grind exactly alike. Some granulate the flour finer than others, and some add a larger proportion of the total break of the wheat berry to their various grades of flour than do others. A difference in the granulation of the flour and in the amount of the total break of the wheat berry contained in the flour affects very materially the appearance of the flour. The quality and characteristics of the flour can not be determined by the paddle test, and respondents by this test can not maintain uniformity of brands or grades. The grade and quality of all flours are determined by their chemical analysis. The quality or grade of the flour is not changed by mixing self-rising ingredients with it and running it through the equipment in respondents' plant. From time immemorial there have been plants buying and blending flour but not grinding wheat into flour, which plants were known as blending plants and not called or known as mills or milling companies, or manufacturers of flour. Such terms have from time immemorial been applied in the flour trade only to the grinding of the grain.

PAR. 7. Respondents represent themselves as "Royal Milling Co. Daily Capacity 1,500 Barrels;" "Richland Milling Co. Manufacturers of High Grade Flour. Daily Capacity 1,000 Barrels;" "Empire Milling Co. Manufacturers of Highest Grade Flour. Daily Capacity 1,500 Barrels." In the letters, circulars and literature which respondents circulate among the trade in their efforts to sell flour they make such statements as the following:

No jobbers, salesmen, brokers, bookkeeping. *Half your profit is in the buying!* Order direct from the mill and save this yourself. We offer delivered your depot, basis 24-pound sacks, our high-grade flour, as follows.

And—

The scarcity of soft red wheat of good milling quality is becoming more acute each day, and with a good demand for flour we can see nothing to prevent prices from working higher. It has always been our policy to give our customers opportunity to take care of their requirements before an advance, and believe you will find it to your advantage to book your needs for at least 60 days now. * * *

Nothing can be better than the best, and we handle only the best. This is not a mere dream, but an actual fact—based on chemical analysis, baking tests, and the statements of those who sell and use our flour. * * *

When you buy from us we save you money, as we do not sell through salesmen, brokers or jobbers, but go direct to the retail grocer and sell him at jobbing prices and you will find it much to your interest to buy on this plan.

PAR. 8. The containers for respondents' flour have on them the trade name under which they are selling the particular flour, such as "From Royal Milling Co.," "From Richland Milling Co.," "From Empire Milling Co." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Silver Dawn. Superlative Self-Rising Flour," "Clover Leaf. Superlative Patent Flour," "Royal. Best Patent Self-Rising Flour," "Aviator. Highest Patent Plain Flour," "Best Yet. Standard Patent Self-Rising Flour," "Security. Self-Rising Flour," "Martha White. Highest Patent Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondents' bags, labels, or containers, or in any of their literature as descriptive of any of their flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low-grade or off-grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

PAR. 9. When the term "mills" or "milling company", or "manufacturer of flour" is used in the flour industry it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour. When either of such is used in the name of or in connection with the name of the concern that is on the container in which the flour is sold, it indicates to dealers and consumers that the flour contained in the package was ground from wheat by the concern whose name appears upon the package. And many dealers and consumers prefer to buy flour that comes directly from a concern that ground the wheat into flour rather than from one that bought the flour from a grinding concern, mixed it and packed it and then resold it, because they think that they get from such grinding concern a more uniform product or get a better product for less money because of the elimination of a middlemen's profit or costs. Many persons, dealers and consumers, have been buying respondents' flour believing them to be, because of the use of such words or terms in the names under which they do business and because of their representation that they are "manufacturers of flour," a concern grinding wheat into flour. The crushing of wheat into flour is one of the oldest of human occupations. The act of crushing the grain into flour has always been known as milling, and the concern performing such act as a "mill," "miller" and "milling company," and this is still the significance of such terms to a large part of the trade and the consuming public. Respondent's use of such words or terms in the

names under which they do business and their representation that they are manufacturers of flour tend to and do divert trade to respondents from concerns actually grinding wheat into flour and selling in the States in the Southeastern section of the United States and from concerns engaged in the same character of business as respondents and selling in the said section of the United States, but that do not use such words or terms in the names under which they do business or represent that they are manufacturers of flour.

CONCLUSION

The practices of respondents under the conditions and circumstances set forth in the foregoing findings of fact are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents thereto, stipulation between counsel and briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have been and are using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, John McGraw and E. A. Glennon, co-partners, doing business under the names of Royal Milling Co., Richland Milling Co., and Empire Milling Co., as co-partners and individually, their representatives, agents and employees and the representatives, agents and employees of each of them, do cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the words "milling company" or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the indi-

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vidual respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour sold or offered for sale by them or either of them under such title or name, or by or through any such representations.

It is further ordered, That the respondents above named within 60 days from the notice hereof file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date, promulgated similar findings and orders against six other Nashville concerns as noted below, paragraphs 1, 7 and 8 of the respective findings being reproduced to set forth the varying identities, and business histories of respondents and terminology and representations employed by them.

Appearances in these cases were *Mr. Baldwin B. Bane* for the Commission and *Mr. Thomas H. Malone* of Nashville, Tenn., for respondents.

Statement referred to follows:

D. V. JOHNSON, doing business under the name of Tennessee Grain Co. and Tennessee Milling Co., Docket 1598 (selling 10 brands under the trade name employed, though not a different grade or quality of flour under each brand, and with a plant value of approximately \$50,000, and a total investment of approximately \$200,000, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondent, D. V. Johnson, an individual, conducts business under the trade name Tennessee Grain Co. and Tennessee Milling Co. Respondent began business in 1905 as a grain dealer under the name Tennessee Grain Co. He continued in business as a grain dealer under this name until about 1920. About the year 1920 machinery was installed by respondent for the grinding of feed and whole wheat flour. Respondent is not now engaged in the grinding of feed or whole wheat flour but his plant is equipped for such although in a limited way as compared with the flour which he mixes and sells as described below. Respondent is now and has been since about 1925 or 1926 engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-

rising flour. He then packs the flour in bags under brands of his trade name, and sells it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondent buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to him at Nashville, Tenn., at which point his place of business is located, and from which point he ships the flour to his customers. In the course and conduct of his business respondent is in competition with other individuals, corporations and partnerships engaged in the sale of flour in interstate commerce.

PAR. 7. Respondent represents himself as "Tennessee Grain Co. and Tennessee Milling Co. Receivers and Shippers of Grain. Manufacturers of Soft Wheat Flour." In the letters, circulars and literature which respondent circulates among the trade in his efforts to sell flour he makes such statements as the following:

We have no salesmen in your territory and can make very close prices on flour orders sent in direct.

And—

Eventually you will see the best flour is Tennessee.

And—

"Tennessee" plain flour and "Diamond T" self-rising guaranteed to be as good as any flour regardless of brand or price.

PAR. 8. The containers for respondent's flour have on them the trade name under which he sells the flour as "From Tennessee Grain Co. and Tennessee Milling Co." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour as follows: "Commodore. Superlative Patent Flour," "White Gold. Best Fancy Patent Flour." "Diamond T Self-Rising Superlative Flour," "Golden South. Superlative Patent Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent's bags, labels, or containers, or in any of his literature as descriptive of any of his flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

NASHVILLE ROLLER MILLS ET AL., Docket 1599 (selling from five to six brands under each trade name employed, though not a differ-

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ent grade or quality of flour under each brand, and with a replacement value of respondent corporation's plant and equipment of approximately \$155,000 and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondent, Nashville Roller Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee. The respondents, John Schultz, Louis Baujan and Vernon S. Tupper, are the president, vice president and secretary and treasurer respectively of said respondent corporation and conduct, manage, control and direct its business. Respondents' place of business is located in Nashville, Tenn. Respondent, Nashville Roller Mills, conducts business under its own name and under the trade names of Cumberland Valley Milling Co., Belle Meade Mills, and The Red Mill, the last of which names is largely used in connection with the name Nashville Roller Mills as a descriptive term. Respondent, Nashville Roller Mills, is engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. It then packs the flour in bags under brands of its own or its trade names and sells it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondent buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to it at Nashville, Tenn., from which point it ships the flour to its customers. In the course and conduct of its business respondent is in competition with other corporations, partnerships and individuals engaged in the sale of flour in interstate commerce. From 1908 until July, 1913, respondent corporation operated a plant grinding wheat into flour. This plant was burned in July, 1913. Respondent corporation did not rebuild a plant to grind wheat into flour after this fire but built and has since operated a plant for conducting a business as described above.

PAR. 7. Respondent corporation represents itself as "Nashville Roller Mills. The Red Mill. Quality Flour"; "Cumberland Valley Milling Co. Flours of Quality. Plain and Self-Rising"; "Belle Meade Mills. Quality Flour"; "The Red Mill. Flours of Quality." In the letters, circulars and literature which respondent corporation circulates among the trade in its effort to sell flour it makes such statements as the following:

The May option in wheat has been very interesting—that is, to those equipped with steady nerves and able to withstand shock. The last days of the week have seen a bewildering series of flights and nose dives, very spectacular but not noticeably soothing.

But May wheat, thank heaven, has gone into the discard. True, the old crop has a few weeks of life left, but the new crop will now have the spotlight. * * *

Be they never so abstemious, the people are going to consume a whole lot of flour before new crop wheat is to be had; and you and I would be remiss should we fail to continue to function with diligence and effectiveness. May we have your active backing to the end that this coming month of June may be prolific, not only for brides but particularly in volume of business on Red Mill flours.

And—

Pending the time when new wheat is actually on the market, the trade would do well to bear in mind that old wheat stocks—and it is from old wheat exclusively whence our supplies of flour for the ensuing several weeks must come—are low, unusually low. Under the circumstances, it is scarcely likely that any severe break will develop for quite a bit of a while.

PAR. 8. The containers for respondent corporation's flour have on them the name under which it is selling the particular flour such as "From Nashville Roller Mills," "From Cumberland Valley Milling Company," "From The Red Mill, Makers," "Manufactured For From Belle Meade Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Rising Sun. Superlative Self-Rising Flour," "Gloria. Supreme Patent. The Best Manufactured," "Bride's. Superlative Self-Rising Flour," "Spinning Wheel. Best Soft Winter Wheat Patent Flour," "Ace of Aces. Supreme Patent Flour," "Conqueror. Fancy Patent Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent corporation's bags, labels or containers, or in any of its literature as descriptive of any of its flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

SNELL MILLING CO. ET AL., Docket 1600 (selling from 7 to 13 brands under each trade name employed, though not a different grade or quality of flour under each brand, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondent, Snell Milling Co., is a corporation organized and existing under the laws of the State of Tennessee with its office and place of business in Nashville, Tenn. Respondent corporation was organized in 1925. Thomas E. Snell is president and J. A. Stevens is vice president of respondent corporation. Respondents, Thomas E. Snell and J. A. Stevens, manage, control and direct the business of respondent, Snell Milling Co. Respondent Percy Myatt has no connection officially or otherwise with said respondent corporation and was not connected with it at the time the complaint herein was filed. Respondent corporation conducts business under its own name and also under the trade names Peabody Mill Co. and Mero Mills. Respondent corporation is engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. It then packs the flour in bags under the brands of its respective trade names, and sells it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondent corporation buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to it at Nashville, Tenn., from which point it ships the flour to its customers. In the course and conduct of its business respondent corporation is in competition with other corporations, partnerships, and individuals engaged in the sale of flour in interstate commerce.

PAR. 7. Respondent corporation represents itself as "Snell Milling Co. Manufacturers of High Grade Flour;" "Peabody Mill Co. Manufacturers of Quality Flour;" "Mero Mills. Manufacturers of Quality Flours." In the letters, circulars and literature which respondent corporation circulates among the trade in its efforts to sell flour it makes such statements as the following:

When you look at the price below, and compare with prices of other mills, you will figure it is impossible for any mill to put out a guaranteed flour at such an unheard of low price, and you lay this letter aside and not order. * * * You can always save yourself money by paying cash. This mill is simply run on a cash proposition. That's the reason these prices are possible.

And—

The volume of business that any mill does is one of the main factors that serve to hold the price down. This is the principle upon which this mill is built.

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And—

You understand we are able to give you this discount because we will sell to you direct and not through a wholesale jobber, for as you perhaps know 40 cents per barrel is considered the legitimate profit of the jobber, but when you buy flour direct from us we feel that we can give you the benefit of this jobber's profit.

And—

There can be no doubt but what the above prices are much too cheap considering the present market and what it is costing us to make our brands of flour, and it is our suggestion to our customers that they mail us either an order or a booking immediately so as to be sure and get the benefit of these prices.

And—

As you will note we make no difference in price for plain and self-rising flour of the same grade, although it is customary with a great many mills to charge 25 cents per barrel over the plain for self-rising of the same quality. We invite your comparison of these prices with other mills, and will be glad to have you call us over 'phone or wire us our expense if interested.

PAR. 8. The containers for respondent corporation's flour have on them the corporate or trade name under which it is selling the particular flour such as "Snell Milling Co.," "Peabody Mill Co.," "Mero Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Queen of the South. Superb Patent Flour," "Early Dawn. Standard Patent Flour," "Fortune. Superb Self-Rising Flour," "Daddy Gander. Self-Rising Flour," "Melva. Highest Patent Flour," "Red Hat. Highest Patent Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent corporation's bags, labels, or containers, or in any of its literature as descriptive of any of its flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

FRANCIS J. MCCARTHY, doing business as Watauga Milling Co., etc., Docket 1601 (selling from five to eight brands under each trade name employed, though not a different grade or quality of flour under each brand, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondent, Francis J. McCarthy, an individual, conducts business under the trade names Watauga Milling Co., Modern Milling Co., F. J. McCarthy Milling Co., and Southern Flour Mills, and for a time conducted business under the name Star Mills also. He adapted the trade name Watauga Milling Co. when he went in business in 1921. He began operating also under the name F. J. McCarthy Milling Co. in 1925, and under the names Southern Flour Mills and Modern Milling Co. in 1926. He operated also under the name Star Mills during 1927 and part of 1928. Respondent's place of business is located in Nashville, Tenn. Respondent is engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. He then packs the flour in bags under brands of his respective trade names, and sells it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondent buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to him at Nashville, Tenn., from which point he ships the flour to his customers. In the course and conduct of his business respondent is in competition with other individuals, co-partnerships, and corporations engaged in the sale of flour in interstate commerce.

PAR. 7. Respondent represents himself as "Watauga Milling Co. Pioneer Manufacturers of Self-Rising Flour. Capacity 2,400 Barrels Per Day;" "Modern Milling Co. Manufacturers of Flour. Capacity 1,500 Barrels Per day;" "Southern Flour Mills. Manufacturers Of High-Grade Flour. Capacity 2,000 Barrels Per Day;" "F. J. McCarthy Milling Co. Pioneer Manufacturers of Self-Rising Flour. Nothing But High-Grade Flour. Capacity, 2,400 Barrels Per Day." In the letters, circulars and literature which respondent circulates among the trade in his efforts to sell flour he makes such statements as the following:

We can save you money on your flour purchases through our Direct-To-The-Trade plan of selling flour, as you can buy from us at first cost and cut out the profit of the middleman.

We have a large established trade on flour, and quantity production enables us to make it at very low cost per barrel. You will get the benefit of this saving. * * * Why pay premium prices for flour when you can buy from us under our Direct-To-The-Trade plan at a big saving? We have over twenty years' experience in the manufacture of flour and can save you money the year round.

And—

We are putting out the finest grade of flour that can be made from wheat under our brands of Superb, Quality, Select, Belvedere, and Glo-Light. We are selling this high-grade flour under a money-back guarantee to the most discriminating trade at prices ranging from one to two dollars per bbl. under fine flour of similar quality. If you want quality at low cost we have it under these brands, and you will note we do not offer anything but high-grade flour.

And—

Mills have been compelled to advance prices again during the past week due to the growing scarcity of soft red winter wheat which Southerners use in biscuit flour, and this class of flour will sell higher. We have the volume that enables us to make you prices on flour that will meet or beat all legitimate competition.

PAR. 8. The containers for respondent's flour have on them the trade name under which he is selling the particular flour, such as "From Watauga Milling Co.," "From Modern Milling Co.," "From Southern Flour Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour, such as "Dixie Maid. Best Self-Rising Flour," "Superb Superlative Self-Rising Flour," "Eagle. Standard Self-Rising Flour," "Lion. Finest Patent Self-Rising Flour," "White Star. Standard Plain Flour," "Belvedere. Highest Patent Flour," "White Fawn. Best Plain Flour," "Supreme. Best Patent Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent's bags, labels, or containers, or in any of his literature as descriptive of any of his flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

J. A. WELLS ET AL., doing business as State Milling Co. and Myracle Milling Co., and individually. Docket 1602 (selling from three to six brands under each trade name employed, though not a different grade or quality of flour under each brand, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondents, J. A. Wells, J. M. Wilkerson, H. P. Johnson, and Mrs. H. P. Johnson conduct business under the names State Milling Co. and Myracle Milling Co. They have conducted such business since January 1, 1924, when they purchased the good will and equipment of a predecessor which had conducted the same

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business under the name State Milling Co. since about 1912. Respondents' place of business is located in Nashville, Tenn. Respondents are engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour.

They then pack the flour in bags under brands of their respective names, and sell it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondents buy the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to them at Nashville, Tenn., from which point they ship the flour to their customers. In the course and conduct of their business respondents are in competition with other co-partnerships, corporations and individuals engaged in the sale of flour in interstate commerce.

PAR. 7. Respondents represent themselves as "State Milling Co. Manufacturers of High Grade Flours. Daily Capacity 500 Barrels," and "Miracle Milling Co. High Grade Flour. Daily Capacity 500 Barrels." In the letters, circulars and literature which respondents circulate among the trade in their efforts to sell flour they make such statements as the following:

Our products are made from select wheat in a perfectly equipped mill by millers who know how.

And—

We are very anxious for you to give our flour a trial for it is made from the best No. 2 red wheat which produces a product unequalled and our overhead is very light which enables us to sell cheaper than most of our competitors.

We are selling considerable flour in your state, both in carload lots and in smaller amounts and it is giving universal satisfaction. Each bag leaving our Mill carries an absolute Guarantee of Perfect Satisfaction or Money Refunded.

And—

We are glad to be able to give you advantage of the exceedingly good purchases we have made in wheat and we now call your attention to our GREATLY REDUCED PRICES. We believe this is the opportune time for you to buy and feel you will make no mistake in replenishing your stock to its full capacity.

When you buy from us you are buying direct from the mill, thereby eliminating all unnecessary middleman's profit. Our flour is made from No. 2 soft red wheat acknowledged to be the best wheat grown for the manufacture of flour, and we invite a comparison of its quality with any other flour regardless of price.

And—

For the past six weeks we have had a nice stock of wheat on hand and have been giving you the advantage of it by quoting you considerable lower than the market, however our supply bought on the lower market is about exhausted and today cash wheat is very strong and shorts and bran have gone up some \$4 per ton making flour advance in proportion to this. We have held off as long as we can and we are now forced to raise prices but we are going to make the smallest possible one in order to get by. You will not be able to duplicate the quality of our flour elsewhere without paying quite a bit more and we trust you will let us *SERVE YOU ALL YOUR NEEDS.*

PAR. 8. The containers for respondents' flour have on them the trade name under which they are selling the particular flour such as "Manufactured by State Milling Co.," "Manufactured by Miracle Milling Co." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Red Bird. Self-Rising Flour," "Southern Maid. Superlative Patent Flour," "Wonder Worker. Standard Patent Flour," "No Peer. Highest Patent Flour," "Every Woman. High Quality Flour," "Alfixt. Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondents' bags, labels, or containers, or in any of there literature as descriptive of any of their flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low-grade or off-grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

E. C. FAIRCLOTH, SR., ET AL., doing business as Cherokee Mills and individually. Docket 1604 (selling from four to seven brands under each trade name employed, though not a different grade or quality of flour under each brand, and otherwise operating as set forth in paragraph 2 of the Royal Milling case, reported in full above). See page 41.

PARAGRAPH 1. Respondents, E. C. Faircloth, jr., F. B. Evers, estate of C. K. Evers and estate of E. C. Faircloth, sr., are members of a partnership which conducts business under the names Cherokee Mills and Tennessee Flour Co. The business of this partnership was begun under the name of Cherokee Mills in 1910 by E. C. Faircloth, sr., and C. K. Evers. E. C. Faircloth, sr., died March 13, 1929. Respondents' principal place of business is located in Nashville, Tenn., but they also operate a branch in Birmingham, Ala., which was established in 1922. Respondents are engaged in the business of

buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. They then pack the flour in bags under brands of their respective names and sell it to dealers located in various States of the United States, but particularly in the Southeastern States. Respondents buy flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to them at Nashville, Tenn. or Birmingham, Ala., from which points they ship the flour to their customers. In the course and conduct of their aforesaid business respondents are in competition with other co-partnerships, corporations and individuals engaged in the sale of flour in interstate commerce. In addition to the above described business respondents on a much smaller scale and in a much smaller way are also engaged in making a mixed feed for cattle or other animals but not for human consumption. Respondents produce this mixed feed by the grinding together of wheat, corn, hay, alfalfa, etc. The making of this mixed feed is carried on by separate and different machinery from that used in the mixing of the flour, the unit for the making of this mixed feed being a separate part of the general plant. This mixed feed unit of the Nashville plant has been in operation for about six years.

PAR. 7. Respondents represent themselves as "Cherokee Mills. Quality Flour. Daily Capacity 2,000 barrels;" "The Tennessee Flour Co. Quality Flours. Daily Capacity 1,000 barrels." In the letters, circulars and literature which respondents circulate among the trade in their efforts to sell flour they make such statements as the following:

In the Southwest the growing wheat is coming along nicely and they have prospects of the biggest yield in recent years but this is offset by late planting and consequent lowered conditions to the north, and the Southwest crop is entering now upon a period that is most dangerous to its welfare, and being perfect at the present, its future course, if it changes at all, must be downward.

As to the soft red wheat there is little to be had and while we favor the market for May only, it may be that wheat will grow steadily stronger until the new crop is harvested, which will be some time in July.

And—

The wheat market during the past week having remained practically stationary we are not making a change in our flour prices today, but we continue to lean to the belief that an advance of considerable proportion will take place during this month of May, and that you are absolutely safe in buying your flour requirements as far ahead as June 1st.

And—

Wheat is up still more since we quoted you last Saturday, and we note that a number of mills have still further advanced their flour prices, but we propose to stick to our present levels just as long as we possibly can. However, at the rate we are shipping out "TIP-TOP" and our other brands our stocks will speedily diminish. One of the largest millers in the United States was in our office today, and in talking of general conditions the writer asked him his opinion on the soft red wheat for the remainder of this crop, and we are pleased to say that his idea coincided with ours in that he looks for another 10 cents per bushel at least between now and June, which would be in round numbers 50 cents per barrel on flour above our present price.

And—

Please remember that in our flours you are getting an entirely soft red wheat article, perfectly uniform and absolutely guaranteed, and again we caution you to look out for the numerous brands being shipped into the Southeast that are milled from hybrid wheats, and which will not give satisfaction to housewives accustomed to soft flour.

And—

We have not been, nor will we be from present indications, friendly to stronger prices on wheat as a whole, but we do believe that soft red wheat is good property, and will be at any time during the remainder of this crop year. We have accumulated considerable supplies and are able to offer entirely soft red wheat flour in all our grades, and the prices that we quote do not nearly reflect replacement costs.

And—

Soft wheat continues to climb, and even at the price it is bringing now there is little to be had. We therefore consider ourselves fortunate indeed in that we have protected our requirements for the spring months and can guarantee delivery of an entirely soft wheat flour in all our grades.

There are a number of flours being offered to the southern trade at this time that are made entirely from semi-hard or low protein wheat, and while these can be had at a considerable discount we doubt that it is wise to buy them for they will not give satisfaction where housewives are accustomed to soft red wheat flour.

PAR. 8. The containers for respondents' flour have on them the name under which they are selling the particular flour such as "Cherokee Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Tip-Top. Finest Patent Flour," "Tip-Top. Superlative Self-Rising Flour," "Cherokee Chief. High Patent Flour," "Blue Bonnet. Fancy Self-Rising Flour," "Ready To Bake. Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondents' bags,

labels, or containers, or in any of their literature as descriptive of any of their flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

Syllabus

IN THE MATTER OF

MAX KENNER AND SAMUEL GRAUBARK, COPARTNERS
TRADING AS AMUSEMENT NOVELTY SUPPLY 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 1763. Complaint, Feb. 21, 1930—Decision, Apr. 16, 1931

Where a firm engaged in sale of novelty goods such as knives, pipes, dolls, etc., to jobbers, retailers, and circus and amusement park concessionaires; in describing their products through catalogues, price lists, and other printed advertising matter,

- (a) Represented canes, manicure sets, toilet sets and other articles as "amber", "pearl on amber", "gold on amber" and "grained ivory" and brooches sold for \$6 a dozen as "cameo", facts being former articles were pyroxylin or celluloid and contained no gold, ivory or pearl, and latter were not made of that substance ordinarily known to public and trade as cameo;
- (b) Represented handles of carving sets as "stag" and articles such as bread and serving trays and water pitchers, as "engraved", facts being said handles were not carved from antlers and said trays, etc., had not been engraved, but were etched or stamped;
- (c) Falsely represented rayon goods containing no silk as "silk" and "rayon silk", and billfolds, key cases and other articles not made of seal leather, as "genuine pin seal" and "genuine hudson seal"; and
- (d) Applied words "Army and Navy" to field glasses neither purchased from nor made by or for the United States Government, nor in accordance with its specifications or requirements, and applied to jewelry, belt buckles, cuff button sets, stick pins and other articles words "Sapphire", "platinoid finish" or "diamond", as the case might be, facts being so-called sapphires were imitation and synthetic stones, belt buckles, etc., contained no platinum, and "diamonds" were not carbons in their crystalline state, entitled to be so designated;

With capacity and tendency to mislead and deceive customers and ultimate purchasers from such customers in respect of the substance and character of aforesaid articles and to divert trade to said firm from competitors similarly engaged without thus misrepresenting their merchandise:

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. PGad B. Morehouse for the Commission.

McGovern, Erb & Lehr of Buffalo, N. Y., for respondents.