

## Syllabus

## IN THE MATTER OF

C. J. OZMENT, INDIVIDUALLY AND DOING BUSINESS  
UNDER THE TRADE NAME AND STYLE, OZMENT'S IN-  
STRUCTION BUREAU

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

*Docket 1872. Complaint, Nov. 3, 1930—Decision, May 11, 1931*

- Where an individual engaged in the sale of correspondence courses of instructions for civil-service examinations, purporting to qualify applicants for success therein; in describing its courses in advertisements in newspapers, magazines, and elsewhere, and in printed circulars, letters, and otherwise—
- (a) Made such statements as "Wanted Immediately—18-55, Men—Women, qualified for permanent Government positions, \$105-\$250 a month," "Wonderful Jobs with U. S. Government for Men—Women, 18-55. \$125-\$250 a month," etc., "Government Positions \$35 to \$75 weekly. Age 18-55," together with list of places including such positions as railway mail clerk, forest ranger, R. F. D. carrier, etc., facts being salaries for some of positions were not as high as \$250 a month to commence with, and some were not available to persons over 50 years of age, or had maximum age limits considerably below 55;
  - (b) Represented that a large number of examinations would be held soon, that "if you can get started right away, we can have you ready for one or more examinations within three or four weeks from now," that "civil-service examinations are held in almost all towns and cities of 3,000 population and upward," and that "it is not necessary for anyone to go far in order to enter an examination," etc., and that "U. S. Government stenographers and typist examinations are announced to be held in almost every large city throughout the United States about every 60 days," facts being that no examinations were to be held soon for some of the positions, while for others only a small number were to be held or likely to be held soon, examinations are held in comparatively few towns and cities of 3,000 population and upward, and examinations for Government stenographers and typists were held or announced to be held only once or twice yearly in many of the large cities instead of each sixty days in almost all such cities;
  - (c) Represented that "there are good Government positions in almost every town, and in the larger cities there are thousands and thousands of places," and that "in the smaller towns and cities there are places such as postmaster, assistant postmaster, post-office clerk, city carrier, village carrier, rural carrier, etc., while in the larger cities there are many kinds," fact being that the number of Government positions available in the larger cities is very much less than represented;
  - (d) Stated in connection with the description of duties and compensation of forest rangers that examinations were usually held in a large number of States specified, but that it was not necessary to be a resident thereof

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though such residents were given preference where practicable, facts being very few appointments were made to said position, and appointment in practically all instances is limited to residents of State in which forest is situated with very little, if any, opportunity for appointment for those passing examinations who do not live in States with natural forests;

- (e) Made such statements in describing compensation, duties and privileges of railway mail clerks as "the position \* \* \* with all the splendid advantages of travel, interesting stimulating change of scenery, new friends, new opportunities," etc., " \* \* \* you work four or six days then you are off duty four or six days. Free to spend almost all your time as you please, ball games, fishing," etc., and "on FULL PAY STRAIGHT THROUGH," some arranging "to engage in some other employment during the days off the road" and making "almost enough that way to meet personal expenses," and inquiring whether "\$225 per month for fifteen days, (\$15 for each day you actually work), with allowance for meals and hotel bills, a railway pass or commission and an annual vacation with pay appeal to You," facts being many clerks must serve several years in a terminal station before being allowed to travel, with no allowances during such a period for meals or hotel bills, allowances for hotel expenses are limited to actual expenses and such expenses, not exceeding \$3 a day, do not begin until clerk has been on road ten hours, at least 50 per cent of employees receive no such allowance since employed on short runs or at terminals or transfers, and employees are required to average 8 hours work a day for 306 days a year, and at least one-third of entire force is employed at terminals and transfers, or in offices, for 8 hours a day, with no time off;

- (f) Set forth so-called "MONEY BACK AGREEMENT," in which he agreed to refund full tuition paid, should applicant not secure Government position after completing course and taking the three Government examinations for which it prepared him, with privilege, however, if desired, of concentrating on one examination only, fact being that in absence of any specified time within which tuition money was to be refunded, years might elapse before refunds could or would be made,

With capacity and tendency to mislead and deceive public and prospective subscribers into erroneous belief that said statements and representations were true and induce such persons to apply for and subscribe to such courses in reliance upon and by reason of their belief in the truth and accuracy thereof, and thereby divert trade to him from competitors and with effect of so doing:

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

*Mr. Richard P. Whiteley* for the Commission.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, a resident of St. Louis, engaged in the sale of correspondence courses for preparing subscribers for success in

competitive civil-service examinations for positions in the Government service, with advertising falsely and misleadingly as to prospects and probable results of service offered, and money-back guarantee, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in commerce.

Respondent, as charged, engaged as above set forth, makes statements in his advertisements in newspapers, magazines, and elsewhere in printed circulars, in letters, and otherwise which are false or misleading as to age limits, the places in which examinations are to be held, the frequency and pendency of examinations, the demand for employees in various classes and places, the possibilities of employment and the perquisites and other advantages of certain places and the compensation to be paid, and sets forth a misleading money-back agreement, in which provision for refund is made only in case subscribers have taken "at least three Government examinations and have failed to secure a position in the Government service," which in most instances prevents said applicants or subscribers from securing said refund.<sup>1</sup>

Respondent, further as charged, "enrolls and/or retains as students after enrollment, certain applicants for or subscribers to his courses of instruction as eligible for or fitted, physically or mentally or otherwise, for appointment to certain positions in the Government service, and notifies said applicants or subscribers that they are eligible for said positions when he is without knowledge of their mental or physical fitness and when, in truth and in fact, said applicants or subscribers are not eligible for or fitted, physically or mentally or otherwise, for appointment to said positions."

Said acts and things, as charged, are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent C. J. Ozment, doing business under the trade name and style, Ozment's Instruction Bureau, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer herein and having entered into a

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<sup>1</sup> The various advertisements charged in the complaint as being misleading, are set forth in the findings, as is the "money back agreement."

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stipulation as to the facts in which it was agreed that the said facts might be taken in lieu of testimony and that the Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the filing of briefs or the presentation of argument, thereupon this proceeding came on for final hearing and the Commission having 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. Respondent C. J. Ozment is a resident of the city of St. Louis, State of Missouri, with his office and principal place of business in said city and State, where he is and has been for more than two years last past doing business under the trade name and style, Ozment's Instruction Bureau. The said business of respondent consists in furnishing courses of instruction by correspondence sent by him through the United States mail to applicants for or subscribers to said courses of instruction purported to qualify them for and enable them to succeed in competitive examinations with credits sufficient to entitle them to be appointed to positions in various departments of the Government service of the United States. For this instruction the respondent charges a fee of \$9.75.

PAR. 2. The respondent during the said times referred to is and has been sending the aforesaid courses of instruction by mail from his place of business in the city of St. Louis, State of Missouri, in commerce to, into, and through other States of the United States and the District of Columbia to the individuals, the said applicants for and subscribers to said courses of instruction, who paid the respondent in money therefor.

PAR. 3. During the times above mentioned other individuals, firms, and corporations, located in the various States of the United States, have been engaged in the business of furnishing courses of instruction by correspondence sent by them through the United States mail to applicants and subscribers who have paid their money therefor, located in the various States of the United States other than the States from which the said courses were sent and the District of Columbia, and during the aforesaid times the respondent was, and still is, in competition in commerce with the said other individuals, firms, and corporations so engaged.

PAR. 4. Respondent offers his said courses of instruction to the public and to the aforesaid applicants and subscribers in advertisements

in newspapers, magazines, and elsewhere, and in printed circulars, in letters sent by him through the mail, and otherwise, in which he has made the following statements and representations:

## INSTRUCTION

*Wanted immediately.*—Men—women, 18–55, qualify for permanent Government positions, \$105–\$250 month; experience not required; vacations with full pay; common education; many needed. Write, Instruction Bureau, 248, St. Louis, Mo.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that the salaries established for some of the Government positions referred to are not as high as \$250 per month to commence with, and further in that some of the said Government positions referred to are not available to persons over 50 years of age.

*Wonderful jobs* with U. S. Government for men—women, 18–55. \$125–\$250 month. About 40,000 openings yearly. Are you eligible? We advise you free. Write. Instruction Bureau, 364, St. Louis, Mo.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that the salaries established for some of the Government positions referred to are not as high as \$250 per month to commence with, and further in that some of the said Government positions referred to are not available to persons over 50 years of age.

## GOVERNMENT POSITIONS

## \$35 TO \$75 WEEKLY

## Men—women, age 18 to 55

|                               |                      |
|-------------------------------|----------------------|
| Railway mail clerk.           | Immigrant inspector. |
| Forest ranger.                | Seamstress.          |
| R. F. D. carrier.             | Auditor.             |
| Special agent (investigator). | Steno-secretary.     |
| City mail carrier.            | U. S. border patrol. |
| Meat inspector.               | Chauffeur-carrier.   |
| P. O. clerk.                  | Watchman.            |
| File clerk.                   | Skilled laborer.     |
| General clerk.                | Postmaster.          |
| Matron.                       | Typist.              |
| Steno-typist.                 |                      |

*Instruction Bureau, 316 Arcade Bldg., St. Louis, Mo.* Send me free particulars how to qualify for positions marked "X." Salaries, locations, opportunities, etc. All sent free.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that it overstates or misrepresents the actual or probable earnings available to persons appointed to many

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of the positions stated, and further in that for the positions named in the list the age limits vary, and for many of them the maximum age limit is considerably below 55 years. The advertisement or representation was used by respondent in the exact form as stated above up to about June 1, 1927, upon which date the position of "forest ranger" was taken from said list.

A large number of examinations will be held soon, and if you can get started right away, we can have you ready for one or more examinations within three or four weeks from now. You may mark three positions if you wish, and we will instruct you for all three at the same time, and for the one fee of only \$9.75, and that's all you pay; or you may confine all your efforts to one or two if you prefer to do so. Our object is to help you get your Government position just as quickly as possible.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that for some of the positions to which it refers no examinations were to be held soon after the issuance of such advertisement or representation, and for others, only a small number of examinations were to be held or likely to be held soon after its issuance. The said advertisement or representation was discontinued by respondent on or about January 26, 1931.

## PLACES OF EXAMINATIONS.

Civil service examinations are held at almost all towns and cities of 3,000 population upward, and it is not necessary for anyone to go far in order to enter an examination. We keep our applicants advised as to how to keep in touch with the places and dates of examinations.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that civil-service examinations are not held at almost all towns and cities of 3,000 population upward, but are held in comparatively few of such towns and cities. The above advertisement or representation was discontinued by respondent on or about February 16, 1931.

U. S. Government stenographers and typists examination are announced to be held in almost all large cities throughout the United States about every 60 days. The demand for stenographers and typists has been good for several years.

The above-quoted advertisement or representation is untrue or misleading and deceptive in that examinations for Government stenographers and typists are not and have not been announced to be held in almost all large cities of the United States about every 60 days, but in many of said cities only one or two examinations for said positions are or have been announced to be held yearly. The above advertisement or representation was discontinued by respondent several months prior to the date of the issuance of the complaint herein, and has not been used by him since that time.

There are good Government positions in almost every town, and in the larger cities there are thousands and thousands of places. In the smaller towns and cities there are places such as postmaster, assistant postmaster, post-office clerk, city carrier, village carrier, rural carrier, etc., while in the larger cities there are many kinds of places.

The above quoted advertisement or representation is untrue or misleading and deceptive in that the number of Government positions available in the larger cities of the United States is very much less than represented. The above advertisement or representation was discontinued by respondent on or about February 16, 1931.

#### FOREST RANGER—\$1,620 TO \$2,500 PER YEAR

Forest ranger has direct charge of all work in his section. This is patrolling forests, extinguishing fires, enforcing regulations, etc. It may also include supervising the grazing of stock, building of trails, etc. He is also a deputy game, fish, and fire warden with power to make arrests. Commence \$1,620 per year with possible promotion to \$2,500 per year.

Examinations are usually held in the following States, i. e., Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming. Subjects of examination are practical questions, clerical tests, education and experience. Where practicable, residents of above States are given preference.

The above quoted advertisement or representation is untrue or misleading and deceptive in that there are very few appointments made to the position of forest ranger in the Government service, and such appointments that are made are in practically all instances limited to qualified citizens of the State in which the forest is situated, and there is little if any opportunity for the appointment to said service of persons passing the examination who do not live in States having natural forests. The above advertisement or representation was discontinued by respondent on or about June 15, 1927, and has not been used since by him.

If you want unusual advantages of travel, 4 to 6 days' work, 4 to 6 days' free-full-time pay—hotel expenses—vacations with pay and travel. Act now! Prepare for the railway mail. Railway mail clerks needed to fill openings in this gigantic branch of Government service frequently. Regular positions pay \$1,900 to \$2,700 yearly.

#### PAY INCREASES AGAIN GRANTED RECENTLY

The position as railway mail clerk with all the splendid advantages of travel, interesting, stimulating change of scenery, new friends, new opportunities, can be obtained by this amazing short cut. With Mr. Ozment's coaching anyone having the equal of a grammar or common school education should pass this examination at a splendid grade.

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What Mr. Ozment has learned in his twenty years' experience in coaching thousands for choice positions, will stand you in good stead now. The work is unusually interesting; something new, something different always, new friendship; you work four or six days then you are off duty four or six days, free to spend almost all your time as you please, ball games, fishing, hunting, work around home, whatever you will, and on full pay straight through. Some arrange to engage in some other employment during the days off the road, and make almost enough that way to meet personal expenses and have all their salaries to deposit in the bank. The regular entrance salary is now \$1,900 with promotions to \$2,700 per year and a raise of at least \$100 is granted through the successive grades will run to \$225 per month. Railway mail clerks may also be promoted to a place as post-office inspector, or superintendent of a railway mail division, which pay about \$4,200 per year.

Does \$225 per month for 15 days' work (\$15 for each day you actually work), with an allowance for meals and hotel bills, a railroad pass or commission and an annual vacation with pay appeal to you? If you want one of these places enroll now for Ozment's coaching and go after it. One round trip in the service almost pays our fee. Moreover, Ozment's agreement insures your success or his coaching costs you nothing, as per his liberal agreement. Act now; enjoy one of these splendid places.

The above-quoted advertisement or representation is untrue or misleading and deceptive (1) in that many railway mail clerks are required to serve several years in a terminal station before being allowed to travel, and while working at said station no allowances for meals or hotel bills are granted; (2) in that there are no allowances for hotel expenses other than actual expenses up to a certain amount; (3) in that actual expenses, not exceeding \$3 a day, do not begin until the clerk has been on the road ten hours; (4) in that at least fifty per cent of all railway mail clerks receive no expense allowances for the reason that they are employed on short run or at terminals or transfers; and (5) in that said clerks are required to average eight hours' work a day for 306 days a year, and at least one-third of the entire force of said clerks are employed by terminals and transfers or in offices for eight hours a day, with no periods of time off.

The above advertisement or representation was discontinued by respondent subsequent to the issuance of the complaint herein and prior to February 16, 1931.

## MONEY BACK AGREEMENT

Ozment's Instruction Bureau agrees to refund the full tuition paid, provided applicant does not secure a Government position after completing the course and taking the three Government examinations for which it prepares him.

NOTE.—Applicant is prepared for three examinations so that he may enter an examination and secure a position more quickly. If applicant desires to prepare for only one kind of examination and confine all efforts to one, he may do so.

The above quoted advertisement or representation is deceptive and misleading in that there is no specified time within which tuition money paid respondent will be refunded to applicants, and under said agreement years might elapse before the refunds could or would be made.

PAR. 5. The use as aforesaid of the advertisements or representations of respondent prior to their discontinuance by him, or prior to the changes made in the same by him, has tended to and has diverted trade from competitors of respondent.

PAR. 6. With the first letter sent by respondent to a prospective student or applicant for his course of instruction the following circular is enclosed:

PERSONAL INFORMATION (SEND NO MONEY) No. —

These questions are given to determine if you are eligible for a Government position, and the kind that is best suited for you.

Are you a citizen of the United States? ----- Age ----- Weight without overcoat ----- Height without shoes ----- Any defect of heart, lungs, ears, eyes, limbs, or speech ----- Any physical defects, if so, describe here ----- What grade did you reach in school? ----- Have you taken a business course, if so what kind? ----- What is your occupation? ----- Where do you prefer a position? ----- Have you had military service? ----- How soon do you wish to complete course? ----- Have you attended night school or taken a correspondence course? ----- Name the positions you prefer ----- Name ----- P. O. ----- St. or R. F. D. ----- State -----

The above circular or questionnaire is filled out and sent to respondent before the prospective student or applicant enrolls and the respondent does not enroll students for courses of instruction for those positions which by reason of age or physical disqualifications they are manifestly ineligible.

PAR. 7. The statements and representations set forth in paragraph 4 herein are false and misleading, as indicated, and the use of said statements and representations by respondent, C. J. Ozment, in the manner and form made has the capacity and tendency to mislead and deceive the public and prospective applicants for and subscribers to said courses of instruction into the erroneous belief that said statements and representations are true and to induce persons to apply and to subscribe to said courses of instruction in reliance upon and by reason of their belief in the truth and accuracy of said statements and representations, and thereby to divert trade to respondent from competitors.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice

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of the public and respondent's competitors and constitute unfair methods of competition 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."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, and the stipulation of facts entered into by and between the respondent and the chief counsel of the Commission, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered*, That respondent, C. J. Ozment, his agents, representatives, and employees, do cease and desist from making statements and representations in advertisements in newspapers, magazines, and periodicals, and in letters, printed circulars, pamphlets, booklets, and other advertising literature, circulated and distributed in connection with the offering for sale and sale in interstate commerce of courses of instruction for positions in the Government service of the United States, as follows:

(1) That the salaries established for the positions are higher than they actually are and that the positions are available to persons over 50 years of age when such is not the fact;

(2) That the examinations for all positions for which respondent offers courses of instruction are to be held immediately or within a short time, when such is not a fact;

(3) That civil-service examinations are held at almost all towns and cities of 3,000 population upward, and that it is not necessary for anyone to get far in order to enter such an examination, when such is not the fact;

(4) That examinations for United States Government stenographers and typists are announced to be held in almost all large cities throughout the United States about every sixty days, when such is not the fact;

(5) That there are good Government positions available, and that in the larger cities there are thousands and thousands of such places, when such is not the fact;

(6) That appointments to the position of forest ranger are available and that it is not necessary to be a resident of the States within which the forest ranges are located in order to secure appointments to such positions, when such is not the fact;

(7) That railway mail clerks immediately upon appointment are allowed to travel with allowances for meals or hotel or other expenses and that they are off duty half the time with full time pay, when such are not the facts;

(8) That the respondent agrees to refund the full tuition paid by applicants or subscribers without specifying the time in which such money will be repaid.

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

IN THE MATTER OF  
NUGRAPE COMPANY OF AMERICA

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

*Docket 1576. Complaint, Feb. 27, 1929<sup>1</sup>—Decision, May 19, 1931*

Where a corporation engaged in manufacture and sale of a sirup so made through removal of certain ingredients from and addition of alcohol and others to, a California grape juice concentrate upon which was based the "Merchandise No. 25" used by it, that there resulted a grape extract, containing no more than 20 per cent of grape juice, depending chiefly on addition of artificial coloring and tartaric acid for flavor and color, as did the carbonated beverage made therefrom in accordance with its directions by its very numerous bottler vendees, and others,

- (a) Displayed its corporate name including word "Nugrape" in advertisement, offer, and sale of aforesaid product and represented, designated, and referred to its aforesaid concentrate and beverage as "NuGrape", and, in smaller letters, as a "flavor you can't forget", in advertising matter, posters, tacking signs, and magazine and newspaper advertisements displaying persons reaching for the bottled beverage, and the slogan "reach for NuGrape";

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<sup>1</sup> Complaint amended, after argument, to charge respondent as a Delaware instead of a Georgia corporation, by the following order:

"In the complaint issued on the 27th day of February, 1929, against the NuGrape Company, respondent herein, it is alleged in paragraph 1 that the respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. This complaint was served upon the respondent on March 1, 1929, and respondent, in its answer filed March 28, 1929, denied that it was a corporation by virtue of the laws of the State of Georgia, but answered fully in all other respects and submitted itself to the jurisdiction of the Commission. Thereafter, in the course of taking testimony, it developed that respondent is a corporation under the laws of the State of Delaware, and that it is the successor of the NuGrape Company of America, a Georgia corporation, and that all the property and assets of the Georgia corporation had been transferred to the Delaware corporation, under an agreement in writing dated December 19, 1924. At the time of the said transfer, the officers, directors and stockholders of the NuGrape Company of America, a Georgia corporation, were identically the same as the officers, directors, and stockholders of the NuGrape Company of America, the Delaware corporation. Since the said transfer, no business has been carried on by the NuGrape Company of America, the Georgia corporation, although it has not been dissolved. In the brief in support of the complaint filed herein on February 24, 1931, and served upon respondent on February 26, 1931, counsel for the Commission stated that 'the Commission, at or before the time for final argument, will be asked to amend the complaint herein by striking out the word "Georgia" in line 3 of paragraph 1 and inserting in lieu thereof the word "Delaware."' At the final argument before the Commission on April 15, 1931, in accordance with the above quoted declaration contained in the brief in support of the complaint, counsel for the Commission moved the Commission that the amendment stated be made in conformity with the proof contained in the record, now, therefore,

"It is ordered, That the complaint herein be and the same is hereby amended by striking out the word 'Georgia' in line 3 of paragraph 1 and inserting in lieu thereof the word 'Delaware.'"