

IN THE MATTER OF
WAUGH EQUIPMENT COMPANY, ARTHUR MEEKER,
FREDERICK W. ELLIS, J. B. SCOTT

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1779. Complaint, Apr. 3, 1930.—Decision, Sept. 21, 1931

Where a corporation engaged in the manufacture of draft gears and in the sale of aforesaid necessary cushioning and shock absorbing devices to railway companies, private car lines, car builders, and others for use on their rolling stock, and including among its large stockholders persons representing important interests in two of the great packing companies; and two individuals, (1) for some thirty years employees of one of said packing companies, and respectively executive vice president, and vice president in charge of traffic, controlling the movement of some 7,000 private cars operated by said packer, and the routing and the allocation of some 275,000 carloads a year, and (2) large stockholders in said corporation through subsequent purchase, and prior agreement to use the influence possessed by them through control of aforesaid traffic in securing favorable reception for said corporation's representatives in soliciting railway companies to purchase its said gears, and in bringing about such purchases;

- (a) Used the volume of traffic of said packing company and/or its subsidiaries, highly prized and eagerly and insistently sought by the railway companies, and controlled as aforesaid, to induce and compel such companies to purchase said corporation's draft gears in preference to competitors' products of equal or higher quality through promising, assuring and shipping traffic of said packing company and its subsidiaries, or of an increased volume thereof, over their lines, and through threatening to withdraw and withdrawing such traffic, contingent upon their purchasing or failing to purchase said products; and

Where the aforesaid general officers,

- (b) Cooperated with and assisted such corporation and its officers, agents and employees in the sale and distribution of said gears and other equipment to railway companies through utilizing their position in said packing company to induce or compel officials of said companies to give undue preference to gears and other railway equipment made and/or sold by said corporation, through promises of traffic from said packing company and/or its subsidiaries, and through threats of withdrawal thereof, should said companies fail to purchase such gears or other equipment;

With the result that sales of said practically unknown gear increased in a few years from less than 1 per cent of those sold for new freight equipment to over 35 per cent and passed those of competitors, and with an undue tendency to suppress competition between aforesaid corporation and its competitors and to create a monopoly in the sale and distribution of draft gears and other railway equipment, through creation and use as above set forth of a coercive and oppressive weapon, preventing customers solicited by it and its competitors from exercising their free will and judgment in determining the most efficient device and that best suited to their needs at the lowest net cost over a period of time, and in the injection thereby of an unfair and abnormal element into the competitive field concerned, tending to reduce efficiency and economy in production and sales methods of

competitors, to give the concern controlling the largest volume of freight traffic an unfair advantage more than offsetting higher efficiency in production and sales methods of competing concerns controlling no such traffic, and to force all competitors either to abandon the field involved, or compete through gifts of stock or other valuable consideration to employees of corporations controlling and directing heavy volumes of traffic unrelated to the industry in question, and thus hinder and restrain freedom of competition in said industry's natural, customary and prevailing channels of trade:

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

Mr. Everett F. Haycraft for the Commission.

Mr. Edward M. O'Bryan, of Chicago, Ill., 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 Waugh Equipment Co., a Maine corporation engaged in the manufacture of railway equipment appliances and supplies, and, particularly, draft gears and centering devices, and in the sale thereof directly or indirectly through sales agents to railway companies, freight and passenger car builders, and others, and with principal office and plant at Depew, N. Y., and with branch offices in New York and Chicago, and respondent Meeker, executive vice president of Armour & Co. for ten years prior to January 1, 1928, respondent Ellis, vice president in charge of traffic of said company,¹ and respondent Scott, his assistant and general manager of said company's car lines, and large sockholders in said Equipment Co.,² with cooperating to use and using coercively and oppressively

¹ As alleged in the complaint Armour & Co., an Illinois corporation with outstanding capital stock of \$50,000,000, principal offices and slaughtering plants in Chicago and 26 or more branch slaughtering plants in other sections of the United States and one of the largest meat-packing concerns in the world, ships or causes to be shipped, directly and through its numerous subsidiaries, large quantities of meat products and by-products from its various plants and other factories to their more than 500 distributing depots, or branch houses, in the principal towns and cities, of the United States, and to other distributors, in various sections of the country, utilizing for this purpose more than 7,000 refrigerator and other cars owned by it, or its subsidiaries, "causing said cars to be transported over the lines of the various railway companies of the United States," and, together with its subsidiaries, negotiating with said companies with respect to the transportation of said products, through its traffic department located at its Chicago office, the annual volume of said products transported over the lines of said railway companies amounting to approximately 275,000 carloads.

² As alleged, said individual respondents own and/or control, along with other officials and employees of Armour & Co., the majority of respondent corporation's common stock, and control, in the case of the last two, the traffic routing and allocation of Armour & Co., with its 7,000 private cars and its shipments of some 275,000 carloads a year, said respondents having acquired their stock as a result of the taking over by respondent corporation of the business of the old Waugh Draft Gear Co., about Aug. 1, 1924, and their agreement to use their influence through control of aforesaid traffic, much of which was competitive and eagerly and insistently sought by the railway companies, in bringing about the purchase by said companies of said corporation's draft gears.

said individuals' control of large volumes of eagerly sought competitive business, and official positions, to solicit and secure business, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth and more particularly in the sale of a draft gear, in cooperation with respondents Meeker, Ellis, and Scott, acting in pursuance of their agreement or understanding to use their influence in its behalf, "has sought to induce and compel, and has induced and compelled various railway companies to purchase draft gears and other railway equipment manufactured and/or sold by said respondent corporation in preference to draft gears and other equipment of equal or higher quality^{*} manufactured and sold by competitors by the following methods:

"(a) By promises and assurances of freight traffic to be shipped over the lines of said railway companies by Armour & Co. and its subsidiary corporations;

"(b) By promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Armour & Co., and its subsidiary corporations; and

"(c) By threats of withdrawal of freight traffic from the lines of said railway companies by said Armour & Co. and its subsidiary corporations, if said railway companies would not purchase the said draft gears and other railway equipment manufactured and/or sold by said respondent corporation."

Respondent individuals, as charged, pursuant to the aforesaid agreement or understanding "and at the request of the officials and promoters of said respondent corporation, have cooperated with and assisted the said respondent corporation in the sale and distribution of its said draft gears and/or other railway equipment to various railway companies," as aforesaid, "particularly by utilizing their official positions in the said Armour & Co. to induce and compel the

^{*} As alleged, products made and sold by the old Waugh Draft Gear Co. included a draft gear known under the trade name "Waugh," which "was obsolete and not suitable for use on freight cars, and which had been sold in limited quantities in previous years by the said Waugh Draft Gear Co. to a very few railway companies, and at the time of the organization of the said respondent corporation the said Waugh Draft Gear Co. was not conducting its business at a profit, and the sale of its said gear had substantially diminished because it did not meet the strict specifications and requirements of the railway companies of the United States."

Complaint further alleges in this connection that "respondent corporation has, since the date of its organization, purchased and acquired licenses to manufacture other draft gears for use on freight and passenger cars, some of which were in use while others were not yet established or recognized as efficient draft gears," and that "respondent corporation * * * since the date of its organization until on or about January 1, 1927, sold and distributed draft gears under the said trade name of 'Waugh,' but since said date said respondent corporation has sold and distributed, and now sells and distributes, various sizes and types of draft gears under the trade name of Waugh-Gould."

officials of railway companies to give undue preference to draft gears and/or other railway equipment manufactured and/or sold by the said respondent corporation by means of promises of freight traffic from said Armour & Co. and its subsidiary corporations, and threats of withdrawal of said traffic, if the said railway companies would not purchase draft gears and/or other railway equipment manufactured and/or sold by said respondent corporation."

Such alleged acts and things done by respondents, as charged, are all to the prejudice and injury of the public and competitors of said respondent corporation, "individuals, firms, and corporations located in the various States of the United States * * * engaged in the manufacture or assembly of draft gears and other railway equipment, and in the sale and distribution thereof to the various railway companies and other concerns in the United States on the basis of quality and price alone," and unduly tend to suppress competition between said respondent corporation and competing manufacturers, and to create a monopoly in said respondent corporation in the sale and distribution of draft gears and other railway equipment, 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on June 9, 1928, issued and thereupon served, as required by law, upon Waugh Equipment Co., Arthur Meeker, Frederick W. Ellis, and J. B. Scott, respondents above named, in which said complaint it is charged that respondents have been and are now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The said respondents, having filed their answers herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, the briefs having been filed on the part of the Commission and the respondents, and counsel for the Commission and the respondents having been heard in oral argument 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. Respondent Waugh Equipment Co. is a corporation organized under the laws of the State of Maine in August, 1924, with its principal office and plant located in Depew in the State of New York and with sales offices in New York City, Chicago, Cleveland, St. Louis, Los Angeles, Anniston, Alabama, and Montreal, Canada. This respondent corporation is engaged in the manufacture of railway equipment, particularly draft gears, and in the sale of said products through sales agents to railroad companies, freight and passenger car builders, private car lines and any users of draft gears. Its products when manufactured and sold are shipped from the point of manufacture in Depew, N. Y., to purchasers or users thereof located in various States of the United States other than the State of New York. The said respondent corporation is in competition with manufacturers and distributors of draft gears located in various States of the United States who sell and distribute their products in and among the various States of the United States.

Arthur Meeker, for ten years prior to January 1, 1928, was one of the executive vice presidents of Armour & Co. and for a period of from 25 to 30 years prior to January 1, 1928, had been connected with and in the employ of Armour & Co., his headquarters being located in the city of Chicago.

Frederick W. Ellis is a vice president of Armour & Co. in charge of traffic and for 30 years had been in charge of the traffic department of Armour & Co. under varying titles. During this entire period he has been in direct charge of the direction, routing, and allocation of the large traffic of Armour & Co. and its subsidiaries.

John B. Scott, general manager of Armour Car Lines and first assistant to Frederick W. Ellis, has been in the employ of Armour & Co. in one or both of these positions for 11 years. Respondents Ellis and Scott are charged with and have direct control of the equipment and maintenance of the cars belonging to Armour & Co.

PAR. 2. Armour & Co. with its subsidiaries, as is well known, are large meat packers with headquarters and a large plant in Chicago, Ill., and plants in Kansas City, Kans., Omaha, Nebr., and 16 other points in the United States. Into these plants from various sections of the country a heavy volume of livestock, poultry, and other products move, and from these plants a heavy volume of fresh meats of all kinds, canned meats, fertilizers, and other by-products move to purchasers thereof and to approximately 400 distributing branches of Armour & Co. located in various States of the United States. Much of this traffic is competitive as between two and often more

railroads, its routing by their respective roads is constantly, eagerly, and insistantly sought and the traffic department of Armour & Co. is daily solicited by the traffic departments of one or another of the railroads for business. A large percentage of the commodities shipped by Armour & Co. is of a highly perishable nature and requires refrigeration in transit. To care for this exigency the Armour Car Lines were established by Armour & Co. to own and operate some 7,000 cars in which its products are transported, and in addition to these cars makes use of the cars of the various railroads. The livestock and fresh meat traffic require unusual expedition in movement. The rate structures are complex and require a wide knowledge and a high degree of skill in order to obtain the best results for the shipper and consignee. In order to secure the very best service and avail itself of the best rates under the published tariffs, Armour & Co., many years ago established a traffic department with headquarters in Chicago which controls, allocates, and directs the routing of the products of Armour & Co. so as to best serve its interests. This department has grown with the business, which business now amounts to approximately 275,000 carloads per year.

PAR. 3. All railroads, in order to operate must have draft gears. Each freight or passenger car must have two and each locomotive at least one.

A draft gear is a cushioning and shock-absorbing device that serves two purposes on a car—either freight or passenger. One is to provide sufficient give or free movement to permit the locomotive engineer taking up the slack in the train, the second purpose being to serve as a shock absorber to protect the cars and the lading from damage that might otherwise be caused by heavy impact blows received by the various cars on the road or in switching.

In the year 1902 there was organized, by one J. M. Waugh, under the laws of the State of Illinois, a company known as the Waugh Draft Gear Co. with headquarters in Chicago, which sold draft gears described as the Waugh Gear. Its draft gear was used to a limited extent on four western railroads and to a substantial extent on one railroad for both freight and passenger equipment, although no sales for new freight equipment were made to the railroad subsequent to 1918.

In March, 1924, a contract was entered into with the Armour Car Lines for the sale of a substantial number of Waugh Gears over a period of time. During the period from 1910 to 1921, both inclusive, sales for draft gears manufactured by the Waugh Draft Gear Equipment Co. for both freight and passenger equipment amounted to approximately \$800,000. During the period from Jan-

uary 1, 1921, to July 31, 1924, its sales amounted to approximately \$6,000.

There have been two general types of draft gears in use on the various railroads of this country during the past 10 years—namely, the spring type and the friction type. In the spring type, either a coil or plate spring is used to absorb the shocks, while in the friction type, a number of blocks of steel and iron appropriately arranged rubbing together absorb the shocks. In most friction types a coil spring is also utilized to assist in this process. The Waugh Draft Gear Co. manufactured the plate spring type.

Prior to the year 1922 or 1923 the Westinghouse Air Brake Co. controlled the patents on the frictional type of gear, but after the expiration of these patents many manufacturers entered the business of manufacturing that type of draft gears. Because of the heavy freight traffic, the railroads required a draft gear which was more sturdy than the spring type and which could endure a longer period of time. With the increase in the tonnage capacity of all freight equipment and the use of heavier locomotives and heavier and longer trains the spring type of gear was not found to give the service and protection to freight cars which the friction type could furnish, although for passenger use it was satisfactory. Many draft-gear manufacturers who had, prior to the expiration of the Westinghouse patents manufactured and sold only the spring type of gear enlarged their plants and began to manufacture the frictional type of draft gear. This the Waugh Draft Gear Co. was apparently not able to do because of its financial condition brought about by patent litigation and the changing business conditions.

PAR. 4. In the spring of 1924, J. M. Waugh, owner of the majority of the capital stock of Waugh Draft Gear Co., entered into negotiations with A. J. Pizzini, of New York City, which negotiations culminated in the organization by Pizzini and one T. E. Bragg, a stock promoter, of a company known as the Waugh Equipment Co., the respondent corporation herein. Waugh Equipment Co., when organized, proceeded to issue 2,000 shares of preferred stock and 7,000 shares of common stock, of which amount all the preferred stock and 2,000 shares of common stock were issued to the former stockholders of the Waugh Draft Gear Co. and 5,000 shares were originally issued as promotion stock to Messers. A. J. Pizzini and T. E. Bragg, the promoters of the respondent corporation, without money consideration.

Some time between June and September, 1924, the exact date not being determined, A. J. Pizzini and T. E. Bragg, promoters of the respondent corporation, divided their promotion stock of the Waugh

Equipment Co., and gave one-third of that stock or 1,666 shares of common stock to respondents, Arthur Meeker, F. W. Ellis, and J. B. Scott—666 shares going to Meeker, 666 shares to Ellis, and 334 shares to Scott—as consideration for an agreement or understanding entered into by and between respondents, Arthur Meeker and F. W. Ellis and Messrs. Pizzini and Bragg, promoters of the respondent corporation, whereby respondents Meeker and Ellis agreed and promised to use their influence acquired through long years of contact with railroad officials, and particularly the influence of respondent Ellis, to advance the interest of the respondent, Waugh Equipment Co., by obtaining hearings for officers or salesmen of that company, when necessary, and further, to use their influence with the officials of the railroads, particularly the traffic officials and through them the executive and other departmental officials of the railroads, to solicit and secure orders for the draft gears sold by the Waugh Equipment Co. The influence which they agreed to exert was that influence which had been acquired, and was then, and is now, possessed by them by virtue of the large volume of competitive traffic of Armour & Co. and its subsidiaries, which traffic had been for years and was at the time of the making of this agreement, and is now, controlled and directed by respondent, F. W. Ellis.

Said agreement or understanding was entered into by respondents Arthur Meeker and F. W. Ellis without the knowledge of other officials and stockholders of Armour & Co., except F. Edson White, president of said corporation.

On or about February 2, 1927, T. E. Bragg sold his one-third share in the promotion stock of the respondent corporation, Waugh Equipment Co., amounting to 1,666 shares for \$40,000 cash, the purchasers of said stock being the Whitehouse Investment Co., an investment trust created and controlled by F. Edson White, president of Armour & Co., for the benefit of his family, which purchased 1,000 shares, respondent Meeker who purchased 266 shares, respondent Ellis who purchased 266 shares, and respondent Scott who purchased 74 shares. Subsequently, respondents Meeker and Ellis have made additional purchases of the common stock of the respondent corporation, Waugh Equipment Co., until the record as of May 1, 1930, shows respondent Meeker owns 57 shares of preferred stock and 1,069 shares of common stock of said corporation and respondent Ellis as of record May 1, 1930, owned 1,069 shares of common stock in said corporation.

Just prior to December 1, 1929, the total holdings of employees and officials of Armour & Co., including respondents Meeker, Ellis, and Scott, was 3,749 shares of common stock out of a total of 7,000 shares outstanding. On or about December 1, 1929, respondent corporation,

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Waugh Equipment Co., increased its outstanding capital stock to 8,666 shares, issuing the additional 1,666 shares to George A. Hood, trustee for the heirs of the late G. F. Swift, generally known as the Swift Estate, substantial owners of capital stock of Swift & Co., Chicago, meat packers, in exchange for an assignment of a license to manufacture a centering device which was owned by the Mechanical Manufacturing Co., a corporation at that time engaged in the manufacture and sale of draft gears and which was controlled by the Swift Estate. Therefore, subsequent to December 1, 1929, officials and employees of Armour & Co. owned 3,749 shares of common stock, and officials and employees of Swift & Co. owned 1,666 shares of common stock of a total outstanding issue of 8,666 shares of common stock—the remaining shares being principally owned by A. J. Pizini, president of the Waugh Equipment Co.

PAR. 5. Respondents Meeker and Ellis, cooperating with the officials and employees of the respondent corporation, Waugh Equipment Co., beginning in the year 1924 and continuing through the year 1929 used the large volume of traffic of Armour & Co. and its subsidiaries, under the direction and control of respondent Ellis, to induce and compel various railway companies of the United States to purchase draft gears manufactured and sold by the respondent corporation in preference to draft gears of equal or higher quality manufactured and sold by competitors, by giving the traffic officials of said railway companies, directly or indirectly, promises and assurances of freight traffic to be shipped over the lines of said railway companies by Armour & Co., and its subsidiary corporations, if said railways would purchase draft gears manufactured and sold by the Waugh Equipment Co.; also by giving the traffic officials of said railway companies, directly or indirectly, promises and assurances of, and in some instances by actually furnishing, an increased volume of freight traffic to be shipped over the lines of said railway companies by Armour & Co. and its subsidiary corporations, if said railways would purchase draft gears manufactured by the Waugh Equipment Co.; and also by threats of withdrawal, and the actual withdrawal, of freight traffic from the lines of certain railway companies by said Armour & Co., and its subsidiary corporations, if and when said railway companies would not purchase the draft gears manufactured by the Waugh Equipment Co.

PAR. 6. Respondent corporation, Waugh Equipment Co., cooperating with respondents Meeker and Ellis, pursuant to the agreement set forth in paragraph 4 hereof, and as a result of their activities as set forth in paragraph 5 hereof, succeeded in making substantial sales of draft gears manufactured by it to the Chicago Northwestern

Railroad for new freight equipment during the years 1924, 1926, 1927, 1928, 1929, and 1930; to the Missouri Pacific Railway Co., during the years 1926, 1927, 1928, 1929, and 1930; to the Wabash Railroad during the year 1928; to the American Refrigerator Transit Co., jointly controlled by the Wabash and the Missouri Pacific Railroad, during the years 1924, 1926, 1927, 1928, and 1930; to the St. Louis-San Francisco Railroad during the years 1926, 1928, and 1929; to the Missouri, Kansas & Texas Railroad during the year 1930; to the Rock Island Lines during the years 1929 and 1930; to the Chicago, Burlington & Quincy Railroad during the years 1928 and 1929; to the Chicago, Milwaukee, St. Paul & Pacific Railroad during the years 1928, 1929, and 1930; to the Boston & Maine Railroad during the years 1928 and 1929; to the New York, New Haven & Hartford Railroad during the years 1927 and 1930; to the Lehigh Valley Railroad during the years 1927 and 1929; to the New York Central Railroad during the years 1929 and 1930; to the Erie Railroad during the years 1928, 1929, and 1930; to the Delaware, Lackawanna & Western during 1926 and 1927; to the Chesapeake & Ohio during 1930; and to the Pere Marquette Railroad during 1930.

PAR. 7. From August, 1924, until April, 1926, the respondent corporation, Waugh Equipment Co., continued to manufacture and sell the spring plate type of gear which had been formerly manufactured by its predecessor, the Waugh Draft Gear Co., except that some improvement was made in the gear and it was encased in a housing. On or about April 1, 1926, respondent corporation began to manufacture and sell a friction type draft gear, known as the Waugh-Gould gear—it having acquired certain rights to manufacture same from the Gould Coupler Co., a concern manufacturing and selling a relatively small number of draft gears at that time, principally to the Philadelphia & Reading Railroad. From 1926 until 1930 the great bulk of sales of draft gears for freight equipment of respondent corporation was of the Waugh-Gould friction type draft gear, which was improved from time to time, until in the latter part of 1929, it was rated as one of the three best draft gears on the market in laboratory tests which were made by the American Railway Association. It had not been in use on railways for a sufficient length of time to determine its merits in actual service, and it had been found necessary to make changes and improvements to overcome defects which had been discovered as the gear had been placed in service on various railroads.

Respondent corporation continued to sell substantial quantities of the old spring-plate type gear to various railroads for use on passenger cars—it being recognized as suitable for such purpose, where smoothness of action rather than durability is required.

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PAR. 8. The principal competitors of the respondent corporation, since the year 1924, are the following:

W. H. Miner, Inc., Wilmette, Ill., which has been manufacturing and selling draft gears since 1897 under the trade name Miner. It has been generally recognized as the best draft gear on the market for a number of years and has enjoyed the largest sales. In 1924 and 1925 it sold over 50 per cent of the total number of draft gears sold for new freight equipment and controlled a larger percentage of the total draft gear sales.

National Malleable & Steel Castings Co., which has been, for a number of years, selling draft gears under the trade name of National.

Westinghouse Air Brake Co., which prior to November, 1929, sold and distributed the Westinghouse gear.

The Union Draft Gear Co., which prior to November, 1929, sold the Cardwell draft gear. During that year the consolidation of these two concerns took place, and the Union Draft Gear Co. now sells what is known as the Cardwell-Westinghouse gear.

Bradford Corporation, which was organized in 1924, and which was a consolidation of three railway equipment manufacturers, which since 1917 had been engaged in the manufacture and sale of the Bradford gear.

Standard Coupler Co., which corporation since 1922 has been engaged in selling the Sessions draft gear, which is a gear that has been on the market since 1901.

Keyoke Railway Equipment Co., which corporation sold a draft gear known as the Murray since about 1914.

The Mechanical Manufacturing Co., which concern was owned by interests connected with Swift & Co., meat packers, Chicago, Ill., and which sold in 1929 a draft gear known as the Durable.

Despite the fact that respondent corporation, during the period of time from August, 1924, until the year 1929, was manufacturing and selling a practically unknown gear, in competition with the foregoing competitors, well established in the industry, it succeeded in forging ahead of all of them from a place of obscurity, when it sold less than 1 per cent of the total draft gears for new freight equipment in 1924, until in 1929 it sold approximately 25 per cent, and in 1930 approximately 35 per cent of the draft gears sold for new freight equipment to the railroads of the United States.

During the year 1924 the various railroads of the United States placed orders for approximately 144,000 freight cars, which was the largest building program for any year since 1916 except 1922. Each new freight car must be equipped with two draft gears—one at either end. During that year the following principal manufacturers and

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distributors of draft gears sold gears for freight car equipment as follows:

New equipment only	Sets (2 gears)
The W. H. Miner Co.....	79, 325
The Bradford Co.....	21, 995
The Westinghouse Co.....	21, 250
National Malleable Steel Castings Co.....	5, 233
Standard Coupler Co.....	4, 771½
Keyoke Equipment Co.....	10, 723
Waugh Equipment Co. ¹	2, 156
Gould Coupler Co.....	1, 602½

In 1925 approximately 93,000 freight cars were ordered by railroads of the United States, which was considerably below normal. During that year the sales of the principal draft gear companies for freight car equipment were as follows:

New equipment only	Sets (2 gears)
The W. H. Miner Co.....	33, 015
The Bradford Co.....	20, 613½
National Malleable Steel Castings Co.....	22, 668½
Westinghouse Co.....	6, 971
Standard Coupler Co.....	2, 404
Keyoke Equipment Co.....	5, 292
Waugh Equipment Co.....	2, 817
Gould Coupler Co.....	1, 078

In 1926, approximately 67,000 orders for freight cars were placed by the railroads of the United States, which was the lowest number since 1921. Sales of draft gears by the aforementioned draft gear companies during 1926 for freight car equipment were as follows:

New equipment only	Sets (2 gears)
The W. H. Miner Co.....	28, 226
The Bradford Co.....	17, 880½
National Malleable Steel Castings Co.....	11, 110
Westinghouse Co.....	16, 000
Standard Coupler Co.....	6, 137½
Keyoke Equipment Co.....	6, 317
Waugh Equipment Co.....	4, 000
Gould Coupler Co.....	237

These figures for Waugh included approximately 600 sets of old Waugh gears, 1,750 sets of the Gould gear 175, and 1,500 sets of the Waugh-Gould gears developed during that year by the respondent company.

¹ The sales of this company include 2,782 gears or 1,391 sets sold by the old company, of which number 835 sets were sold to Armour & Co. under contract made in March, 1924.

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In 1927 approximately 72,000 orders for freight cars were placed by the railroads of the United States, which it will be noted, was a slight increase over 1926. The sales of the aforementioned draft-gear companies during 1927 for freight-car equipment were as follows:

New equipment only	Sets (2 gears)
The W. H. Miner Co.-----	15, 811
Bradford Co.-----	8, 833
National Malleable Steel Castings Co.*-----	14, 903
Westinghouse Co.-----	11, 390
Standard Coupler Co.-----	3, 867½
Keyoke Equipment Co.-----	8, 507
Waugh Equipment Co.-----	7, 992½

In 1928 approximately 51,200 orders for freight cars were placed by the railways of the United States, which was the lowest number ordered in any year except two in 28 years. The sales of the aforementioned draft-gear companies for freight-car equipment during 1928 were as follows:

New equipment only	Sets (2 gears)
W. H. Miner Co.-----	16, 459
The Bradford Co.-----	4, 784½
National Malleable Steel Castings Co.*-----	16, 630
Westinghouse Co.-----	10, 500
Standard Coupler Co.-----	7, 014½
Keyoke Equipment Co.-----	2, 140
Waugh Equipment Co.-----	10, 415

In 1929, 111,218 freight cars were ordered by the railways of the United States, which exceeded orders for all previous years since 1913, except four years. The sales of the aforementioned draft-gear companies during 1929 for freight cars were as follows:

New equipment only	Sets (2 gears)
W. H. Miner Co.-----	24, 382
The Bradford Co.-----	7, 425
National Malleable Steel Castings Co.*-----	20, 164
Westinghouse Co.*-----	2, 800
Standard Coupler Co.-----	4, 241
Keyoke Equipment Co.-----	6, 293½
Waugh Equipment Co.-----	28, 293

In 1930, 46,360 orders for freight cars were placed by the railroads of the United States, the total number for the year being less than half the orders placed in 1929 and one of the three lowest years in 30 years. The small number of cars ordered was due principally to the

* Sales to railroad companies as distinguished from private-car lines and industrial plants.

* This company was merged with the Cardwell Draft Gear Co. during that year, which accounts for the small number of gears sold.

decline in traffic commencing in October, 1929. The principal purchaser of draft gears was the Van Sweringen group, which purchased 13,754 cars. The sales of the aforementioned draft-gear companies during the first four months of 1930 for freight-car equipment were as follows:

New equipment only	Sets (2 gears)
W. H. Miner Co.....	8, 877
The Bradford Co.....	3, 310
National Malleable Steel Castings Co.*.....	12, 813
Standard Coupler Co.....	853½
Keyoke Equipment Co.....	279½
Waugh Equipment Co.....	17, 054

The ordinary procedure followed by the draft gear companies named in this paragraph, competitors of the respondent corporation, in the sale and distribution of draft gears to the railroad companies before the advent of the respondent corporation, and at the present time is to first attempt to sell the product to the mechanical department of the railroad and then to solicit the operating and purchasing officials. No contact is made with the traffic department. After the mechanical officials have placed the gears in the specifications for new equipment, the purchasing department of the railway companies usually called upon the draft gear manufacturers for bids. There is substantial evidence in the record to show, however, that due to the activities of respondents Ellis and Meeker described in paragraph 5 hereof, in many instances the specifications of the mechanical departments of the railroads were broadened to include gears manufactured by the respondent corporations, contrary to the recommendation of the mechanical officials, and purchases were made of said gears regardless of the bids of competitors.

The factors ordinarily taken into consideration by officials of the railroad who purchase draft gears before the advent of the respondent corporation were—first, quality of the product, second, price of the product, and third, salesmanship. The draft gear companies named in this paragraph, competitors of the respondent corporation, do not have any appreciable traffic to offer as an inducement to railroad companies who purchase their gears, and are therefore unable to meet the competition of the respondent corporation as described in paragraphs 5 and 6 hereof, and their gears as a result have been displaced on a number of railroad lines by the product of the respondent corporation.

* Sales to railroad companies as distinguished from private-car lines and industrial plants.

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The president of one competitor testified that the decline in his company's sales of gears to the railroad companies was due to the extreme competition of the respondent corporation and one other concern by the use of traffic which he didn't have. He named the respondent corporation as the principal offender in this respect, particularly on the Missouri Pacific, Seaboard Air Line, and the Rock Island roads. He also named the Missouri, Kansas & Texas, the Chicago, Milwaukee, St. Paul & Pacific, the Boston & Maine, the New York, New Haven & Hartford, the Lehigh Valley, the Delaware & Lackawanna, and the Chesapeake & Ohio, as other railroads where this type of competition on the part of the respondent corporation had been encountered.

The president of another competing draft gear manufacturer testified that the loss of business by his company in 1929 was caused, to some extent, by what he termed "traffic conditions"; that he had found it necessary to attempt to overcome traffic consideration on the part of some competitors, naming the respondent corporation and one other concern (The Union Draft Gear Co.).

The vice president of one of the largest manufacturers of draft gears and one of the oldest in the industry, testified that his firm had lost business and sales had been reduced in 1929 as compared with previous years due to "various competitive conditions which had not been effective in earlier years—notably traffic". He explained this statement as follows: "I mean the urging of railroad officials to consider specialties in consideration of traffic which might be given to the railroads who are contemplating the purchase of this new equipment". He named the respondent corporation and the Union Draft Gear Co. as competitors who were using traffic as outlined by him to solicit business from the railroads, particularly on the Chicago & Northwestern road.

Officials of other competitors, while admitting that they had lost business to the respondent corporation, and had keenly felt its competition, would not attribute the loss of their business to the use of traffic on the part of respondent corporation.

PAR. 9. The aforesaid acts and things done by respondent Ellis, Meeker, and the respondent corporation, Waugh Equipment Co., are all to the injury of the public and competitors of respondent corporation, and unduly tends to suppress competition between respondent corporation and competing manufacturers of draft gears, and to create a monopoly in the respondent corporation in the sale and distribution of draft gears and other railway equipment, in that the respondent corporation, cooperating with respondents, Meeker and Ellis, have created and taken advantage of a competitive weapon, oppressive and coercive in nature, which prevents the customers to

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whom the respondent corporation and its competitors are trying to sell their products, from exercising their free will and judgment in determining which device is the most efficient and will best serve their needs at the lowest net cost over a period of time, and has thus injected an element in the competitive field in which respondent corporation is engaged, which is unfair and abnormal, and tends to reduce the efficiency and economy in the production and sales methods of competing manufacturers and gives to the concern that controls the largest volume of freight traffic an unfair advantage that will more than offset the higher efficiency in the production and sales methods of competing concerns which control no such traffic, and force all competitors either to abandon the draft gear field or to compete by gifts of stock or other valuable consideration to employees of corporations controlling and directing heavy volumes of traffic unrelated to the draft gear industry, and thus hinder and restrain the freedom of competition in the natural, customary, and prevailing channels of trade in the draft gear industry.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondents' competitors, 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 complaint of the Commission, the answer of the respondents, and the Commission having made its findings as to the facts and the conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the following respondents, Waugh Equipment Co., Arthur Meeker, and Frederick W. Ellis, their agents, representatives, and employees, shall cease and desist the use of the volume of the traffic of Armour & Co. and/or its subsidiary corporations, in the solicitation of draft gear or other railway equipment business in interstate commerce from railway companies by the following methods:

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(a) By promises and assurances of freight traffic to be shipped over the lines of said railway companies by Armour & Co. and/or its subsidiary corporations, or any other shipper of a substantial volume of freight traffic;

(b) By promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Armour & Co. and/or its subsidiary companies, or any other shipper of substantial volume of freight traffic; and/or

(c) By threats of withdrawal of traffic from the lines of said railway companies by Armour & Co. and/or its subsidiary corporations, or any other shipper of substantial volume of freight traffic, if said railway companies would not purchase draft gears or other railway equipment manufactured and/or sold by respondent corporation.

It is further ordered, That said respondents, Arthur Meeker and Frederick W. Ellis, shall cease and desist cooperating with and assisting the respondent corporation, its officers, agents, and employees in the sale and distribution of its draft gear and other railway equipment in interstate commerce to railway companies by utilizing their official positions in Armour & Co. to induce or compel officials of railway companies to give undue preference to draft gear or other railway equipment manufactured and/or sold by respondent corporation by means of promises of freight traffic from said Armour & Co. and/or its subsidiary corporations and threats of withdrawal of said traffic if said railway companies would not purchase draft gear or other railway equipment manufactured and/or sold by said Waugh Equipment Co.

It is further ordered, That the respondents, Waugh Equipment Co., Arthur Meeker, and Frederick W. Ellis, shall individually and separately within 60 days after the service upon them of copies of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

ORDER OF DISMISSAL AS TO J. B. SCOTT¹

This case coming on for further consideration, upon motion of counsel for the Commission approved by the chief counsel to dismiss the proceedings as to respondent J. B. Scott for lack of proof, and the Commission having considered the same, and being fully advised in the premises,

It is ordered, That the complaint herein be and the same hereby is dismissed with respect to respondent J. B. Scott.

¹ Made as of December 16, 1931.

Syllabus

IN THE MATTER OF

AVIATION INSTITUTE OF U. S. A., INCORPORATED

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1834. Complaint, May 20, 1930—Decision, September 21, 1931

Where a corporation (1) engaged in selling a correspondence course in aviation to students in practically all the States, and in many foreign countries from its place of business in Washington, D. C., and (2) headed by a person, who held no commission as lieutenant or other officer in the Navy or in the Air Corps of the United States Army or any other branch thereof, and held no office in any department or branch of the Government but had come to be identified in the public press, in official correspondence, and otherwise, by his name, and title as a former lieutenant in the Navy, as a result of his part in a famous Navy trans-Atlantic flight, and of other subsequent exploits,

- (a) Included the letters U. S. A. prominently in its trade name Aviation Institute of U. S. A. and in its corporate name Aviation Institute of U. S. A., Incorporated or Aviation Institute of U. S. A., Inc., and made extensive use of said trade name in its business and school stationery and papers, advertisements, catalogues, enrollment blanks, printed lessons, etc., and, less frequently, of its corporate name or both, and in connection with such use of said trade and corporate names usually set forth on the same line the words "Washington, D. C.";
- (b) Made general use of the title "Lieutenant" or the abbreviations thereof in referring to its aforesaid head or president in catalogues, enrollment blanks, advertisements, and other printed matter bearing its trade or corporate names and Washington address, as above set forth, and referred therein to said lieutenant and "staff";
- (c) Displayed and used in catalogues, advertisements, enrollment blanks, textbooks, registration and graduation certificates, and other printed matter an insignia or trade-mark consisting of wings separated by a shield and resembling in such respects the Naval Aviation insignia and those employed by the air corps of the United States Army, though distinguishable therefrom by careful side by side comparison;
- (d) Made use of pictorial representations of what might be said to be the dome of the National Capitol and of the Washington Monument on letter-heads, and in catalogues reproduced a letter of indorsement addressed to its said president by the Assistant Secretary of War on the official letter-head of the War Department, and set forth in such catalogues (1) statements emphasizing its Washington location and the Government activities centering there and relating to the conduct and development of aviation in its various phases, and (2) the indorsement of the course by Army and Navy officials, etc., together with said letter, and stated that such factors "help make Aviation Institute training the complete service that it is";