

Complaint

15 F. T. C.

IN THE MATTER OF

C. ARLINGTON BARNES

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1981. Complaint, Oct. 20, 1931—Decision, Dec. 15, 1931*

Consent order requiring respondent individual to cease and desist from falsely representing, in connection with sale of jewelry made and dealt in by him, that he is a jewelry importer or importer of precious or semiprecious stones, or will give free, upon payment of 25 cents for packing and shipping charges, new ring in exchange for any made and sold by him and becoming defective, as specified, "unless and until a new ring is actually given free under such circumstances, the purchaser paying only the amount required for packing and shipping."

Mr. Robert H. Winn for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that C. Arlington Barnes, an individual, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual with his principal office and place of business in the city of Providence in the State of Rhode Island. He is and for more than one year last past has been engaged in manufacturing various articles of jewelry and offering for sale and selling the same by mail direct to purchasers thereof located in various States of the United States. He causes the said jewelry when sold to be transported from his place of business in the State of Rhode Island into and through other States of the United States to purchasers thereof located in a State or States of the United States other than the State of Rhode Island. In the course and conduct of his business respondent is in competition with other individuals and with corporations, firms, and partnerships engaged in the manufacture and in the sale and distribution of jewelry in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof the respondent has been and is now representing to purchasers and prospective purchasers of the jewelry manu-

factured and offered for sale and sold by him that he, the respondent, is an importer of precious and semiprecious stones. In truth and in fact the respondent is not an importer in that he does not import precious or semiprecious stones from any foreign country nor does he import any articles or material for use in manufacturing his jewelry from any foreign country. Respondent uses neither precious nor semiprecious stones in the course and conduct of his business of manufacturing jewelry.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof respondent incloses with each of certain rings manufactured by him and offered for sale and sold by him in interstate commerce copies of an alleged "Certificate of Guaranty." Respondent, by means of the certificate of guaranty, purports to guarantee the ring which it accompanies against defects or a loose setting for five years from date of purchase. Respondent, by means of the certificate of guaranty purports to offer a new ring free if the ring which accompanies the certificate of guaranty is defective in any way, or if the stone loosens or falls out. Respondent, by means of the certificate of guaranty purports to offer a new ring free under such circumstances when 25 cents is forwarded for postage and shipping charges by the purchaser of the defective ring, together with the defective ring. In truth and in fact the certificate of guaranty is not a guaranty at all and the ring offered in exchange for a defective ring is not offered free in that the 25 cents required for packing and shipping charges includes not only the cost of packing and shipping, but the cost to respondent of the new ring plus an amount not less than his ordinary profit.

PAR. 4. The acts and things done by the respondent as hereinbefore set out have the capacity and tendency to mislead and deceive the purchasing public into the belief that certain of the jewelry manufactured by respondent and offered for sale and sold by him in interstate commerce is set with precious or semiprecious stones.

PAR. 5. The acts and things above alleged to be done by respondent as hereinbefore set out have the capacity and tendency to mislead and deceive the purchasing public into the belief that the jewelry manufactured by respondent and offered for sale and sold by him in interstate commerce is guaranteed and will be replaced if defective on the payment of charges which represent the cost of packing and shipping only.

PAR. 6. The acts and things done by respondent as above set forth constitute practices or methods of competition which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c)

operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the jewelry business, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 20th day of October, 1931, issued its complaint against C. Arlington Barnes, an individual, respondent herein, and caused the same to be served upon said respondent as required by law, in which complaint it is alleged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On October 27, 1931, the respondent filed herein a formal written answer to said complaint. On November 11, 1931, the said respondent filed a second answer herein wherein he stated that he desired to waive hearing on the charges as set forth in the complaint and that he did not desire to contest the proceedings. He further stated in the said answer that he consented that the Commission may make, enter, and serve upon him an order to cease and desist from the violations of law alleged in the complaint, all in accordance with the provision of section 2, Rule III, of the Rules of Practice and Procedure of the Federal Trade Commission, and the Commission having considered and accepted the last named answer in lieu of the former answer therefore filed, and being fully advised in the premises, states that the respondent, C. Arlington Barnes, 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 the respondent, C. Arlington Barnes, his agents, representatives, servants, and employees, cease and desist in connection with the offering for sale and sale in interstate commerce of jewelry—

(1) From representing that he is an importer unless and until he actually imports articles or materials for use in manufacturing his jewelry from some foreign country.

(2) From representing that he imports precious or semiprecious stones unless and until precious or semiprecious stones to be used by

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him in manufacturing his jewelry are imported by him from some foreign country.

(3) From representing that he will give free a new ring in exchange for any ring manufactured and sold by him which becomes defective or in which the setting becomes loose within five years from the date of purchase upon the payment of 25 cents for packing and shipping charges, unless and until a new ring is actually given free under such circumstances, the purchaser paying only the amount required for packing and shipping of the new ring.

It is further ordered, That respondent, C. Arlington Barnes, shall within 30 days after the 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 the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
MUTUAL PUBLISHING COMPANY ET AL.

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

Docket 1571. Complaint, Feb. 25, 1929—Decision, Dec. 18, 1931

Where two corporations under common ownership and management, and three individuals, owners, officers, and operators thereof; in carrying on, directly and through agents acting under said individuals' instructions, sale of a four volume cyclopedia, and ten-year loose leaf extension service, and in soliciting teacher prospects, whom they or their agents approached on some such false basis as having been sent by teacher's superintendent or as occupying some official position or as in a position to render or secure some official service or benefit, or as offering books necessary for teacher prospect's continuance of her position,

- (a) Falsely represented that a four volume cyclopedia was being given away as part of an advertising plan, or in consideration of recommendation to be given, or by reason of selection of particular prospect as recipient of such a gift, and that only charge was for the recommended, ten-year loose leaf extension supplement, payable at special rate or price of \$3.95 a year, and contract for which was revocable at will by subscriber, facts being contract was not revocable, and regular payment of \$39.50 thereunder for set and supplement in ten monthly installments was insisted on, and there were additional charges, frequently concealed, for postage, expressage, and binders, and through use of aforesaid, so-called "give away" method misled many purchasers;
- (b) Falsely represented that certain well known and eminent educators, authors, public officials, surgeons, and explorers were editors, associate editors, contributors to or otherwise connected with aforesaid publications, and that said cyclopedia was the latest reference work, kept always up to date by said extension service;
- (c) Represented through order forms employed that the bindings were "full seal Levant fabricoid" and through agents' representations and use of flexible leather prospectuses lead purchasers to believe that bindings of the books would be flexible leather, facts being said bindings were not that large grained, highly prized variety of Morocco leather implied by word "Levant," but were a nonflexible fabric covered paste board substance, and sets frequently were noticeably inferior in contents and illustrations to those represented by prospectus;
- (d) Falsely represented through such words upon their contract and note forms as "special introductory contract to teachers," "special introductory offer," and directly, that regular price of \$39.50 constituted a special price extended to particular teacher solicited, in consideration of her anticipated recommendation, and that price would later be much higher;
- (e) Represented that a member of the particular city school board, whose teachers were being solicited, or their principal, superintendent, super-