

IN THE MATTER OF

MAHAFFEY COMMISSION COMPANY AND C. E. MALMIN,
ALIAS "NORTHERN AGRICULTURAL INSTITUTE"COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2066. Complaint, Oct. 3, 1932—Order, Mar. 1, 1933*

Consent order requiring respondents, their agents, etc., in connection with sale in interstate commerce of seed potatoes, to cease and desist from representing, directly or by implication, "that inspection or certification by the respondent, C. E. Malmin, is certification or inspection by the 'Northern' or any other 'agricultural institute' or that the said seed potatoes have been inspected and certified to by any persons whomsoever or in any manner whatsoever other than is actually the case".

Mr. PGad B. Morehouse for the Commission.

Mr. Justus Chancellor, Jr., of Chicago, Ill., for respondents.

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 Mahaffey Commission Co., a corporation, hereinafter referred to as the company, and C. E. Malmin, an individual who styles and designates himself as "Northern Agricultural Institute", and each of them, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act and states its charges in that respect as follows:

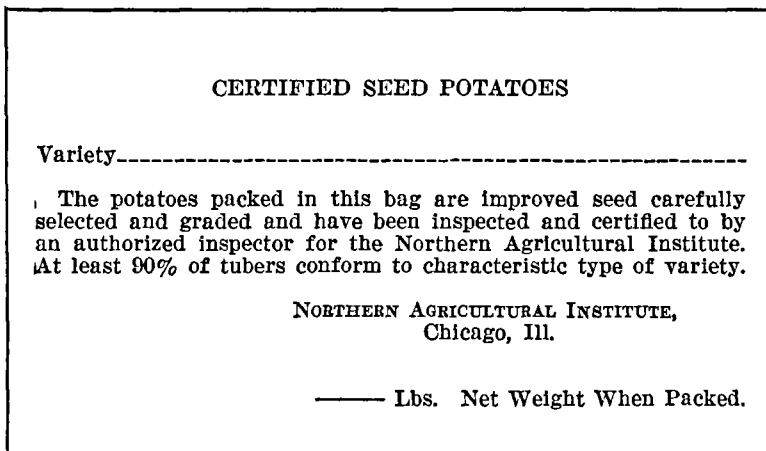
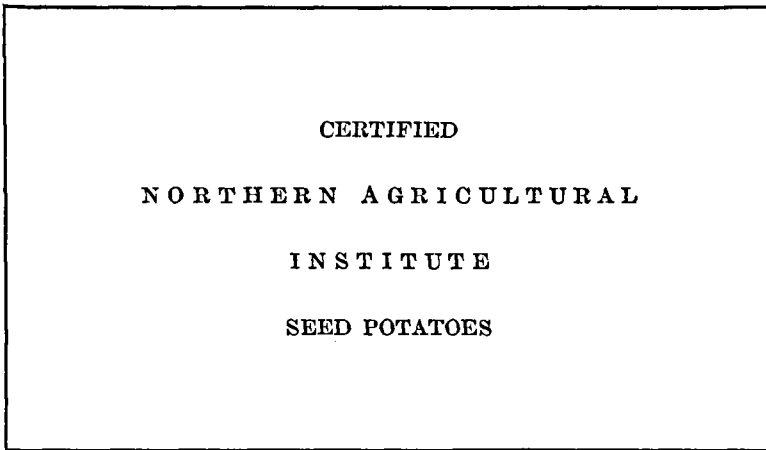
PARAGRAPH 1. The respondent, Mahaffey Commission Co., is a corporation organized, existing, and doing business in the State of Illinois, having its office and principal place of business in the city of Chicago, State of Illinois. The respondent C. E. Malmin under the alias "Northern Agricultural Institute" is and has been in the exclusive employ of the other respondent as an inspector of seed potatoes under arrangements and circumstances hereinafter more fully set out.

For approximately the 2 years last past the respondent company, as a commission merchant, has been engaged in the sale and distribution of seed potatoes, by it purchased in carload lots from the sellers located in various States other than the State of Illinois, and

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shipped by those sellers from such other States to the company at Chicago, Ill. In the course and conduct of its business, while the said carloads of seed potatoes are in Chicago awaiting resale and transshipment, the company employs the respondent Malmin to certify and tag the bags in which said potatoes are contained. Respondent Malmin designating himself as Northern Agricultural Institute, for hire, upon the instructions of the company, thereupon certifies and tags the said seed potatoes by attaching to the said bags tags in words and figures following:



PAR. 2. In the course and conduct of his employment and while the seed potatoes are in the cars in the railroad yards at Chicago, Ill., awaiting rebilling to final destination, respondent Malmin places

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these certificates and tags upon the sacks in which the seed potatoes are contained, with the purpose and result of having said certificates and tags transported with the potatoes from the State of Illinois in and through various other States of the union all in aid and furtherance of respondent company's acts of unfair competition herein set forth.

The said potatoes thus certified and tagged by respondent Malmin, respondent company acting sometimes as broker and sometimes as a middleman, transships and resells to various buyers, other commission merchants, middlemen, wholesalers, jobbers, and chain stores at a price which includes a premium, or an advance price over that price which is charged for uncertified seed potatoes which price is charged and received by reason of such certification and tagging.

PAR. 3. Respondent company causes the said seed potatoes to be reshipped from the city of Chicago in the State of Illinois into and through various other States of the United States to the purchasers thereof.

In the course and conduct of its business as aforesaid the respondent company is in competition with other individual partnerships and corporations engaged in the sale and distribution in interstate commerce of seed potatoes.

PAR. 4. For more than two years last past through the efforts of State and local organizations, educational institutions, and widely disseminated information by State and National agencies, potato planters have come to recognize the value of planting seed potatoes certified to be free from various diseases deleteriously affecting crop production such as "dwarfing", "running out", or "mosaic", some of which diseases are destructive, soil-inoculating, and can only be detected by inspection of the growing seed potato plant. Seed potatoes are grown almost exclusively in those States in the northern half of the United States, and transshipped, with Chicago, Ill., as a central distributing point, to States in the southern portion of the United States and virtually all of the seed potato raising States have made provisions for field inspection conducted by trained men during the growing season, generally under the auspices of the State Agricultural College or other organization or institution. After such inspection there is customarily a certificate issued which the grower may attach to his bags of seed potatoes prior to shipment. From the foregoing educational propaganda, customs and practices in the seed potato trade, wholesalers, jobbers, retailers, and many of the consuming public have come to associate, where seed potatoes are concerned, the word "certified" with a product which, while still growing, has been competently and disinterestedly inspected for free-

dom from destructive plant diseases, under the supervision of an accredited Federal or State institution or organization, and also have come to associate the words "agricultural institution", where used in connection with seed potatoes, with an accredited educational or scientific institution. By reason of such trade practices and association of ideas purchasers have been and are willing to and do pay higher prices for seed potatoes which have been certified in such manner.

PAR. 5. Under and by reason of the foregoing circumstances the certification and tagging of said seed potatoes done by respondent Malmin at the instance of the company as above set out, respondent company in the course and conduct of its business, falsely represents and has represented to purchasers and prospective purchasers that such seed potatoes have been competently and disinterestedly inspected, and that they are therefore free from "dwarfing", "running out", "mosaic", and any other potato disease determinable by inspection of the growing seed potato plant, when in truth and in fact such is not the case; and the prospective purchasers, believing and relying upon the truth of such representations, purchase the seed potatoes at a price higher than they would for seed potatoes not inspected and certified in the manner in which they believe respondent company's seed potatoes have been inspected and certified.

PAR. 6. In the course and conduct of its business as aforesaid, by means of the certification and tagging of said seed potatoes in the manner above set out, respondent company falsely represents to purchasers and prospective purchasers that its said seed potatoes are freer from "dwarfing", "running out", and "mosaic", and other potato plant diseases than seed potatoes which have not been inspected while growing and thereafter certified by competent and disinterested persons or organizations, and the prospective purchasers believe and rely upon the truth of said representation. Such representation is passed on by respondent company to, through, and by various buyers, commission merchants, middlemen, wholesalers, jobbers, and chain stores aforesaid, to the ultimate purchasers who, believing and relying thereon, purchase and plant seed potatoes of a quality and condition productive of inferior crops, risk of soil-inoculation and actual inoculation of the soil with disease producing bacilli.

PAR. 7. In the course and conduct of his employment by respondent company as aforesaid, the respondent Malmin, in procuring and affixing the aforesaid tags and certificates to the sacks of seed potatoes while en route from the source of their production to their final desti-

nation into and through various States of the United States, places in the hands of respondent company the means of deceiving its prospective purchasers and the ultimate purchasers of said seed potatoes, as to the pedigree, quality, value, and kind of said seed potatoes so purchased and also as to the nature and kind of inspection to which such seed potatoes have been subjected.

PAR. 8. The aforesaid methods used by respondent company in the course and conduct of its business, aided and abetted for hire by respondent Malmin, have a tendency to and do unfairly result in (a) respondent company's being able to sell its so-called "agricultural-institute-certified" seed potatoes at a greater profit than can be obtained by competitors who do not misrepresent to their prospective purchasers in the manner and form hereinabove set out, and (b) respondent company's being able to undersell those of its competitors who in the course and conduct of their business have had their seed potatoes field-inspected by competent disinterested persons under supervision of accredited national or state associations or institutions and who, after paying the reasonable and usual expenses of such inspection and certification (greater than the expenses of respondent company's so-called inspection and certification), are unable to compete with respondent company at a profit.

PAR. 9. The foregoing methods of competition and each of them are to the prejudice of competitors of the respondent company, to the prejudice of the public, and have a tendency to divert trade from respondent company's competitors to respondent and constitute unfair methods of competition in interstate commerce within the intent and meaning 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 come on for final hearing by the Federal Trade Commission upon the respondents' answer waiving all further procedure and consenting that the Commission may make, enter and serve upon them an order to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises,

It is now ordered, That the respondents, Mahaffey Commission Co., a corporation, C. E. Malmin, an individual and the agents, representatives, servants, and employees of each of them, in connection with the sale or offering for sale in interstate commerce of seed potatoes cease and desist from representing directly or by implication—

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That inspection or certification by the respondent, C. E. Malmin, is certification or inspection by the "Northern " or any other "agricultural institute " or that the said seed potatoes have been inspected and certified to by any persons whomsoever or in any manner whatsoever other than is actually the case.

It is further ordered, That the respondents and each of them shall within 60 days from the date of the service upon them of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they and each of them have complied with the order herein set forth.

IN THE MATTER OF

CONGO PICTURES, LTD., NATHANIEL H. SPITZER, INDIVIDUALLY, AND AS PRESIDENT OF CONGO PICTURES, LTD., WILLIAM ALEXANDER, INDIVIDUALLY, AND AS VICE PRESIDENT OF CONGO PICTURES, LTD., WILLIAM SYDNEY CAMPBELL, INDIVIDUALLY, AND AS SECRETARY OF CONGO PICTURES, LTD., HAROLD D. SMITH, AN INDIVIDUAL

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

Docket 1938. Complaint, Apr. 8, 1931—Decision, Mar. 27, 1933

Where a corporation created to exploit a motion-picture film as an authentic record of an African scientific expedition, and officers and organizers of said corporation; in offering and advertising said film, which (1) was created by said organizers through acquisition and merging of films theretofore made, and depicting authentic scenes of African exploration and travel with film made under their direction in or near Los Angeles, (2) displayed orang-utans for the gorillas purportedly shown, and American negro women and children for the "wild" and "strange" women, children, and pygmies ostensibly portrayed in their native Africa by the film in question, (3) made use of actors, including one in the skin of a gorilla, to depict fictitious, fanciful, and fantastic happenings inserted by them, and of a turtle, made up with wings, scales, and a long tail to portray a newly discovered animal, and (4) was called "Ingagi," falsely asserted African name for Gorilla,

Referred to said film as the "Belgian Congo Picture * * *, the amazing camera captures of the Royal expedition into the heart of Africa headed by Sir Hubert Winstead, F.R.G.S.", "noted anthropologist" and "intrepid big game hunter," and as "an authentic incontestable celluloid document showing the sacrifice of a living woman to gorilla hordes * * *", "an authentic record of African adventure. The spectacular sensational real adventure film made with untold difficulties in the heart of equatorial Africa", "a production of actual experiences", "photographed under the most unbelievable difficulties and dangers", and described the film as recording the expedition of "Sir Hubert Winstead, F.A.S.", and "Captain Daniel Swayne", a young American big game hunter and "collector of museum specimens" into "the heart of the Congo", into the gorilla country, "in the vicinity of Burunga, in the mountains, where they encountered not only gorillas in plenty, but wild women, queer children that seemed to be the offspring of some unholy alliance * * *, the most thrilling, awe inspiring and dramatic record of actual experience in the heart of equatorial Africa ever made * * *", etc., along with the comment "Real adventures make fiction seem tame", and reference to aforesaid strange "new" beast, discovered and named Tortadillo, due to resemblance to a cross between a tortoise and an Armadillo; and