

Complaint

IN THE MATTER OF
COOK PAINT & VARNISH CO. AND MARK L. JONES,
INDIVIDUALLY

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

Docket 1959. Complaint, June 17, 1931—Decision, Sept. 23, 1933

Where a corporation engaged in the manufacture of varnish, paints, shellacs, wood-fillers and kindred products, and its salesman or agent through whom it contacted and solicited furniture manufacturing customers and prospective customers in certain States, paid and offered to pay to trusted employee foremen finishers of said manufacturing customers and prospective customers, without their knowledge or consent, substantial sums of money as a reward for recommending or procuring purchase of said corporation's products by their employers, or as an inducement for continuing so to do, or opposing purchase of competitors' product; with result that competitors unwilling to resort to such practices found it practically impossible to obtain any considerable business, trade was unfairly diverted to it, and fair competition based upon price and quality was eliminated:

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

Mr. Richard P. Whiteley for the Commission.

Littlepage & Littlepage, of Washington, D.C., for respondents, along with whom appeared *McCune, Caldwell & Downing*, of Kansas City, Mo., for Cook Paint & Varnish Co.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation, engaged in the manufacture and sale of varnish, paints, shellac, wood-fillers, and kindred products, to manufacturers of furniture and others in various States, and with principal office and place of business in Kansas City (and with a Cincinnati division or branch called Blackburn Varnish Co., which trade name it used in the sale and distribution of certain of its products in interstate commerce); and respondent individual, its sales manager or general salesman, with bribing employees of com-

petitors, in violation of the provisions of Section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent company, as charged, through respondent individual, who acted in its behalf has during several years last past offered and given to finishers, foremen, and other employees of manufacturers of furniture to whom it sells its said products, without the knowledge and consent of said manufacturers, the respective employers of said employees, substantial sums of money as inducements to influence said employers to purchase its products, to recommend such purchases to their said employers or the use of its said products, or as promised gratuities for having induced such purchases by such employers or having recommended the use of its products to them, such payments having been made by said individual in cash only, in order to conceal said transactions and the identity of the donors.

Said acts and practices, as alleged, have tended to induce and have induced the purchase of said company's products by furniture manufacturers, and have tended to divert, and have diverted trade from, and thereby injured said competitors; all to the prejudice of the public and respondent company's competitors.

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 respondents, Cook Paint & Varnish Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and upon Mark L. Jones, an individual, charging them and each of them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents having entered their appearance and filed answers to the said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing before the Commission on the complaint, answers, testimony and evidence received and briefs and oral argument in support of the allegations of the complaint and in opposition thereto, and the Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cook Paint & Varnish Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business in the city of Kansas City, State of Missouri, and with an office in the city of Cincinnati, State of Ohio. Said respondent has a division or department called Blackburn Varnish Co., which name respondent corporation uses as a trade name in the sale and distribution in interstate commerce of certain of respondent corporation's products. The said division of respondent corporation, namely, Blackburn Varnish Co., has its principal office and place of business in the city of Cincinnati, State of Ohio. Respondent, Cook Paint & Varnish Co., is now, and for several years last past, has been engaged in the manufacture of varnish, paints, shellacs, wood-fillers, and kindred products, and in the sale and distribution thereof to manufacturers of furniture and others located at places in various States of the United States. Said respondent causes said products when so sold to be transported from its places of business in the cities of Cincinnati, Ohio, and Kansas City, Mo., 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 States of origin of said shipments, and in the course and conduct of its said business, respondent Cook Paint & Varnish Co. is in competition with other corporations, partnerships, firms, and individuals also engaged in the manufacture, sale, and distribution of varnish, shellacs, paints, wood-fillers, and kindred products between and among the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business respondent Cook Paint & Varnish Co. employed respondent Mark L. Jones as its salesman or general salesman, and said Mark L. Jones was engaged, as the agent or representative of respondent Cook Paint & Varnish Co., in the sale of said company's varnishes and kindred products throughout various States of the United States, particularly in the States of Virginia and North Carolina, from the latter part of April, 1927, until the end of July, 1930.

PAR. 3. During the month of April, 1927, the respondent Cook Paint & Varnish Co. acquired the plant equipment and inventory of the Blackburn Varnish Co., a corporation then engaged in the business of manufacturing and selling varnishes and other kindred materials, with its principal place of business at Cincinnati, Ohio. Thereupon, respondent Cook Paint & Varnish Co. caused the said Blackburn Varnish Co. to be dissolved and a new corporation to be organized under the laws of the State of Ohio, which new

corporation was given the same name as that of the old corporation. All of the stock of said new corporation has since been owned by respondent Cook Paint & Varnish Co. and said new Blackburn Varnish Co. has been and is operated as a department or division of respondent Cook Paint & Varnish Co. and under the direction and control of said Cook Paint & Varnish Co officials. Prior to the acquisition by respondent Cook Paint & Varnish Co. of the property of the old Blackburn Varnish Co., one Mark L. Jones had been and was engaged as the salesman or agent or representative of said old Blackburn Varnish Co. in the sale of its varnishes, paints, and kindred products under a written contract, whereby he received certain commissions on all sales made by him.

PAR. 4. At the time that respondent Cook Paint & Varnish Co. had under consideration the acquisition of the plant equipment and inventory of the old Blackburn Varnish Co., there was outstanding against said Blackburn Varnish Co. and its agents, representatives, servants, and employees a cease and desist order issued by the Federal Trade Commission on July 19, 1926, forbidding said company and its representatives to engage in the practices commonly known as commercial bribery. An investigation had been carried on by an organization known as the Unfair Competition Bureau of the Paint, Varnish & Lacquer Industry, maintained by the members of the National Varnish Manufacturers' Association and of the Paint Manufacturers' Association of the United States, with regard to the activities of the said old Blackburn Varnish Co., particularly with respect to the practice of commercial bribery, and with especial regard to the activities of its aforesaid representative, respondent Mark L. Jones. The said Unfair Competition Bureau had been organized January 1, 1918, with headquarters in Washington, D.C., principally for the purpose of suppressing commercial bribery in the paint and varnish industry, in cooperation with the Federal Trade Commission. As a result of this investigation, the head or director of said Unfair Competition Bureau had obtained evidence showing that the said old Blackburn Varnish Co., through several of its salesmen and particularly through respondent Mark L. Jones, had been secretly paying bribes to foremen of certain furniture manufacturers in Virginia and North Carolina in violation of the outstanding cease and desist order issued against the said company by the Federal Trade Commission, and had turned said information over to the chief examiner's bureau of the Federal Trade Commission for its attention. Subsequent to this investigation and while the matter was still pending before the Federal Trade Commission, the aforesaid head of the Unfair Competition Bureau of the Paint & Varnish Industry, one M. Q. Macdonald, learned through trade papers that

respondent Cook Paint & Varnish Co. was considering the acquisition of said old Blackburn Varnish Co.

The president of respondent Cook Paint & Varnish Co. at that time was one Charles R. Cook, and he has continued as president of respondent corporation up to the present time. Said Macdonald immediately got into communication with said Cook, and went to Kansas City, Mo., in the early part of April, 1927, where, in a conference lasting several hours, he gave Cook full information about the investigation he had made into the affairs of the old Blackburn Varnish Co. and specifically informed him that the investigation showed that said Blackburn Varnish Co. had been and was engaging in the practice of commercial bribery in violation of the outstanding cease and desist order of the Federal Trade Commission, and that its activities in that regard had been and were being carried on principally through respondent Mark L. Jones. Within two weeks after this conference respondent Cook Paint & Varnish Co. acquired the plant equipment and inventory of said former Blackburn Varnish Co., took over its contract of employment with respondent Mark L. Jones and continued Mark L. Jones in its employ as salesman and representative until the end of July, 1930. At the time respondent corporation took over the contract of employment of respondent Mark L. Jones, said contract contained a provision that said Jones should not give bribes, gratuities or any form of gift or subsidy to any customer or any employee of such customers in contravention of law or of the rules established by the Federal Trade Commission, and a similar provision was placed in the subsequent contracts of employment under which Jones served respondent Cook Paint & Varnish Co. during the years 1928, 1929, and 1930. Other than including in its contracts with respondent Jones the provision that said Jones would not engage in the practice of commercial bribery, which provision had been included in the contract between Jones and the old Blackburn Varnish Co., no effort was made by respondent Cook Paint & Varnish Co., or by its officials, to see that respondent Jones did not engage in the practice of commercial bribery, despite the information conveyed by the Unfair Competition Bureau of the industry as to his previous activities in that practice.

PAR. 5. In the southern part of Virginia and in the northern part of North Carolina there are located a number of manufacturers of furniture who purchase, for use in finishing their furniture, large quantities of varnish, shellac, wood-fillers, and other kindred products. Among said furniture manufacturers were the W. M. Bassett Furniture Corporation of Martinsville, Va., and the Bassett Furniture Co. of Bassett, Va. Each of the aforesaid two furniture manu-

facturing companies maintain a department in which the furniture manufactured by them is finished by the application of varnish and other finishing materials and employ a number of workmen for that purpose. The workmen so employed are under the supervision, direction and control of foremen, called foremen finishers. It is the duty of the aforesaid foremen finishers to supervise the application of the finishing materials and to report to their employers in what manner said materials function and whether or not they are satisfactory. The foreman finisher for the W. M. Bassett Furniture Corporation of Martinsville, Va., from August, 1928, to May 1, 1930, was one A. F. Lambeth, jr., and the foreman finisher for the Bassett Furniture Co. of Bassett, Va., from about August 1, 1927, to about August 3, 1930, was one George W. Snyder.

Immediately after A. F. Lambeth, jr., entered the employment of the W. M. Bassett Furniture Corporation as foreman finisher in August, 1928, respondent Mark L. Jones called upon him at his residence in Martinsville, Va., and told said Lambeth that he, Jones, was going to sell materials at the W. M. Bassett Furniture Corporation. He informed Lambeth that he had a load coming in or already in and that he would split his commission with Lambeth on everything that he, Jones, sold to Lambeth's company. At the time of his conversation Jones handed Lambeth \$65 in cash. On other occasions the said Jones paid Lambeth amounts ranging from \$390 to \$454 each, always in cash, making at least eight of said payments, totaling \$2,977. Said Jones told Lambeth to bank the money paid him as far away from home as possible, and Lambeth opened an account for this purpose in Greensboro, N.C., some sixty miles from Martinsville. Said Lambeth already had a banking account in a Martinsville bank, where he deposited the salary paid him by the W. M. Bassett Furniture Corporation. At no time, throughout the whole period while these payments were being made to said Lambeth by the said Jones, did said Lambeth or said Jones tell anyone connected with the aforesaid W. M. Bassett Furniture Corporation about said payments. And during the period when respondent Jones was paying the aforesaid bribes to said Lambeth, no person connected with the said W. M. Bassett Furniture Corporation, except said Lambeth himself, knew that the said bribes were being made.

PAR. 6. Immediately after George W. Snyder entered the employment of the Bassett Furniture Co. of Bassett, Va., as foreman finisher, in August, 1927, he met respondent Mark L. Jones on the street in Bassett. Said Snyder had known said Jones for a number of years. At the time of this said meeting in August, 1927, Jones

handed Snyder about \$200 in cash, stating that he was splitting with Snyder the commission received by him, Jones, on varnish and shellac that he was selling to the Bassett Furniture Co. for the Blackburn Varnish Co. division of respondent Cook Paint & Varnish Co. Jones also informed the said Snyder at that time that he would pay him a certain percentage of commission so received by Jones, and Jones continued to make payments to Snyder, always in cash, and usually shortly after shipments of the respondent corporation's products were delivered to the Bassett Furniture Co. at Bassett, Va. On one occasion said Snyder drove over to Martinsville, Va., to the Thomas Jefferson Hotel, with a foreman finisher, by the name of Holbrook, employed at another factory, and called to see respondent Jones in his room at the Thomas Jefferson Hotel. On that occasion respondent Jones took Snyder in the bath room and shut the door and there paid him \$190 or \$197 in cash. Upon another occasion Snyder met said Jones at the Thomas Jefferson Hotel in Martinsville, Va., and Jones introduced Snyder to a man who was with Jones, telling Snyder that the man was his boss or sales manager. Payments were made by respondent Jones to Snyder on numerous other occasions, on an average of about once a month and soon after shipments of respondent corporation's products came in at the Bassett Furniture Co. factory. These payments averaged \$200 each. During the period of his employment with the Bassett Furniture Co. and while these bribes were being paid to Snyder by respondent Jones, neither the said Snyder or the said Jones told anyone connected with the said Bassett Furniture Co. about said payments. And during the period when respondent Jones was paying the aforesaid bribes to said Snyder, no one connected with the said Bassett Furniture Co. except said Snyder himself knew that said bribes were being paid.

PAR. 7. One Fred A. Hugenberg, who had been employed as assistant factory manager by the old Blackburn Varnish Co. prior to the time respondent Cook Paint & Varnish Co. took over certain of the Blackburn assets and business, was continued in that capacity in the Blackburn Varnish Co. division of respondent corporation from about April, 1927, to about the middle of the year 1928, when he became assistant superintendent of said division and its local city salesman for Cincinnati. In January, 1929, said Hugenberg was appointed manager of the Blackburn Varnish Co. division of respondent Cook Paint & Varnish Co., continuing in that capacity throughout the year 1929. During the period when said Hugenberg was manager of the Blackburn Varnish Co. division of respondent Cook Paint & Varnish Co., he made several trips to certain furniture

factories in the State of Virginia, said factories being customers of respondent corporation, which said customers were solicited and sold by said Mark L. Jones on behalf of said respondent corporation, stopping at the same hotel and occupying a room adjoining that of said Jones. While said Hugenberg was in his own or Jones' hotel room on one of his said visits to Virginia he was introduced to A. F. Lambeth, jr., and George W. Snyder by said respondent Mark L. Jones. The said Lambeth and Snyder, at that time, were both foremen finishers of furniture factories which were purchasing respondent Cook Paint & Varnish Co. products through said Mark L. Jones. Said Hugenberg at that time told said Lambeth that respondent Jones would be around to see Lambeth every once in a while to look after what Lambeth was to get and that Jones would fix things up with Lambeth. Said Hugenberg was introduced to said George W. Snyder by respondent Jones as Jones' boss or sales-manager.

PAR. 8. Respondent Mark L. Jones was indicted by the grand jury of Henry County, State of Virginia, at the July 1931 term of the Circuit Court of said county, for corruptly influencing agents, servants and employees, to wit, A. F. Lambeth, jr., and George W. Snyder, employees of W. M. Bassett Furniture Corporation and Bassett Furniture Co., respectively, through the payment of certain specific sums of money. Said indictment charged that said Mark L. Jones, on certain specified occasions, did unlawfully promise and give money and other gratuity of the value, respectively, of \$65, \$389, \$420, \$389, \$420, \$420, \$420, and \$455 to A. F. Lambeth, jr., the employee and servant of W. M. Bassett Furniture Corporation without the knowledge and consent of the said W. M. Bassett Furniture Corporation, with intent to influence the action of said A. F. Lambeth, jr., to the prejudice of the business of said W. M. Bassett Furniture Corporation.

The aforesaid grand jury further charged in the same indictment that said respondent Mark L. Jones, on certain specified occasions, did unlawfully offer, promise and give money and other gratuity of the value, respectively, of \$250, of \$200, and \$200, to the said George Snyder, an agent, employee and servant of Bassett Furniture Co., Inc., without the knowledge and consent of the said Bassett Furniture Co., Inc., and with intent to influence the action of the said George Snyder to the prejudice of the business of the said Bassett Furniture Co., Inc.

The said grand jury further charged that said respondent Mark L. Jones, at various times and places, in said county of Henry, State of Virginia, from the 1st day of August, 1929, until the 1st day of

January, 1930, did unlawfully offer, promise and give money and other gratuity, of value, to A. F. Lambeth, jr., as the agent, employee and servant of W. M. Bassett Furniture Corporation, without the knowledge and consent of the said W. M. Bassett Furniture Corporation, his employer as aforesaid, with intent to influence the action of the said A. F. Lambeth, jr., to the prejudice of the business of the said W. M. Bassett Furniture Corporation.

The said grand jury further charged that the said respondent Mark L. Jones, at various times and places, in said county of Henry, State of Virginia, from the 1st day of August, 1928, to the 1st day of August, 1930, did unlawfully offer, promise and give money and other gratuity, of value, to one George Snyder, he, the said George Snyder, then and there being an agent, employee and servant of Bassett Furniture Co., Inc., and that he, the said Mark L. Jones, then and there made said offer, promise and gift, of money and other gratuity, to the said George Snyder without the knowledge and consent of the said Bassett Furniture Co., Inc., as employer as aforesaid, with intent to influence, the action of the said George Snyder, to the prejudice of the business of the said Bassett Furniture Co., Inc.

Thereafter respondent Mark L. Jones appeared by counsel before the Circuit Court of Henry County, Va., and pled guilty to corruptly influencing agents, servants and employees as found by the indictment returned by the grand jury of the said county and, with the consent of the attorney for the commonwealth and the defendant, the court proceeded to hear and determine the cause without the intervention of a jury, and after hearings, evidence and argument of counsel found the said Mark L. Jones guilty as charged in the indictment and sentenced said Jones to pay a fine of \$500 and to serve two months in jail. The said court further ordered that, as there were circumstances in mitigation of the offense, the jail sentence be suspended during good behavior of said Jones for a period of one year.

The bribes paid by respondent Jones to the aforesaid Lambeth and to the aforesaid Snyder were the same bribes which said Lambeth and Snyder testified herein were paid them by Jones because of the sales made by him to their respective employers of the products manufactured and sold by respondent Cook Paint & Varnish Co.

PAR. 9. The respondent Cook Paint & Varnish Co. purchased the plant equipment and inventory of the old Blackburn Varnish Co. with full knowledge of the fact that the said company had been engaging in the practice of commercial bribery, particularly through its representative or salesman Mark L. Jones, and thereafter continued in its employ for a period of more than three years the afore-

said Mark L. Jones, and took no adequate precautions to prevent the continuance of the practice of commercial bribery by the said Mark L. Jones. During the period from April, 1927, to July, 1930, inclusive, while the said respondent Mark L. Jones was in the employ of respondent Cook Paint & Varnish Co., the said company paid said Jones large salaries and commissions, amounting to the sum of \$49,616.01 for the period from April 19, 1927, to December 31, 1927, inclusive, and amounting to \$62,917.79 for the period from January 1, 1929, to December 31, 1929, inclusive. No bona fide or adequate effort was made by respondent Cook Paint & Varnish Co. to ascertain whether or not respondent Mark L. Jones, during the period from April, 1927, to July, 1930, was paying bribes to employees of customers or prospective customers out of the large sums of money paid him as salary and commissions by respondent company.

PAR. 10. The duties of foremen finishers in the factories in which furniture is manufactured by the W. M. Bassett Furniture Corporation at Martinsville, Va., and by the Bassett Furniture Co. of Bassett, Va., include the supervision of the finishing work completely, from the time the furniture enters the finishing department until the finish has been entirely applied. The greater part of the exterior surface of furniture made by these two factories is not upholstered and must be treated or finished by the application of varnishes, such as those manufactured by respondent Cook Paint & Varnish Co. The foreman finisher has a number of men working under him to do the actual finishing work, but he has complete charge and supervision of their work and is responsible for the way in which the furniture is finished. While the foreman finisher does not purchase the finishing materials used by his employer, he has to report to his employer as to how said materials function and whether or not they are satisfactory. The employers of Lambeth and Snyder, the foremen finishers who were paid large sums of money by respondent Jones, relied largely upon the opinion and recommendation of said foremen as to whether or not the finishing materials used by them were satisfactory. One of said employers testified that, while he examined the furniture after it was finished with certain materials to determine whether its appearance was satisfactory, he relied pretty nearly 100 percent on the recommendations of the foreman finisher, because said foreman was the only man in the organization who knew anything about the finishing, or the mixture, or the application of the finishing materials.

PAR. 11. In trade territories where the representatives or salesmen of paint and varnish companies make payments of substantial sums of money to employees of customers and prospective customers to

induce such employees to use their influence in having their employers purchase or use the materials sold by the companies represented by the salesmen giving such moneys, representatives or salesmen of competing companies, not resorting to such practices, find it practically impossible to obtain any considerable amount of business. In one instance a high class salesman employed by a company to travel in the paint and varnish sales territory in Virginia and North Carolina reported to his employers that it was almost impossible to obtain any business in that territory without resorting to the practice known as commercial bribery. Because of this report and of the unwillingness of the company in question to resort to said practices it withdrew its representative from that territory, after expending a considerable amount of money in an unsuccessful effort to obtain business legitimately. There are manufacturers of varnish and kindred products who sell, or attempt to sell, or have attempted to sell their products in commerce in competition with respondent Cook Paint & Varnish Co. in the States of Virginia and North Carolina and other States of the Union, whose companies do not engage in the practice known as commercial bribery.

PAR. 12. The foregoing acts and practices of respondents, and each of them, of secretly giving or offering to give substantial sums of money to employees of customers or prospective customers of said respondents, or those of said respondents' customers or prospective customers, without the knowledge or consent of their employers, as inducements to influence said employees to purchase the products of respondents, or to recommend such purchases to said employers, or to recommend to said employers the use of respondents' products, or as promised gratuities for having induced such purchases by such employers, or for having recommended the use of respondents' products to such employers or to influence such employers to refrain from dealing or contracting to deal with competitors of respondents, or to influence such employers to continue to deal with respondents have had the capacity and tendency to injure respondents' competitors and have injured said competitors by unfairly diverting trade from their goods to those of respondents, and have otherwise injured said competitors of respondents; and the effect of the aforesaid acts and practices of respondents has been to eliminate fair competition based upon the price and quality of competing products.

CONCLUSION

The acts and practices of respondents, and each of them under the conditions and circumstances as described in the foregoing findings are to the prejudice of the public and respondents' competitors

Order

18 F.T.C.

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".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents thereto, the testimony and evidence introduced, and the briefs and oral arguments of counsel for the Commission and counsel for the respondent Cook Paint & Varnish Co., and the Commission having made its findings as to the facts and its conclusion that respondents and each of them 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 respondent Cook Paint & Varnish Co., a corporation, and its officers, directors, agents, representatives, servants, employees and successors, or each of them, and respondent, Mark L. Jones, individually, in connection with the advertising, offering for sale, and sale in commerce between and among the several States of the United States and in the District of Columbia of varnish, shellac, paints, wood-fillers, and kindred products, do cease and desist from directly or indirectly—

Secretly giving or offering to give sums of money to employees of customers or prospective customers of Cook Paint & Varnish Co., or those of its competitors' customers or prospective customers, without the knowledge or consent of their employers, as inducements to influence said employees to purchase the products of respondent Cook Paint & Varnish Co., or to recommend such purchases to said employers, or to recommend to said employers the use of respondent Cook Paint & Varnish Co.'s products, or as promised gratuities for having induced such purchases by such employers, or for having recommended the use of respondent Cook Paint & Varnish Co.'s products to such employers or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, or to influence such employers to continue to deal with respondent Cook Paint & Varnish Co.

It is further ordered, That the said respondents, Cook Paint & Varnish Co., a corporation, and Mark L. Jones, an individual, within 60 days from and after the date of the service upon them of a copy of this order, shall each file with the Commission a report

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Dissent

in writing setting forth in detail the manner and form in which they are complying and have complied with and conformed to the order to cease and desist hereinabove set forth.

Commissioner Humphrey dissenting, in memorandum attached.

Dissent of Commissioner Humphrey

One of the one hundred and twenty-five employees of the respondent, Mark L. Jones, admitted three acts of bribery. He plead guilty to these acts and was fined. All this occurred and Jones left the employ of the respondent more than one year before the complaint was issued. These three acts of Jones constituted the only wrongdoing charged in the complaint. This was stated by the attorney for the Commission at the final argument of the case. There is no evidence and no act from which it can be presumed that such bribery will ever be renewed. All the circumstance and evidence is to the contrary. Under these circumstances, the Commission has no jurisdiction. There is no direct evidence of any kind that goes to show that the respondent, Cook, ever knew anything about the actions of Jones, complained of, and every act and circumstance, and Cook's whole business career, gives a lie to such conclusion.

The witness, McDonald, is discredited by his own testimony, and shown unworthy of belief. The other witnesses depended upon to show knowledge on the part of Cook are confessed bribe takers. The attempt to show guilty knowledge on the part of Cook by introducing pleas of guilty on the part of Jones, when Cook was in no way connected with or had knowledge of the proceedings, is a legal outrage and undoubtedly prejudiced the right of Cook.

But suppose, but by no means admitting, that the respondent did know of these three acts of bribery committed by Jones—which as I have said, constitute the only wrongdoing charged in the complaint—Do these three acts of one employee out of 125 constitute a method of doing business by the respondent? What would be the legal sense of issuing an order for respondent to cease and desist from a practice when it is admitted that such practice was abandoned more than three years ago, and more than a year before the complaint was filed and there is no testimony or circumstance from which the inference can be drawn that it is to be resumed. I cannot see any justification for the expenditure of time and money in the prosecution of a case that is so manifestly without public interest.

Order

18 F.T.C.

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

MODIFIED ORDER TO CEASE AND DESIST

Docket 1597. Order, Sept. 25, 1933

Order modifying order in 15 F.T.C. 38, relating to the use of trade or other names which include the words "milling company", or words of like import, and the making of representations, by concerns engaged in the purchase, mixing, and sale of plain and selfrising flour, in competition with others similarly engaged, and also with those actually grinding wheat into flour and making and selling such products; as in the order set forth.

The motion heretofore filed by counsel for the Commission to modify the order to cease and desist that was originally issued by the Commission in the above-entitled case, having been heretofore, after due notice to respondents, presented and submitted to the Commission, and the Commission, having considered the same and being fully advised in the premises, now sustains said motion to modify said order to cease and desist.

It is therefore ordered, By the Commission that the cease and desist order heretofore issued by the Commission in this case be, and hereby is, modified by changing the period at the end of the first paragraph thereof to a semicolon and adding immediately thereafter the following words, to wit:

unless and until respondent shall insert and use also the words "Not Grinders of Wheat" in immediate conjunction with its title, corporate name, trade name or other designation, and in letters equally legible and conspicuous, when said title, corporate name, trade name or other designation is used on stationery, letterheads, bags, containers, advertising matter, or otherwise.¹

It is further ordered, That all other portions of said original order be and remained unaffected by this order.²

¹ Said paragraph required respondents, their representatives, etc., to—

"Cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the words 'milling company' or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour sold or offered for sale by them or either of them under such title or name, or by or through any such representations."

² The second and remaining paragraph of the order constituted the usual compliance provision calling for such a report within 60 days.