

IN THE MATTER OF
ELI DANE, TRADING UNDER THE FIRM NAME AND
STYLE OF YORK RADIO COMPANY

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

Docket 2268. Complaint, Dec. 18, 1934—Order, Feb. 15, 1935

Consent order requiring respondent, his agents, etc., or successors, in connection with the manufacture, sale and offer in interstate commerce of radio sets, to cease and desist from—

- (a) Applying directly or indirectly or attaching or using on any radio set made, assembled and sold by or for him, escutcheon plates, or marks or other means of identification bearing the name "Edison" or "Victor", whether used alone or with prefixes or suffixes or with other names or markings;
- (b) Marking or branding, or directly or indirectly making or using any representations or assertions in advertisements, trade literature, wrappers, cartons or containers, or in signs or sales talks, radio broadcasts or other wise with the words "Edison" or "Victor", whether alone or with prefixes or suffixes or with other names or markings, or to the effect that said sets are the products of "Edison" or "Victor" or are made, assembled and sold, or sponsored, approved, licensed, authorized or consented to by said Edison, or Edison or Victor companies, as specified, or persons or concerns legally qualified to act for them in such matters.

Mr. Carrel F. Rhodes for the Commission.

Dane & Weinstein, of Washington, D. C., for respondent.

COMPLAINT

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 having reason to believe that Eli Dane, trading under the firm name and style York Radio Company, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eli Dane, owns and has caused to be registered with the New York County Clerk's Office, New York City, the trade name "York Radio Company", under which name respondent operates.

PAR. 2. Respondent, Eli Dane, now is and for more than one year last past has been engaged under the name and style of "York Radio

Company" with his office and principal place of business at 135 Liberty Street, New York City, State of New York, in the business of manufacturing or assembling radio sets and selling them to the retail trade. Respondent conducted his said business in the name of "York Radio Company" in partnership or association with Bernard Buchwald from December 18, 1933, to April 17, 1934, when the partnership or association was dissolved. Since April 17, 1934, respondent has continued the conduct of said business in the name of York Radio Company. Respondent sells said radio sets to retail dealers and customers located in the various States of the United States other than in the State of New York, and when so sold respondent causes said radio sets to be transported from the City of New York, State of New York, through and into other States of the United States, other than the State of New York, to the purchasers thereof at their respective locations. In the course and conduct of his said business respondent is in competition with various other persons, partnerships, and corporations engaged in the business of manufacturing or assembling radio sets, and selling them to retail dealers and the public in interstate commerce.

PAR. 3. Respondent, Eli Dane, in the course and conduct of his business has adopted and followed the scheme and method of appropriating the names of well-known manufacturers and applying them to the radio sets manufactured or assembled and sold by him as aforesaid, thereby appropriating to himself their goodwill by the sale of his said radio sets to the purchasing public as sets made by said manufacturers.

PAR. 4. For more than thirty years prior to his death on October 18, 1931, Thomas A. Edison had been known and recognized throughout the various States of the United States and foreign countries as the inventor, patentee, owner, and manufacturer of numerous electrical devices of various kinds and descriptions, and of machines for the reproduction of the human voice, which have acquired a wide and favorable reputation, and are in great demand by the trade and purchasing public who desire Edison products. Among the machines for the reproduction of the human voice manufactured by companies which the said Thomas A. Edison organized and controlled are phonographs, dictaphone and transcribing machines, radios, combination radios and phonographs, and many other articles of various kinds and character such as storage batteries, spark plugs, ignition coils, and household electrical appliances. Many of the machines and articles above referred to bear the name "Edison" as part of their brand names, and said name "Edison" has acquired

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a valuable goodwill as identifying the manufacturer of such machines or articles.

Among the companies organized and controlled by the said Thomas A. Edison before his death, is Thomas A. Edison, Inc., which said company is still engaged in the manufacture of many of the machines and articles invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the years 1928 to 1930, inclusive, manufactured and sold radio sets valued at many millions of dollars, and during the said period spent several millions of dollars in advertising its said radio products. All of the radio sets manufactured and sold by Thomas A. Edison, Inc., featured the name "Edison" as part of their brand name.

PAR. 5. Respondent, Eli Dane, in the course and conduct of his said business conducted in the name of York Radio Company has purchased what are known as escutcheon plates, which plates bear various names and which are attached in a prominent place to radio sets. Respondent has purchased and attached to radio sets manufactured or assembled, and sold by him, escutcheon plates bearing the name "Edison Stores". Respondent has no authority or license from Thomas A. Edison, Inc., to use the name "Edison" on the radio sets manufactured, assembled and sold by him, and his said use of that name has the capacity and tendency to, and does, mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets manufactured or assembled, and sold by respondent are radio sets which have been manufactured by Thomas A. Edison, Inc., and to cause the trade and purchasing public to buy said radio sets in that belief.

PAR. 6. For many years last past the Victor Talking Machine Company, Camden, N. J., has been manufacturing and selling phonographs and phonograph records, which phonographs have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public. During all this period the phonographs, phonograph records, and other articles manufactured and sold by said company have featured the name "Victor" as part of their trade name, which said name has been attached in a prominent place to said machines. In 1929 the Radio Corporation of America obtained control of said Victor Talking Machine Company, and organized a company under the corporate name of "R. C. A.-Victor Company", which company is engaged in the manufacture and sale of radio sets and combination radio and phonograph sets, among other articles. All of said sets bear the name "Victor" either alone or in combination with other letters or words, in a prominent place on said sets. Said radio sets and combination radio and phonograph

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sets are sold to the purchasing public by retail dealers throughout the United States. During the past twenty-five years the Victor Talking Machine Company have spent approximately \$70,000,000 in advertising, and the word "Victor" has always prominently appeared in said advertising. At the present time, R. C. A.-Victor Company is advertising its radio sets in a number of magazines having a large national circulation, and in other publications and newspapers.

PAR. 7. Respondent, Eli Dane, in the course and conduct of his said business conducted in the name of York Radio Company, has purchased escutcheon plates bearing various names which he has attached in a prominent place to radio sets manufactured or assembled, and sold by him. Among the escutcheon plates which respondent has purchased and attached to said radio sets are plates bearing the name "Victor International". Respondent has no authority or license from R. C. A.-Victor Company to use the name "Victor" on the radio sets manufactured, assembled and sold by him, and the use of said name "Victor" by respondent on said radio sets manufactured or assembled, and sold by him has the capacity and tendency to, and does mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets manufactured or assembled, and sold by respondent are radio sets which have been manufactured by the R. C. A.-Victor Company, and to cause the trade and the purchasing public to buy said radio sets in that belief.

PAR. 8. The use by respondent, Eli Dane, on radio sets manufactured, assembled and sold by him of the names "Edison" and "Victor", in the manner set forth, hereinabove, is false, deceptive and misleading to the trade and purchasing public, and tends to, and does divert trade to respondent from his said competitors who do not use such false, deceptive and misleading names for radio sets manufactured, assembled and sold by them.

PAR. 9. The above alleged acts and things done by respondents are each and all of them to the prejudice of the public and respondent's competitors, 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

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",

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the Federal Trade Commission on the 18th day of December 1934 issued its complaint against Eli Dane, doing business under the name and style of York Radio Company, respondent herein, and caused the same to be served upon him as required by law, in which complaint it is charged 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 January 9, 1935, said respondent filed herein an answer in writing to said complaint. Subsequently, said respondent filed herein a petition to withdraw its said answer and asking that a new answer, therewith submitted, be filed in lieu thereof, which said petition was granted by the Commission and said new answer was accordingly filed. By said new answer respondent elected to refrain from contesting this proceeding and consented to the issuance of an order to cease and desist from the practices set forth in the complaint herein.

Therefore, this proceeding came on regularly for disposition and decision by the Commission under Subdivision (2) of Rule III of the Rules of Practice and Procedure adopted by the Commission, and the Commission being fully advised in the premises:

It is ordered, That the respondent, Eli Dane, his agents, representatives, employees, or successors in connection with the manufacture, sale, offering for sale, and distribution in interstate commerce between and among the several States of the United States and the District of Columbia or any territory of the United States, of radio sets, cease and desist:

1. From directly or indirectly applying, attaching to or using or causing to be applied, attached to or used on any radio set manufactured, assembled and sold by or for respondent, escutcheon plates, brands, marks or other means of identification in any manner whatsoever bearing the names "Edison" or "Victor", whether said names "Edison" or "Victor" are used alone or with prefixes or suffixes or together with other names or markings.

2. From marking or branding or directly or indirectly making or using any representations, statements or assertions in advertisements, trade promotional literature, on wrappers, cartons or containers, or signs, or in any sales talks, radio broadcasts, or in any other manner whatsoever with the name "Edison" or "Victor", whether said names "Edison" or "Victor" are used alone or with prefixes or suffixes or together with other names or markings, or to the effect that the said radio sets manufactured, assembled and sold by respondents in interstate commerce are the products of "Edison" or

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"Victor" or are products manufactured, assembled and sold, or sponsored, endorsed, and approved, or licensed, authorized, or consented to, by:

(a) 1. Thomas A. Edison; 2. Thomas A. Edison, Inc.; 3. Companies which Thomas A. Edison organized and controlled; or 4. Any person, corporation, or partnership licensed, authorized or empowered by Thomas A. Edison or Thomas A. Edison, Inc., so to do.

(b) 1. Victor Talking Machine Company, Camden, N. J.; 2. R. C. A.-Victor Company; or 3. Any person, corporation, or partnership licensed, authorized, or empowered by them or either of them so to do.

It is further ordered, That said respondent shall, within 60 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 hereinabove set forth.

IN THE MATTER OF
MALLORY CLOTHES, INC.

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

Docket 2197. Complaint, June 13, 1934—Decision, Feb. 13, 1935

Where a corporation engaged in the sale of men's clothing direct to wearer, through salesmen or solicitors compensated by receipt as their commission of the customer's down payment with his order—

- (a) Represented in advertising for such salesmen in trade journals and other papers and publications that it was in the business of making clothing to measure and stated in letters to prospective salesmen, that it had "been making shipments of clothing and selling it direct to the wearer for many years", facts being that the great bulk of its business consisted in selling ready-made clothes which it kept in stock and used in filling customers' orders, and only a very small percentage of its clothing was made to measure; with tendency and capacity to mislead many persons engaged in the business of taking orders for clothing, and with intent and effect of so doing, and enticing persons to enter its employ and sell its clothing, and represent in reliance upon said statements and inducements that all of the clothing sold by them for it was tailor made by it for the individual purchaser and to his measurement;
- (b) Set forth upon cards supplied its said agents or salesmen and bearing the name of the particular agent that it had "representatives in all principal cities", and factories in Brooklyn, Newark, and New York, facts being that it had no such representatives other than the casual or itinerant salesmen or agents working on a commission basis, or such factories, and its aforesaid ready-made clothing was made in factories neither owned nor controlled by it, and the small percentage of its clothing actually made to measure, was made by certain tailors engaged by it from time to time for such purpose; with intent of creating in the minds of prospective purchasers the belief that its business was of such proportions that it maintained representatives and places of business in all of the principal cities of the United States, and that it owned and maintained factories in which it manufactured the cloth and material out of which its clothing was made, as added inducements to prospective purchasers and the public;

With effect of diverting trade from competitors to it through such false and misleading advertising and agents' statements, and with tendency so to do: *Held*, That such acts and things were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hildrop for the Commission.

Mr. Ralph Nathan, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged