

Complaint

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IN THE MATTER OF

ARMSTRONG RUBBER COMPANY, INCORPORATED

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2365. Complaint, Apr. 15, 1935—Order, Aug. 8, 1935*

Consent order requiring respondent corporation, its officers, etc., in connection with the advertisement, offer for sale, and sale in interstate commerce and in the District of Columbia of automobile tires and tubes, to cease and desist from—

Representing by advertisements, circulars, catalogs or by any other manner that prices at which it sells its products to the consumer are manufacturer's wholesale prices, or that it sells its products to the consumer under a plan or method of distribution by means of which all costs, profits or other charges of middlemen are eliminated, or that the proceeds of such savings by reason of the elimination of such middlemen, accrue to purchasers from it, unless and until such representations are true in fact; or Representing in advertisements, circulars, catalogs or otherwise that the tires sold by it contained more plies of fabric in their composition than is the case.

Mr. Marshall Morgan for the Commission.

Mr. Albert H. Barclay, of New Haven, Conn., and *Tilson, Stanley & McCuen*, of Washington, D. C., for respondent.

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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 Armstrong Rubber Company, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, 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 Armstrong Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business in the city of West Haven, Conn. It is now and for more than two years last past has been engaged in the manufacture of automobile tires and tubes and in the sale thereof between and among the various States of the United States. It causes such automobile tires and tubes when sold by it to be transported to the purchasers thereof in the State of Connecticut and to other pur-

chasers located in the various States of the United States and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in such automobile tires and tubes between and among the various States of the United States. In the course and conduct of its said business the respondent is now and for more than two years last past has been in substantial competition in commerce between and among the various States of the United States with various other corporations and with partnerships, firms and individuals engaged in the sale of automobile tires and tubes.

PAR. 2. In the course and conduct of its said business, as described in paragraph 1 hereof, the respondent Armstrong Rubber Company has entered into and still enters into arrangements with wholesale and retail tire dealers and distributors engaged in the sale of automobile tires, tubes and accessories in various States of the United States, under and by virtue of which said arrangements such dealers and distributors carry and sell the tires and tubes of respondent on consignment. Automobile tires and tubes were and are consigned to such dealers and distributors under and in pursuance of a so-called "Consignment Agreement". Under the terms of such agreement it is provided that the merchandise shall be consigned at prices indicated by respondent in a "Manufacturer's Net Price List" attached to the consignment agreement. Title to the consigned merchandise and to the proceeds thereof, it is provided, is to remain vested in the respondent. It is further provided in said consignment agreement that the consignee is to use his best efforts to sell said consigned merchandise at the best price that can be obtained therefor over and above said consigned price. Sales of consigned merchandise are to be made by the consignee only for cash on delivery and in no instance for less than the consigned price. It is further provided in said agreement that the consignee is not an agent of the respondent and that all monies received from the sale of merchandise shall be held in trust for the respondent until turned over or accounted for by the said consignee. While the said agreement is in force and effect, said consignee is entitled under said agreement to use, does now and has used, the name, signs, advertising matter, etc., of the respondent.

PAR. 3. Prices which the consignee or distributor pays and has paid under the above described consignment arrangement for tires and tubes are set forth in a list furnished by respondent to its consignees entitled "Confidential Distributors' Net Cost".

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On two of the four pages of this list there has been and is conspicuously printed the following:

"WARNING!" This is the Distributors' Net Cost and must be kept confidential!

Across two other pages of this "Net Cost", there has been and is the following, also conspicuously printed:

"WARNING!" This is a Wholesale Price list and must be kept confidential!

Prices which the dealer or distributor in turn charges and is to charge the purchasing public are printed in a list supplied said dealer or distributor by the respondent herein, said list being entitled: "Armstrong Direct from Factory Prices." Said "Direct from Factory Prices" are not, in fact, and were not intended to be, "Direct from Factory Prices," but on the contrary are and have been higher in each instance than factory-to-dealer prices, and were and are intended so to be, the dealer being instructed, as hereinbefore stated, to sell consigned merchandise, "for the most money that he can obtain for the same over and above the manufacturer's price to the consignee".

In truth and in fact price quotations set forth in the aforesaid confidential "Distributor's Net Cost" list of prices to dealers are and have been substantially lower throughout than the prices published in the "Direct Factory Price List" covering resale prices quoted to users and purchasers.

On Armstrong DeLuxe Heavy Duty Tires, the following among other differences in prices, have existed:

Size	Confidential factory price to dealers.	Factory price to user.
29 x 4.40-21.....	\$6. 15	\$8. 45
30 x 5.00-20.....	7. 60	10. 45
35 x 7.00-21.....	14. 30	19. 75

On High Pressure Passenger Car Tires, were the following, among other differences in prices:

Size	Confidential factory price to dealers.	Factory price to user.
32 x 4 1/4.....	\$11. 05	\$15. 80
30 x 6.....	13. 40	17. 05
32 x 6.....	22. 25	32. 85
42 x 9.....	70. 85	101. 20

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On Armstrong Semi-Balloons for regular old style wheels, were the following among other differences in prices:

Size	Confidential Factory Price to Dealers.	Factory Price to User.
31 x 4.40-23.....	\$6.20	\$8.15
31 x 4.95-24.....	9.50	12.65
34 x 5.77-24.....	13.05	17.35

PAR. 4. In truth and in fact substantial differences exist and have existed between respondent company's prices to dealers and to purchasers in the sale of tire tubes. Extra heavy, red, high-pressure tubes, size 30x3½, have been priced to dealers at 75 cents each, to purchasers at \$1.15; size 32x4, to dealers at \$1, to purchasers at \$1.65; size 33x7.00-19, to dealers at \$1.75, to purchasers at \$3.50. In truth and in fact substantial differences between the prices to dealers and those to purchasers appear and have appeared throughout the entire list of tubes as advertised and offered for sale by respondent company.

PAR. 5. In further connection with the sale of its tires respondent represents and has represented to the user or purchaser in advertising circulars that respondent's automobile tires contain and have contained two more plies or layers of rubber-dipped or impregnated fabric than said tires actually contain or have contained. In the confidential price list circulars issued to dealers, appear and have appeared the following statement or explanation:

Number of plies indicated are *Full Plies* from bead to bead. Each tire in addition has two breakers.

In said advertising matter or circulars intended to be read by the purchaser tires which are now and were described to the dealer as "four-ply" tires are and were described as "six-ply" to the user or purchaser, a footnote explanation reading: "Two plies are breakers." Tires actually containing six-ply are and were described as "eight-ply" to the user or purchaser with the same footnote explanation, and advertising matter intended for the purchaser carries and has carried this same two-ply increase on all tires up to and including eighteen-ply-tires, the latter being represented to the consumer as "twenty-ply" with the same footnote explanation "two plies are breakers".

In truth and in fact said tires advertised and represented by respondent as "six-ply" were and are in fact "four-ply"; the tires advertised and represented as "eight-ply" were and are in fact "six-ply"; tires advertised and represented as "ten-ply" were and are in

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fact "eight-ply" and all other grades and sizes of tires advertised and represented by the respondent as containing a certain number of plies actually contain and have contained two plies less than the number so represented and advertised.

PAR. 6. In respondent's said advertising matter containing user or purchaser prices, among other statements, are and have appeared the following:

These prices subject to change without notice, but remember that you can always buy Armstrong tires at Direct-from-Factory prices that are substantially lower than tires of comparable quality.

Free advice. We will gladly give you the benefit of our experience in solving your truck and bus problems. Let us help you reduce your tires expenses.

Note that we replace damaged tires with a new tire. We do not ask you to accept a repair job.

Armstrong Direct-from-factory, effective August 1, 1933. Armstrong Insured Tires at Direct Factory Prices.

When in truth and in fact purchasers cannot and were not permitted to buy Armstrong tires at "direct from factory prices," substantially lower than tires of comparable quality. The tire expenses of purchasers were not reduced and respondent's price to purchasers were not "direct from factory prices", effective August 1, 1933, or of any other date.

Said "confidential distributors' net cost" list of prices and the said Armstrong "direct-from-factory prices", were effective on identical dates.

In further connection with the conduct of the business of respondent catalogs and sales folders were issued in large numbers and mailed to numerous persons throughout the respective States of the United States. Said catalogs in various instances and places emphasized alleged "at factory prices" and "the Armstrong one-way profit," and "direct-from-factory prices".

Emphasis was placed upon the claim that "everywhere we sell the car owner direct for cash." In these same catalogs also appeared the following statements:

In the larger towns without any increase in price, our local factory representative has these tires in stock, ready for mounting, free of charge.

In the larger towns, without any increase in price, we offer you these same fine tires through our local factory representatives who also give you the benefit of local service.

The stock of tires you see in our representative's store is owned entirely by us. He simply puts them on your car for us and we pay him a small fee for doing so. No charge for mounting.

When in truth and in fact local representatives in larger towns do not mount and have not mounted tires free of charge to the pur-

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chaser; said purchaser does not obtain and has not obtained said respondent's tires in the larger towns without increasing the price and the fee alleged to be paid and to have been paid to respondent's representatives by respondent for mounting tires is not and has not been paid by said respondent but by the user or purchaser of the tire instead.

PAR. 7. The hereinbefore described consignment plan, in connection with which the respondent herein issued advertising matter in the shape of catalogs, advertising circulars, etc., was adopted in 1931. In the year 1933, the said respondent company modified its selling plan to the extent of furnishing advertising matter and material to agents or consignees located in various cities of the United States. Said advertising matter consisted of circulars and folders and newspaper cuts and matrices to be used by respondent's dealers and distributors in advertising respondent's products, respondent continuing as theretofore to defray the expenses of such advertising.

In the said advertising thus furnished to and used by respondent's agents or consignees appear and have appeared such statements addressed to the consumer as the following:

Your money is protected when you buy Armstrong insured tires at direct factory prices.

Drive in! Pay factory prices for tires and tubes. Do not pay more.

A direct factory price through your neighborhood dealer.

Space has been left at the bottom of all advertising copy for the insertion of the name and address of the particular dealer using the advertisement.

In a group dealer advertisement inserted in a daily paper appeared the following:

* * * We are your neighborhood Armstrong dealers as direct representatives of the Armstrong factory in West Haven, Connecticut. You save all the in-between-profits by buying from us. * * *

and

Direct from the factory * * *

and further

Pay factory prices and then get the world's strongest guarantee in writing.

In circulars resembling newspapers, designated as the "Armstrong Traveler", these likewise issued by respondent to respondent's agents and consignees to be used with purchasers and prospective purchasers of tires and tubes have appeared among other statements, the following:

Your money is protected when you buy Armstrong insured tires at Direct-factory prices. * * *

Direct-factory prices through your neighborhood dealer.

When in truth and in fact the so-called "in-between profits" are not and have not been saved by users and purchasers of respondent's tires buying from respondent's so-called "direct representatives." Said tires and tubes do not represent and have not represented "Factory", "direct factory," or "direct from factory prices".

Respondent's said consignment arrangement for the sale of its products has been continued as a business plan and policy. During and since the year 1934, the respondent company has continued to arrange advertising material for its dealers and consignees, leaving blank spaces as heretofore for the addition of the name and address of the dealer. Dealers write and have written in to the advertising department of respondent, furnishing their ideas respecting advertising matter and respondent's advertising department thereupon writes and has written appropriate copy therefor and orders and has ordered the printing of circulars with blank space as stated, left at bottom, for the addition of the distributor's name and address. Under this described arrangement the dealer now pays half and respondent pays the other half of the cost of said advertising.

PAR. 8. The use by respondent of the above and foregoing false representations as described in paragraphs 3 to 7, inclusive, herein, have and have had the capacity and tendency to mislead and deceive the public into the erroneous belief that respondent's prices to the user and consumer are and were in fact direct factory one-profit prices with no in-between or middleman's profit and that respondent's tires contain and have contained the number of plies they are and were represented to contain, and have thereby induced and do induce the consuming public to purchase respondent's tires and tubes in preference to tires and tubes of similar kinds and quality offered by manufacturers, retail dealers, and distributors who in connection with their sales do not misrepresent the fact or existence of a middleman's profit or commission comparable with the profit of a retail tire dealer and do not misrepresent the number of plies in tires advertised and sold by them in interstate commerce. As a result of such false and misleading representations on the part of respondent trade is diverted to respondent from such competitors in interstate commerce and thereby substantial injury is done and has been done by the respondent to substantial competition in interstate commerce and there is and has been placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive and have misled and deceived the purchasing public.

PAR. 9. Said representations of respondent contained in its respective catalogs and advertising matter used by and distributed through respondent's dealers and consignees have resulted in injury to respondent's competitors and to retail dealers, and to the prejudice of the buying public, and constitute unfair methods of competition 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 coming on for final hearing by the Federal Trade Commission on the record, including the complaint of the Commission issued under 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", and respondent's amended answer thereto in which respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and, pursuant to the Commission's Rules of Practice with respect to answers, consents that the Commission may make, enter and serve upon respondent without a trial, without evidence, and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That respondent, Armstrong Rubber Company, Inc., a corporation, its officers, agents, servants, employees, in connection with the advertising, offering for sale, and selling in interstate commerce, and in the District of Columbia, of automobile tires and tubes, do cease and desist from:

(a) Representing by means of advertisements, circulars, catalogs, stationery, or by any other manner, or assisting or participating in the circulation in interstate commerce of any advertisements, circulars, catalogs, stationery or other media representing that prices at which respondent sells its products to the consumer are manufacturer's wholesale prices or that respondent sells its products to the consumer under a plan or method of distribution by means of which all costs, profits or other charges of middlemen are eliminated; or that the proceeds of such savings by reason of the elimination of such middlemen, accrue to purchasers from respondent, unless and until such representations are true in fact.

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(b) Representing in any advertisements, circulars, catalogs, stationery, or otherwise, or assisting or participating in the circulation in interstate commerce of any advertisements, circulars, catalogs, stationery or other media representing or indicating, or having the capacity or tendency to indicate from the text in which such representation appears that the tires sold by respondent contain more plies of fabric in their composition than they actually contain.

It is further ordered, That the respondent within 60 days from and after the date of service upon it of this order shall file with the Commission a report or reports, in writing, setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinbefore set out by the Commission.

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IN THE MATTER OF

JONES BROTHERS PUBLISHING COMPANY

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

Docket 2433. Complaint, June 10, 1935—Order, Aug. 8, 1935

Consent order requiring respondent corporation, its officers, etc., in connection with soliciting the sale of, selling and distributing a set of history books in interstate commerce, to cease and desist from falsely,—

- (a) Representing that said books are new and up to date or that it is staging a special introductory campaign limited as to time or to a few selected and outstanding individuals, and that the set is shortly to go on regular sale at a price several times that involved in the introductory offer; or
- (b) Representing that the subscriber or prospective purchaser is receiving absolutely free an unbound set, and that the only cost is the payment of a purported wholesale contract price for binding the same, and that it has made an arrangement with independent book binding companies to bind said work at a saving to the prospective purchaser; and

Ordered further that respondent in connection with soliciting the sale of, selling and distributing any set of books in interstate commerce cease and desist from,—

- (c) Labeling, designating, naming or describing the same set of books under more than one title.

Mr. Morton Nesmith for the Commission.

Waite, Schindel & Bayless, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 the Jones Brothers Publishing Company, a corporation, hereinafter referred to as respondent, has been and 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 thereto would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. The respondent, Jones Brothers Publishing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business at Arbor Place, Norwood, a suburb of Cincinnati, in the State of Ohio.

Respondent corporation for more than three years last past has been and is now engaged in the business of selling and distributing a set of nine volumes of history books, and owns the dies for the