

Complaint

IN THE MATTER OF

AMERICAN ARMY AND NAVY STORES, INC.

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

Docket 2284. Complaint, Jan. 25, 1935—Decision, Nov. 26, 1935

Where a corporation, engaged in the conduct of a mercantile establishment, the inventory of which never showed more than ten or fifteen percent of goods procured from the Army or Navy Departments through purchase of products offered by said departments in sales of surplus, reject and refuse goods—

Caused its corporate name, in which were included words "Army and Navy", to be displayed in large signs about its mercantile establishment and in trade journals, circulars and advertisements in newspapers and other periodicals, and featured the words "Army and Navy" therein as prominently as other portions;

The facts being that, while aforesaid corporation was organized chiefly to engage in purchase and resale of such surplus, reject and refuse goods, said departments began to curtail sharply the quantity thereof offered annually in the open market a number of years after the war, until, for some years since, no such goods had been thus offered, and such products had been ultimately absorbed for the conduct of retail trade by said corporation and other individuals and concerns similarly engaged;

With the result that various members of the purchasing public came to the belief that goods purchased in its establishment were substantially all, if not all, procured from the Army and Navy and were of the quality and nature used by said departments, and that a substantial bargain with reference to price and quality would be therein obtained, and were induced by reason thereof to make purchases from it, and with capacity and tendency thereby to mislead the purchasing public, and with effect of diverting trade to it from competitors, who offer to sell merchandise identical with the bulk of its inventory, similarly purchased from the ordinary marts of trade, without the use of such misleading and deceptive practice, and of causing substantial injury to substantial competition in the District of Columbia:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II, and *Mr. Alden S. Bradley* for the Commission.

Mr. H. Mitchell Pfeffer, 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 Commis-

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sion, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that American Army and Navy Store, 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 in that respect as follows:

PARAGRAPH 1. Said respondent, American Army and Navy Store, is a corporation organized and existing under and by virtue of the laws of the District of Columbia, having its principal office and place of business in the city of Washington, in said District. The said respondent was incorporated August 11, 1929, and since said date has been and is now engaged in the general merchandise business.

Said respondent has sold and has caused and still causes merchandise in which he deals to be transported from his place of business into and through the various parts of the District of Columbia to purchasers located therein.

In the course and conduct of his said business, respondent is in competition with other individuals, partnerships and corporations engaged in the sale and transportation of like merchandise in the District of Columbia.

PAR. 2. Since August 11, 1929, said respondent has operated under the corporate name of American Army and Navy Store. By the implied representations of said corporate name, purchasers are led to believe that the stock of merchandise held out to the purchasing public by said respondent was made for or purchased from the United States Army and Navy. In truth and in fact none of the stock of merchandise of said respondent is purchased from the Army and Navy. None of the merchandise is purchased at any Army and Navy surplus or refuse goods sales. The small amount of such Army and Navy goods carried by said respondent, if any, is bought from jobbers, wholesalers, and others who buy at such Army and Navy refuse goods sales. The remainder of the said respondent's stock of merchandise consists of the usual stock found generally in general merchandise establishments. It is purchased in the marts of commerce in which the general merchant buys his stock of goods, and is not purchased from the Army and Navy or from those who purchase merchandise at any Army and Navy surplus or refuse sales. The said respondent is in no way connected with the Army and Navy, does not have affiliation, association, or working agreement with the Army and Navy.

PAR. 3. There are, among the competitors of said respondent referred to in paragraph 1, *supra*, individuals, partnerships, and corporations engaged in the sale and distribution of like and similar merchandise within the District of Columbia, Maryland, and Virginia, which said individuals, partnerships, and corporations do not misrepresent their merchandise by the use of a false and misleading corporate, or trade name.

PAR. 4. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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" (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon the respondent herein, charging it with the use of unfair methods of competition in commerce as "commerce" is defined in said act, and the respondent having filed its answer to the complaint, testimony and evidence in support of the allegations of the complaint were taken before trial examiner John W. Addison, theretofore duly assigned by the Commission for that purpose, and which testimony and evidence were reduced to writing and filed in the office of the Commission.

Subsequently thereto, a brief in behalf of the Commission was filed in support of the allegations of the complaint, and the respondent failed to file a brief.

Thereupon, the cause came on for final hearing before the Commission on said testimony and evidence and the said brief and oral argument of Alden S. Bradley, attorney for the Commission. The respondent failed to make oral argument.

The Commission having duly considered the testimony and evidence, the aforesaid brief and the aforesaid argument, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, American Army and Navy Stores, Inc., is and has been doing business within the District of Columbia and

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the city of Washington continuously since the date of its incorporation on August 11, A. D. 1929.

PAR. 2. Respondent was organized chiefly for the purpose of engaging in, and has partially engaged in, the purchase and resale of surplus, reject, and refuse goods to be procured from the Army and Navy Departments of the United States Government, but from the date of its incorporation the respondent has been unable to procure and has never possessed any quantity of such goods in excess of fifteen per cent of its total inventory.

PAR. 3. During the year 1927, or thereabout, the Army and Navy Departments of the United States Government began sharply to curtail the quantity of goods theretofore offered by them annually in the open market, until, since the year 1932, virtually no goods of any description have been so offered.

The goods formerly offered by the Army and Navy Departments of the United States Government were ultimately absorbed for the purpose of the conduct of a retail trade by the respondent and various other persons, copartnerships, and corporations engaged in the conduct of mercantile establishments approximately identical with the one herein described as having been conducted by the respondent.

The inventory of the respondent reflects the fact of the withdrawal from the market of surplus, refuse, and reject goods of the Army and Navy Departments of the United States Government in that its inventory has never revealed more than ten or fifteen per cent of the total thereof to consist of such goods procured from the Army or Navy Departments of the United States Government as above related.

PAR. 4. There are no goods now being offered, nor, since the year 1932, has there been any substantial amount of goods offered by the Army or Navy Department of the United States Government.

PAR. 5. The respondent causes its corporate name to be displayed in large signs about its mercantile establishment, in trade journals, in circulars and in advertisements appearing in the daily newspapers and other periodicals, with the words "Army and Navy" featured therein as prominently as other portions of its corporate name.

PAR. 6. Various members of the purchasing public, upon observing the use of the words "Army and Navy" in connection with the corporate name of the respondent and in its circulars and advertisements, as hereinabove stated, have formed the conclusion or received the impression and belief, from the use of such words, that the goods to be purchased in said store were substantially all, if not all, procured from the Army and Navy Departments of the United States Government; that the goods were of the quality and nature used by

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said Departments; that a substantial bargain with reference to price and quality would be obtained in such store; and a substantial number of such members of the purchasing public have been induced, by virtue of such belief or impression, to make purchases of and from the respondent.

PAR. 7. The use by the respondent of the words "Army and Navy" in connection with its corporate name, in its advertisements and circulars, as above described, had and has the tendency and capacity to, and did and does, in fact, mislead and deceive members of the purchasing public into the false impressions and beliefs as set forth in paragraph 6 hereof.

PAR. 8. The use of the words "Army and Navy" in connection with the corporate name, circulars, and advertisements of the respondent, has caused and causes a diversion of trade from competitors of the respondent who offer to sell merchandise identical with the bulk of the inventory of the respondent and procured from the same source, i. e., the ordinary marts of trade, but who do not make use of such misleading and deceptive practice, and has caused and now causes substantial injury to substantial competition within the District of Columbia.

CONCLUSION

The practice of the respondent, doing business under the above-mentioned corporate name and using such corporate name in circulars, trade journals, and other advertising matter, under the conditions and circumstances described in the foregoing findings, were and are to the prejudice and injury of competitors of the respondent and were and are to the prejudice and injury of the public, and were and are unfair methods of competition in commerce and constitute a violation of the provisions of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony taken, and the brief filed in behalf of the Federal Trade Commission herein, and oral argument of counsel for the Federal Trade Commission, and the Commission having made its findings as to the facts and conclusion that the respondent American Army and Navy Stores, Inc., has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a

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Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondent American Army and Navy Stores, Inc., in connection with the conduct of its mercantile establishment within the District of Columbia, cease and desist from:

(1) Using in connection with its corporate name the words "Army and Navy" or either of them.

(2) Advertising or causing to be advertised in any circulars, trade journals, daily newspapers or other periodicals the words "Army and Navy" or either of them, descriptive of or in connection with any merchandise to be sold or offered for sale to the public, unless in fact the words "Army and Navy" be used specifically in connection and conjunction with particular merchandise actually procured from the Army or Navy Department of the United States Government.

It is further ordered, That respondent shall, within 90 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 this order has been complied with and conformed to.

Syllabus

IN THE MATTER OF

ARMY AND NAVY TRADING COMPANY

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

Docket 2285. Complaint, Jan. 26, 1935—Decision, Nov. 26, 1935

Where a corporation, engaged in the conduct of a mercantile establishment in the city of Washington and which was organized chiefly to engage in the purchase and resale of surplus, reject and refuse goods procured from the Army and Navy Departments, and did so engage from its organization in 1922 until the year 1927, approximately—

Caused its corporate name, including the words "Army & Navy", to be displayed in large signs about its mercantile establishment and in trade journals, circulars, and advertisements in papers and other periodicals, and in said use featured such words as prominently as other portions of its name;

Facts being that while during period 1922 to 1927, 85 to 90 percent of respondent's merchandise had been procured either directly or indirectly from such Army and Navy sales, its inventory currently reflected, as did competitors', the curtailment of such offers by said departments in said latter year, and virtual cessation thereof in 1932, and ultimate absorption of such products for conduct of retail trade by said corporation and its competitors, so that by 1932, such products had decreased to approximately 15 to 18 percent of their inventory, as contrasted with aforesaid higher proportions in said earlier period;

With the result that various members of the purchasing public came to the conclusion or received the impression that goods there purchased were substantially all, if not all, procured from the Army and Navy and were of the quality and nature used by said departments and that a substantial bargain with reference to price and quality would be therein obtained, and were induced by reason thereof to make purchases from it, and with capacity and tendency thus to mislead the purchasing public, and with effect of diverting trade to it from competitors who offer to sell merchandise identical with the bulk of its inventory, similarly purchased from the ordinary marts of trade, without the use of such misleading and deceptive practice, and of causing substantial injury to substantial competition in the District of Columbia:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II, and *Mr. Alden S. Bradley* for the Commission.

Mr. Joseph B. Stein, of Washington, D. C., for respondent.