

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.

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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 Army and Navy Trading Company, 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, Army and Navy Trading Company, is a corporation organized and existing by virtue of the laws of the State of Maryland, having its principal office and place of business located in the city of Washington, in the District of Columbia, and has been, for more than one year past, engaged in the sale and distribution of general merchandise within the said District of Columbia. Said respondent sold, and has caused and still causes the said articles of merchandise in which he deals to be sold and transported from his place of business to various purchasers located at various points in the said District of Columbia.

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. For more than one year past, said respondent has operated under the corporate name of Army and Navy Trading Company. By the 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 goods 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. Said respondent, in the conduct of his business has for some time past offered to the purchasing public a man's garment, commonly known as a "windbreaker" or jacket, as "nationally advertised—genuine buckskin jacket." Such description is false and misleading in that the reader thereof believes the jacket is made of genuine buckskin. In connection with the above advertisement appears the head of a deer. In truth and in fact, the said garment has no buckskin whatsoever in it, but is made entirely of textile fabrics.

PAR. 4. 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, or the material of which said merchandise is made.

PAR. 5. The above alleged acts and things done by respondent are all to the injury and prejudice of the public and of 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 filed its answer to the complaint. Testimony and evidence in support of the allegations of the complaint and of the issues joined by the respondent were taken before trial examiner John W. Addison, theretofore duly assigned by the Commission for that purpose, which said testimony and evidence were reduced to writing and filed in the office of the Commission subsequent thereto. A brief on behalf of the Commission was filed

in support of the allegations of the complaint, and the respondent filed its brief in support of the material allegations of its answer.

Thereupon the cause came on for final hearing before the Commission upon the testimony and evidence as adduced by counsel for the Commission and for the respondent, and brief on behalf of the Commission and oral argument of Alden S. Bradley, trial attorney for the Commission, and the brief on behalf of the respondent and oral argument of Joseph B. Stein, attorney for the respondent.

The Commission, having duly considered the testimony and evidence, the aforesaid briefs and the aforesaid arguments, 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Army and Navy Trading Company, is a corporation organized and existing under the laws of the State of Maryland, by charter issue under such authority in the year 1922, and has, since the beginning of its corporate existence maintained and now does maintain, its principal place of business in the city of Washington, in the District of Columbia, and, since the beginning of its corporate existence, has done and now does business in the District of Columbia, in the city of Washington.

PAR. 2. Respondent was organized chiefly for the purpose of engaging in, and has 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, and from the date of the organization of respondent until the year 1927, or thereabout, between 85 and 90 percent of the merchandise offered for sale by the respondent had been procured from the Army or Navy Department of the United States, either directly or indirectly, by the respondent.

PAR. 3. Respondent engaged in the business related in the paragraph last above at a time when the condition of the market afforded opportunity to secure large lots of various kinds of merchandise actually sold by the Army and Navy Departments of the Government of the United States and the respondent did make substantial purchases of such lots and maintained, as long as the market permitted, a large majority of his total inventory in such goods. The later proportionate decrease in his inventory was in consonance with the decrease in the availability of such goods. Respondent continuously advertised its corporate name in connection with advertisements of sales of its merchandise and established a substantial trade value in connection with such corporate name.

PAR. 4. 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 as well as the inventories of its competitors last above referred to, reflect the condition of the withdrawal from the market of surplus, refuse and reject goods of the Army and Navy Departments of the United States Government by decrease of the quantity of such goods in their inventories from approximately 85 to 90 percent in the year 1927 to approximately 15 to 18 percent in the year 1932.

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 & Navy", or "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 & Navy", or "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 or 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 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 respondent of the words "Army & Navy", or "Army and Navy", in connection with its corporate name and in its advertisements and circulars, as above described, had and has the

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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 & Navy", or "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 Army and Navy Trading Company has 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 the respondent Army and Navy Trading Company 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.

Provided, however, That for a period of two years from the date of the service of this order upon respondent, the respondent shall be permitted to use in connection with such corporate or trade name as it might assume the words:

Formerly Army and Navy Trading Company

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.

And it is further ordered, That respondent shall, within 24 months 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.

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IN THE MATTER OF
THE BILLINGS-CHAPIN COMPANY

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

Docket 1733. Complaint, Dec. 14, 1929—Decision, Nov. 27, 1935

Where a corporation, engaged in the manufacture of paints, with an annual business normally amounting to about \$1,000,000 a year, and selling its product principally in cans or containers of 1-gallon capacity or less for display as shelf goods in stores, and distributing its output, between 90 and 95 percent of which was disposed of at retail and consumed by the purchasing public in painting inside and outside of dwellings, etc., and on yachts, steamships, and fishing boats, through various large wholesalers and some nine hundred retail stores scattered throughout the United States, but primarily east of the Mississippi—

- (a) Conspicuously displayed the letters "U. S. N." or, later, "U. S.", on the labels of its deck paint and various other brands, representing normally between 60 and 70 percent of its total business, printed in white letters larger than any other wording on the container and on a navy blue background, and which resembled, in the striking color combination involved, official colors of the Navy, and depicted thereon the battleship *Maine*, first with, and later without, name "Maine";
- (b) Distributed large advertising display placards for paint store counters and windows which frequently depicted enlarged cans of its said paint in color, bearing the designation "U. S. N. Deck Paint" or "U. S. Deck Paint" in letters 2 inches or more high, above a battleship at sea, together with sea scenes and pictures of ship's officers in uniform, about two-thirds life size, on duty on the bridge of a vessel, in uniform very similar to that used by naval officers and in close proximity to a legend, in letters over 2 inches high, reading "U. S. Deck Paint for Sea-Swept Decks and Well Kept Homes", and in another sea scene set forth under caption "Sea Tried" and over words "The Commodore", the statement "For more than thirty years I've seen U. S. N. Deck Paint give unfailing service on ships. I recommend it for your home"; and
- (c) Reproduced, in its advertising in magazines, newspapers, circulars, etc., its said labels, both plain and in said color combination of white and navy blue, but stressing, in all cases, letters "U. S." or "U. S. N." over picture of a battleship, and frequently depicting the ocean, ships, and ships' officers in uniform, together with statements emphasizing product's successful use on vessels, such as "Sea Tried for Fine Homes", "Paint Good for Ships is Better for Homes", "U. S. Deck Paint—the famous sea tried paint is adaptable alike for outside painting, inside painting," etc.;

The facts being that while its said paint had been used on seagoing vessels for many years, it had never been used or tried upon ships of the United States Navy or Government, and it was not made for or in accordance with or in conformity with requirements, formulae, directions, or instructions of said Navy or Government, and had not been regularly used, adopted, approved, or tested thereby; said product differed in composition from that