

Syllabus

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IN THE MATTER OF

JOSEPH M. GUERRA, TRADING AS BENTON
NOVOGRAPH COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2465. Complaint, June 27, 1935—Order, Dec. 24, 1935*

Where an individual, engaged in printing invitations, announcements, calling cards, and other social and business stationery by a process in which the letters or designs were type printed thereon and thereafter "raised" by embossing—

Used words "engraving" and "engravers" in describing his products in newspaper and periodical advertisements circulated throughout the several States, and in circulars, sample books, etc., through such statements as "plate engraved", "Benton engraving is produced by an exclusive method", etc., "Plate engraved on fine velum", "There is no substitute for plate engraving", "Of course, you will not be content with anything less than genuine plate engraving", etc., and "exclusive engravers", in referring to his business or trade name;

The facts being he neither owned, nor operated an "engraving" company, and was not engaged in the business of engraving, or producing engraved stationery, and letters, etc., upon products in question had not been produced by application of the paper to inked plates upon which the words or designs had been cut or incised by hand, machine, etching, or other means below the surface thereof, as understood by trade and public as involved in the much more costly engraving preferred by many;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that he owned or operated an "engraving" company and was engaged in the business of producing and selling engraved stationery, and that the letters or designs upon his said stationery were genuine engraving as known to trade and public generally, and with capacity and tendency so to do, and with result that a substantial volume of his said products was purchased by the consuming public, and trade, to a substantial extent, was diverted from competitors, including those who truthfully represent themselves as producers of and dealers in genuine engraved stationery, and those who manufacture business and social stationery without in any manner representing themselves as manufacturers of or dealers in "engraved" products, to the substantial injury of competition in commerce, and use of words "engraving", "engraved", or "engravers" in his advertising literature, as above set forth, placed in the hands of unscrupulous agents and representatives the means of misleading and deceiving customers in the aforesaid respects and causing purchase of substantial quantities of such products as a result of said erroneous beliefs:

Held, That such acts and practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

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

Mr. J. T. Welch for the Commission.

Mr. Carlton A. Fisher, of Buffalo, N. Y., 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 Joseph M. Guerra, an individual, doing business under the trade name and style of Benton Novograph Company, hereinafter designated as respondent, is now, and has been, 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 the charges in that respect as follows:

PARAGRAPH 1. Respondent, Joseph M. Guerra, is an individual who is now, and has been at all times mentioned herein, doing business under the trade name and style of Benton Novograph Company, at 16 East Tupper Street, Buffalo, State of New York. Respondent is now, and has been, engaged in the business of printing, by a special process, stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and similar products, and in selling said products in commerce, as herein set out.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said stationery so printed, when sold, to be transported from his principal office and place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said stationery so printed or produced and sold by respondent, between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been, in substantial competition with other individuals, firms and corporations likewise engaged in the business of printing and selling stationery for social and business purposes as herein set out, in commerce among and between the various States of the United States and in the District of Columbia, and particularly with individuals, firms and corporations engaged in the business of engraving and selling engraved stationery for social and business

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purposes in commerce between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing individuals, firms and corporations to purchase said stationery products, respondent has, from time to time, caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and has printed and circulated throughout the several States to customers and prospective customers, through the United States mails, numbers of letters of solicitation, price lists, sample books, pamphlets, folders and other advertising literature, in which respondent has caused his trade name, Benton Novograph Company, to be prominently and conspicuously displayed, together with the statements:

1. Benton wedding invitations. Plate engraved.
2. Benton engraving is produced by an exclusive method which, combined with the volume of business enjoyed, brings the cost of genuine plate engraving down to a price comparable with that of "process", "relief", "thermograph", "raised lettering" or other imitation engraving.
3. Benton invitations and announcements are plate engraved on fine vellum.
4. There is no substitute for plate engraving.
5. The Benton Novograph Company unconditionally guarantees the invitations and announcements produced by them to be plate engraved on first quality vellum paper, exactly as shown. It guarantees that the engraving will be produced without error, strictly according to copy furnished.
6. The Benton Novograph Company, Exclusive Engravers.
7. The Benton Novograph Company, established 1924, makers of fine engraved stationery.
8. Of course you will not be content with anything less than genuine plate engraving.

All of said statements, together with similar statements purport to be descriptive of respondent's business and the products manufactured and sold by him. In the various catalogs, circulars and pamphlets distributed as aforesaid by the respondent, there appear numerous statements wherein the respondent refers to the process by which he prints letters, words and designs on stationery as a process of "engraving." In said catalogs, pamphlets and other circulars, as well as all other advertising literature used by him, respondent refers to the product manufactured by him as being "genuine plate engraving."

PAR. 5. Respondent, in the course of his business, as described in paragraphs 1-4, inclusive, prints invitations, announcements, calling cards, letterheads, envelopes and social and business stationery by a process which is designated by him as "plate engraving", although such process is not the process used in producing genuinely engraved stationery. Respondent does not own or operate an "engraving"

company, and respondent is not engaged in the business of "engraving". The letters, words or designs upon stationery products manufactured, offered for sale and sold by respondent, in the manner aforesaid, are not the result of "engraving" according to the trade and public understanding of the term. The process used by respondent is one whereby the letters, words or designs are type printed onto the stationery, and said letters, words or designs are then "bumped up" or "raised" by application, under pressure, of a specially prepared plate to the surface of the stationery. The letters, words or designs are photographed onto a specially prepared sensitized zinc plate and the plate is then treated with a chemical process. The plate, after said chemical treatment, with the letters, words or designs appearing thereon, is applied, under pressure, to the stationery product upon which the letters, words and designs have been previously type printed in such a way as to "bump up" or "raise" the letters on the stationery above the plane of the paper so as to closely resemble genuine engraved stationery in some of its characteristics.

PAR. 6. The word "engraving", as it is used in the graphic arts, may be applied either to an engraved intaglio plate upon which letters, words, or designs have been incised or cut, or to impressions made from such a plate. Such plates are cut or incised by hand, by machine, by etching with acid, by a transfer from other engravings and by other means, but in all cases the letters, words, or designs so to be produced upon stationery are cut below the surface of the plate. To make impressions from such a plate the ink is applied, then the plate is wiped so that the ink remains only in the lines cut below the surface. The inked plate is then put upon a piece of stationery or article to be engraved and pressure is applied sufficient to force the surface of the stationery into the lines cut in the plate, causing the ink in such lines to adhere to the paper on which the impression is to be made.

PAR. 7. The words "engraving" and "engraved", when used in connection with, or descriptive of, business or social stationery, mean, and the trade and consuming public understand, and for many years have understood, them to mean that the stationery products, so being referred to or described, contain letters, words or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application, under pressure, of metal plates which have been specially engraved, cut or carved for, and are used in, the production of such stationery by the process more particularly detailed herein in paragraph 6.

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PAR. 8. The cost of producing genuine engraved stationery greatly exceeds the cost of producing stationery of like stock, grade or character produced by the process employed by the respondent, as set out herein, and a substantial portion of the purchasing public has indicated, and has, a decided preference for engraved stationery over stationery produced by respondent's process or any similar process.

PAR. 9. The use by respondent of the words "engraving", "plate engraved", "plate engraving", "engraved", or "engravers", as set out in paragraph 4 hereof, either in describing his product or designating his business, in his advertisements in newspapers and magazines, circular letters of solicitation, catalogs, price lists, sample books, pamphlets, folders and other advertising literature, and in his general business correspondence, in offering for sale or selling his stationery products, was and is calculated to, and had and now has the tendency and capacity to, and did and now does mislead and deceive a substantial portion of the purchasing public into the erroneous belief that respondent owns or operates an "engraving" company, and that respondent is in the business of producing and selling "engraved" or "plate engraved" stationery, and that the letters, words or designs contained upon the said stationery offered for sale and sold by the respondent were and are "engraved" or "plate engraved", and are the result of the engraving process described in paragraph 6. Further, the use of the words "engraved", "engraving", "plate engraving", "plate engraved" or "engravers" in said advertising literature hereinabove referred to, especially in the catalogs, sample books, pamphlets, folders and price lists, and the placing of said advertising literature, containing said words, in the hands of agents, representatives and dealers, enables unscrupulous agents, representatives and dealers to mislead and deceive customers into the erroneous belief that respondent owns and operates an "engraving" company; and is engaged in the business of producing and selling "engraved" stationery products and that the stationery products offered for sale and sold by respondent are "engraved" products. As a direct consequence of the mistaken and erroneous beliefs, induced by the acts, advertisements and representations of respondent, as hereinabove detailed, a substantial number of the consuming public has purchased a substantial volume of respondent's stationery products, with the result that substantial injury has been done to substantial competition in commerce among the various States of the United States and in the District of Columbia.

PAR. 10. There are among respondent's competitors, many who produce "engraved" stationery products which are designed and in-

tended for business and social purposes, and who sell such "engraved" stationery products, when so produced, and transport them or cause them to be transported, to, into and through other States of the United States, to the purchasers thereof at their respective points of location; there are others among respondent's competitors who manufacture and sell in commerce as aforesaid, stationery products designed and intended for business and social purposes, but who do not manufacture or sell "engraved" stationery products and who do not, by any means or in any manner, hold themselves out, or represent themselves to be manufacturers of, or dealers in, "engraved" stationery products; and the alleged acts, practices and representations of the respondent divert a substantial volume of trade from, and otherwise prejudice and injure a substantial number of said competitors.

PAR. 11. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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".

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", the Federal Trade Commission, on June 27, 1935, issued and served its complaint in this proceeding upon respondent Joseph M. Guerra, trading as Benton Novograph Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by J. T. Welch, attorney for the Commission, before John W. Addison, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Carlton A. Fisher, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto; and the Commission having duly considered the same, and

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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, Joseph M. Guerra, is an individual who is now, and has been for a number of years past, doing business at 16 E. Tupper Street in the city of Buffalo, State of New York, under the trade name and style of Benton Novograph Company. Respondent is now, and has been, engaged in the business of printing stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and similar products.

PAR. 2. Since the date of his commencement in business, the respondent has caused the stationery products printed by him, when sold, to be transported from his principal office and place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been, a constant current of trade and commerce in said stationery so printed or produced and sold by the respondent between and among the various States of the United States.

PAR. 3. In the course and conduct of his business, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of printing and selling stationery for social and business purposes in commerce among and between the various States of the United States and is particularly in substantial competition with individuals, firms, and corporations engaged in the business of engraving and selling engraved stationery for social and business purposes in commerce among and between the various States of the United States.

PAR. 4. In the course of the operation of his business, and for the purpose of inducing the purchase of his stationery products, the respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and has printed and circulated throughout the several States, through the United States mails, to customers and prospective customers, numbers of letters of solicitation, price lists, sample books, pamphlets, folders, and other advertising literature. In all of the literature above referred to the respondent has used the following expressions:

1. Benton wedding invitations. Plate engraved.

2. Benton engraving is produced by an exclusive method which, combined with the volume of business enjoyed, brings the cost of genuine plate engraving

down to a price comparable with that of "process", "relief", "thermograph", "raised lettering" or other imitation engraving.

3. Benton invitations and announcements are plate engraved on fine vellum.

4. There is no substitute for plate engraving.

5. The Benton Novograph Company unconditionally guarantees the invitations and announcements produced by them to be plate engraved on first quality vellum paper, exactly as shown. It guarantees that the engraving will be produced without error, strictly according to copy furnished.

6. The Benton Novograph Company, Exclusive Engravers.

7. The Benton Novograph Company, established 1924, makers of fine engraved stationery.

8. Of course you will not be content with anything less than genuine plate engraving.

All of said statements, together with other similar statements purport to be descriptive of respondent's business and products manufactured and sold by him. In the various catalogs and other literature distributed by the respondent, there appear numerous statements wherein the respondent refers to the process by which he prints letters, words, and designs on stationery as a process of engraving and refers to the product manufactured by him as being genuine plate engraving.

PAR 5. The respondent prints invitations, announcements, calling cards, letterheads, envelopes, and other social and business stationery by a process in which the letters, words, or designs are type printed onto the stationery, and said letters, words, or designs are then "bumped up" or "raised" by an embossing process. The respondent does not own or operate an "engraving" company and is not engaged in the business of engraving or producing engraved stationery. The letters, words, or designs appearing upon stationery products manufactured and sold by the respondent are not the result of an engraving process according to the trade and public understanding of the term.

PAR. 6. The word "engraving", as it is used in the graphic arts, may be applied either to an engraved intaglio plate upon which letters, words, or designs have been incised or cut, or to impressions made from such a plate. Such plates are cut or incised by hand, by machine, by etching with acid, by a transfer from other engravings and by other means, but in all cases the letters, words or designs so to be produced upon stationery are cut below the surface of the plate. To make impressions from such a plate the ink is applied, then the plate is wiped so that the ink remains only in the lines cut below the surface. The inked plate is then put upon a piece of stationery or article to be engraved and pressure is applied sufficient to force the surface of the stationery into the lines

cut in the plate, causing the ink in such lines to adhere to the paper on which the impression is to be made.

PAR. 7. The words "engraving" and "engraved", when used in connection with, or descriptive of, business or social stationery, mean, and the trade and consuming public understand, and for many years have understood, them to mean that the stationery products, so being referred to or described, contain letters, words or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application, under pressure, of metal plates which have been specially engraved, cut or carved for, and are used in, the production of such stationery by the process more particularly detailed herein in paragraph 6.

PAR. 8. The cost of producing genuine engraved stationery greatly exceeds the cost of producing stationery of like stock, grade or character produced by the process employed by the respondent, as set out herein, and a substantial portion of the purchasing public has indicated, and has, a decided preference for engraved stationery over stationery produced by respondent's process or any similar process.

PAR. 9. There are among respondent's competitors, many who produce "engraved" stationery products which are designed and intended for business and social purposes, and who sell such "engraved" stationery products when so produced, and transport them or cause them to be transported to, into, and through other States of the United States, to the purchasers thereof at their respective points of location and who truthfully represent such products to be produced by the engraving process as known to the trade and public generally; there are others among respondent's competitors who manufacture and sell in commerce as aforesaid, stationery products designed and intended for business and social purposes, but who do not manufacture or sell "engraved" stationery products and who do not, by any means or in any manner, hold themselves out, or represent themselves to be manufacturers of, or dealers in, "engraved" stationery products; and the alleged acts, practices and representations of the respondent divert a substantial volume of trade from, and otherwise prejudice and injure a substantial number of said competitors.

PAR. 10. The use by the respondent of the words "engraving", "engraved", and "engravers", or any combination of words containing the aforementioned words, either in describing his product or in designating his business in the various advertisements, catalogs, and other advertising literature, or in his general business correspondence, was calculated to and has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchas-

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ing public into the erroneous belief that the respondent owns or operates an "engraving" company and that the respondent is in the business of producing and selling engraved stationery and that the letters, words, or designs contained upon said stationery produced and sold by the respondent were, and are, engraved and are the result of the engraving process as known to the trade and public generally. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, as hereinabove detailed, a substantial number of the consuming public has purchased a substantial volume of respondent's stationery products with the result that substantial injury has been done to substantial competition in commerce among the various States of the United States.

Further, the use of the words "engraving", "engraved", or "engravers" by the respondent in all of his advertising literature places in the hands of unscrupulous agents and representatives a means whereby they can mislead and deceive their customers into the erroneous beliefs as above indicated and thereby cause the purchase of substantial quantities of the respondent's stationery products as a result of the erroneous beliefs induced by said representations.

CONCLUSION

The acts and practices of the respondent are each and all to the prejudice of the public, and to the competitors of respondent, and constitute unfair methods of competition in 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and the Commission, having made its findings as to the facts and its conclusion that said respondent 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",

Now, therefore, it is hereby ordered, That the respondent Joseph M. Guerra, trading and doing business as Benton Novograph Company, his agents, representatives, and employees, in connection with

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the distribution, offering for sale, and sale of stationery products, in commerce among and between the several States of the United States and the District of Columbia, forthwith cease and desist from:

Using the words "engraved", "engraving", and "engravers", either alone or in conjunction with any other word, or words, in his advertisements and advertising literature, catalogs and general business correspondence distributed or displayed to the public in the several States of the United States, to designate or describe the business conducted by him, or the stationery products manufactured and sold by him, on which the lettering, inscriptions, or designs have been printed from inked typed faces, electrotypes, or similar devices, and which lettering, inscriptions, or designs have been given a raised letter effect by an embossing process wherein the plates used have not been previously inked so as to make an inked impression on the paper stock at the same time the embossing impression is made, or to designate or describe stationery manufactured and sold by him which does not have printed thereon inked impressions from engraved plates or dies.

It is further ordered, That the respondent shall within 60 days after the service of this order file with the Federal Trade 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.

IN THE MATTER OF

THE GENERAL IMPLEMENT COMPANY OF AMERICA,
INC., AND THE GENERAL IMPLEMENT MANUFACTUR-
ING COMPANY, INC.

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

Docket 2517. Complaint, Aug. 15, 1935—Order, Dec. 24, 1935

Where a corporation organized in February, 1932, and its subsequently incorporated subsidiary, together engaged in the assembling, repairing and repainting of a limited number of farm implements and tools at a plant acquired by it, and in the sale as new of said articles, bought in said year in liquidation proceedings of a concern, the products of which, made thereby for some fifty years, had become well and favorably known under their brand or trade name prior to its bankruptcy, and prior to new company's subsequent continuance of said concern's business under same corporate name, at same location, and under same aforesaid brand or trade name, after purchase, in said year, of its plant, equipment, patents, trade marks, and good will—

- (a) Depicted a factory on the first page of its early 1932 catalog, with the statement that its line of farm implements was made therein, and represented in its catalogs that its "Combined Soil Fitter" line had been made for the past twenty years, that its engineers had been experimenting on depth regulators for rotary hoes, and that it maintained an engineering staff engaged in constantly trying out and testing improvements on fitting tools, facts being no implements, excepting manure spreaders, were made at said plant prior to early 1934, said "Soil Fitter" line, excepting a combined Soil Fitter tool, had not been made for the past twenty years, or at all prior to the aforesaid year, and its representations respecting its engineering staff and their activities were grossly exaggerated and misleading;
- (b) Represented in catalogs, pamphlets, price lists, and other advertising literature that the purchaser would find its "Soil Fitter" line the most complete line of such tools made, and that because of such fact and their rigid inspection in manufacturing, dealers in such tools would be given the finest line thereof obtainable, and that it would further furnish from its Indiana factory all repair parts for use with tools listed on its special price sheet, facts being that its said line was not the most complete line of such products made, it did not give them the most rigid inspection in manufacturing, and it was only in a position to furnish repair parts, prior to early 1934, from its aforesaid factory or plant by taking apart the finished tools;
- (c) Set forth in their advertising literature purported testimonial letters expressing writers' experience and satisfaction with their said products through such statements as "I purchased one of your general spreaders and I am certainly pleased in every respect," etc., and "Spreader is doing fine. I could not ask for any better service," etc., facts being said testimonials were not given in endorsement of tools and implements made by