

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

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said corporation or its subsidiary, but of the implements and tools of the old concern, hereinbefore referred to, which had been purchased in the aforesaid liquidation proceedings, and said testimonial letters, referring to the products of the aforesaid old concern, had been altered and changed without the consent or authorization of the writers, so as to make them appear to be endorsements of the said "Soil Fitter" line; and

- (d) Represented through salesmen and agents employed to interview and solicit the trade and prospective customers in various States, that they had acquired some of the assets of the aforesaid old concern and would continue to manufacture repair parts and replacements for said concern's farm tools and implements, and that said concern had become bankrupt and could not continue in business, facts being they had not acquired its assets, did not own the patents under which its said line of implements and tools were made, and could not continue to manufacture said old concern's full line of such products, together with repair parts and replacements;

With capacity and tendency to mislead and deceive the purchasing public into the belief that such representations were true and to induce purchase from them of their products in such erroneous belief, and with result that trade was thereby unfairly diverted by them from competitors, who truthfully advertise and represent their products, to the substantial injury of substantial competition in interstate commerce:

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

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

Mr. Joseph C. Fehr for the Commission.

Bloomfield, Orr & Vickery, of Cleveland, Ohio, for respondents.

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 The General Implement Company of America, Inc., a corporation, and The General Implement Manufacturing Company, Inc., a subsidiary corporation, hereinafter referred to as respondents, have been and are 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. The General Implement Company of America, Inc., is a corporation organized in February, 1932, under the laws of the State of Ohio, and has its principal place of business located in the city of Cleveland in the State of Ohio. It has been engaged in the sale and distribution of farm implements and tools in interstate

commerce from its place of business in Ohio, or from the plant located at Liberty, Ind., over which it acquired control in March, 1934. In July, 1933, said The General Implement Company of America, Inc., incorporated, under the laws of the State of Indiana, a subsidiary company, to wit, The General Implement Manufacturing Company, Inc., which said subsidiary company acquired title to a manufacturing plant at Liberty, Ind., and, subject to the ownership and control of the aforementioned The General Implement Company of America, Inc., has been engaged in the manufacture of manure spreaders but more particularly, engaged in the business of assembling, repairing and repainting a limited number of farm implements and tools purchased by The General Implement Company of America, Inc., at the bankrupt sale of the "old" Dunham Company which for a long time past had been engaged in the manufacture, sale and distribution of farm implements and tools, and which products so assembled, repaired and repainted, said corporation sold in interstate commerce. In the course and conduct of said business, the said respondents were and are in competition with other individuals, partnerships, firms and corporations engaged in the sale and distribution in interstate commerce of like and similar products to those sold and distributed in interstate commerce by the respondents.

PAR. 2. The Dunham Company (hereinafter referred to as the "new" Dunham Company) is a corporation with its principal place of business and factory located at Berea, a suburb of the city of Cleveland, State of Ohio. It was organized in January, 1932, to acquire, and it did then acquire, the plant, factory, equipment, good will and all of the patents and trade marks theretofore owned by a corporation of the same name (hereinafter referred to as the "old" Dunham Company), but which was declared bankrupt in July, 1931. The "old" Dunham Company had been engaged in the manufacture of farm implements for a period of approximately 50 years, and for the whole of that period had been located in the city of Berea, in the State of Ohio. The farm tools manufactured by the "old" Dunham Company were sold and shipped in interstate commerce into the various States of the United States and the District of Columbia, under the registered trade mark of "Culti." "Culti" was a prefix used in conjunction with the hyphenated name of the particular farm implements or tools to which it was applied, as for instance, "Culti-Hoe", "Culti-Packer" and "Culti-Spreader." Under this name the products of the "old" Dunham Company became well and favorably known throughout the United States as the products of one of the foremost manufacturers of farm implements and

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tools. The "new" Dunham Company, since its purchase of the plant, equipment, patents, trade marks and good will of the "old" Dunham Company, has continued the said business as a manufacturer of farm tools and implements in the city of Berea, in the State of Ohio, selling the farm implements and tools in interstate commerce under the trade name "Culti."

PAR. 3. In the course and conduct of its business, The General Implement Company of America, Inc., purchased at a bankruptcy sale, in August, 1932, the bankrupt stock of farm implements and tools which had been manufactured by the "old" Dunham Company. On or about the date of its incorporation, to wit, February, 1932, and in anticipation of the said purchase of said bankrupt stock of farm implements and tools manufactured by the "old" Dunham Company, said The General Implement Company of America, Inc., caused advertisements to be inserted in newspapers and magazines of general and wide circulation, and advertising matter in the form of literature, pamphlets, price lists, and other printed literature, to be distributed in interstate commerce. Said The General Implement Company of America, Inc., held itself out in said advertisements, catalogues, pamphlets, price lists, and other literature as the manufacturer of a complete line of farm implements and tools under the trade name "SOIL FITTER", and at the same time, said The General Implement Company of America, Inc., informed the trade that it could service and repair the "old" Dunham implements at its factory located at the city of Liberty, in the State of Indiana. In truth and in fact, the representations made by The General Implement Company of America, Inc., through advertisements, catalogues, price lists, pamphlets, and other literature were false and untrue, in that they were not manufacturers of a complete line of farm implements and tools under the trade name "SOIL FITTER", and further, in that they did not have facilities for servicing and repairing completely the line of farm implements and tools purchased at the bankrupt sale of the "old" Dunham Company.

PAR. 4. Further, in catalogues, pamphlets, price lists and other advertising literature, said The General Implement Company of America, Inc., made the following representations:

(1) We will furnish all repair parts for use with the tools listed on this special price sheet from our Indiana factory.

(2) You will find the "SOIL FITTER" line the most complete line of these tools manufactured.

(3) It will be our policy to manufacture the "SOIL FITTER" line of farm tools under the most favorable conditions.

(4) We shall employ competent labor, thereby insuring the highest quality of products.

(5) These principles, together with the most rigid inspection in the manufacture, will give our dealers the finest line of Soil Fitting tools obtainable.

(6) We are in a position to take care immediately of any of our dealers' requirements.

In truth and in fact, none of the above representations made by said The General Implement Company of America, Inc., are true, but, to the contrary, they are untrue, false and misleading, in that:

(1) They do not furnish all repair parts for use with the tools and implements listed on the special price sheet from their alleged Indiana factory;

(2) The so-called "SOIL FITTER" line is not the most complete line of farm implements and tools manufactured;

(3) It is not their policy to manufacture the "SOIL FITTER" line of farm tools under the most favorable conditions;

(4) They do not employ competent labor, thereby insuring the highest quality of products;

(5) They do not follow the above enumerated principles nor the most rigid inspection in order to give their so-called dealers the finest line of Soil Fitting tools obtainable;

(6) They would not be, nor were they, in a position to take care immediately of any of their so-called dealers' requirements.

PAR. 5. (1) The General Implement Company of America, Inc., on the first page of its catalogue, pictures its factory with the statement:

"General 'SOIL FITTER' farm implements are manufactured in the above factory located at Liberty, Indiana."

In truth and in fact, with the exception of the manure spreaders, no farm implements were or are manufactured in the factory located at Liberty, Ind.

(2) Said The General Implement Company of America, Inc., also represented in its catalogues that the "Combined SOIL FITTER had been made for the past 20 years". In truth and in fact, the SOIL FITTER line of farm implements and tools had not been manufactured for 20 years, but had been manufactured for less than three years.

(3) A further representation by The General Implement Company of America, Inc., is, that, "For some time past, our engineers have been experimenting on depth regulators on rotary hoes. Our engineering staff is constantly trying out and testing improvements on farm tools." In truth and in fact, no experimental work had been conducted with depth regulators on rotary hoes, and further, in truth and in fact, the said respondents do not maintain an engineering staff.

PAR. 6. In the advertising literature of the respondents, The General Implement Company of America, Inc., and The General Implement Manufacturing Company, Inc., appeared what are purported

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to be various and sundry testimonial letters, of which the following are representative, with respect to the products of the respondents:

"NAPPANEE, IND., November 1, 1932.

THE GENERAL IMPLEMENT CO.,

Cleveland, Ohio.

GENTLEMEN: I purchased one of your GENERAL SPREADERS and am certainly pleased in every respect. I have used several different kinds of spreaders, none of which suited me like the one I now own. Your extra wide wheels and large rollers bearings make the lightest draft Spreader I ever put team to. I now can unload the heaviest manure with two horses. Think that, by having roller bearings on both ends of deflector as well as main better has a lot to do with the draft. All in all, I find it a mighty well built Spreader and would recommend it to anyone.

Sincerely yours,

FRANKLIN HOOVER."

"CARLTON, PA.

GENTLEMEN: Spreader is doing fine. I could not ask for any better service. In snow, ice and mud, under all conditions, it works perfectly with a very light draft under full load. I am well pleased.

Yours truly,

WM. SAXON."

In truth and in fact, the above-quoted testimonials were not given in indorsement of the products of The General Implement Company of America, Inc., and its subsidiary, The General Implement Manufacturing Company, Inc., but were given in indorsement of the farm implements and tools manufactured by the "old" Dunham Company. Further, in truth and in fact, the said purported testimonials were taken from documents prepared by the writers thereof in connection with the farm implements and tools manufactured by the "old" Dunham Company, which said statements had been so altered and changed without the knowledge, consent or authorization of the writers of the said testimonial letters, as to make them appear to be indorsements of the "SOIL FITTER" line of farm implements and tools sold and distributed by the respondents.

PAR. 7. In furtherance of its solicitation for sale and selling of its products in interstate commerce, said The General Implement Company of America, Inc., employs and employed salesmen and agents to interview and solicit the trade and prospective customers in various States of the United States and in the District of Columbia, and to which trade and prospective customers the said salesmen and agents make and made statements and representations as follows:

(1) That The General Implement Company, Inc., and its subsidiary, The General Implement Manufacturing Company, Inc., had acquired all of the assets of the "old" Dunham Company, and owned all of the patents under which the "old" Dunham Company line of farm implements and tools were manufactured.

(2) That the said American Implement Company of America, Inc., and its subsidiary, the General Implement Manufacturing Company, Inc., would continue to manufacture the full line of "old" Dunham Company implements and tools, together with repair parts and replacements.

(3) That the "old" Dunham Company and the "new" Dunham Company had failed and could not continue in business.

In truth and in fact, none of the above representations made by the salesmen and agents of The General Implement Company of America, Inc., and its subsidiary, The General Implement Manufacturing Company, Inc., were true, but, to the contrary, they were untrue, false and misleading, in that:

(1) They had not acquired all of the assets of the "old" Dunham Company and did not own all the patents under which the "old" Dunham Company line of farm implements and tools were manufactured;

(2) Would not and could not continue to manufacture the full line of the "old" Dunham Company implements and tools, together with repair parts and replacements;

(3) The "new" Dunham Company had not failed and it could, did and does continue in business.

PAR. 8. There are, among the competitors of respondents, individuals, partnerships, firms, and corporations engaged in the manufacture, sale and distribution of like and similar products to those of the respondents in and among the various States of the United States and in the District of Columbia which said individuals, partnerships, firms, and corporations truthfully and honestly represent their said products. The false and misleading representations made by respondents, as hereinbefore set forth, have the tendency and capacity to and do divert trade to respondents from those individuals, partnerships, firms, and corporations who truthfully and honestly advertise, sell, and distribute like and similar products to those of the respondents, in and among the various States of the United States and in the District of Columbia.

The above alleged acts and things done by respondents are all to the injury and prejudice of the public and the competitors of the respondents 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",

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the Federal Trade Commission, on the 15th day of August, A. D., 1935, issued and served its complaint in this proceeding upon respondents, The General Implement Company of America, Inc., a corporation, and The General Implement Manufacturing Company, Inc., its subsidiary, charging them and each of them 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 said respondents' respective answers a stipulation as to the facts was entered into between the respondents and this Commission, subject to its approval, through its trial attorney in charge of this proceeding, Joseph C. Fehr, which was received into the record at the hearing held in Cleveland, Ohio, on November 5, 1935, presided over by Trial Examiner John W. Bennett (which said stipulation is hereby approved by this Commission), in and by which stipulation it was agreed that the statement of facts contained therein might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and in which stipulation it was provided that the Commission might proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceedings without the presentations of arguments or the filing of briefs. Thereafter, by order of the trial examiner, the case was closed and the proceeding regularly came on for final hearing before the Commission on said complaint, the answers thereto, and the said stipulation as to the facts; and the Commission having duly considered the same, and being fully advised in the premises, finds 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. The General Implement Company of America, Inc., is a corporation organized in February, 1932, under the laws of the State of Ohio, and has its principal place of business located in the city of Cleveland in the State of Ohio. It has been engaged in the sale and distribution of farm implements and tools in interstate commerce from its place of business in Ohio, and from the plant located at Liberty, Ind., over which it first acquired control in January, 1933. In July, 1933, said The General Implement Manufacturing Company of America, Inc., incorporated under the laws of the State of Indiana, a subsidiary company of the aforesaid The General Implement Company of America, Inc., which said subsid-

iary company, The General Implement Manufacturing Company, Inc., acquired control of a manufacturing plant at Liberty, Ind., and, subject to the ownership and control of the aforementioned The General Implement Company of America, Inc., has been engaged in assembling, repairing, and repainting a limited number of farm implements and tools purchased by The General Implement Company of America, Inc., in the liquidation proceedings of the Standard Trust Bank of Cleveland, Ohio. These tools or implements were manufactured by the old Dunham Company, which for a long time past had been engaged in the manufacture, sale, and distribution of farm implements and tools, and which products respondents so assembled, repaired, and repainted were resold as new in interstate commerce. In the course and conduct of said business the said respondents were, and are, in competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution in interstate commerce of like and similar products to those sold and distributed in interstate commerce by respondents, to wit:

The International Harvester Company of Chicago, Ill.

John Deere Company of Cleveland, Ohio; Lansing, Mich., and Columbus, Ohio.

The Oliver Plow Company, Chicago, Ill.

The Ohio Cultivator Company, Bellevue, Ohio.

The New Idea Spreader Company, Cold Water, Ohio.

The Dunham Company, Berea, Ohio.

PAR. 2. The Dunham Company (hereinafter referred to as the "new" Dunham Company) is a corporation with its principal place of business and factory located at Berea, a suburb of the city of Cleveland, State of Ohio. The new Dunham Company was organized in January, 1932, to acquire, and it did then acquire, the plant, factory, equipment, good-will and all of the patents and trade marks theretofore owned by a corporation of the same name (hereinafter referred to as the "old" Dunham Company), but which was declared bankrupt in July, 1931. The "old" Dunham Company had been engaged in the manufacture of farm implements for a period of approximately 50 years, and for the whole of that period had been located in the city of Berea, in the State of Ohio. The farm tools manufactured by the "old" Dunham Company were sold and shipped in interstate commerce into the various States of the United States and the District of Columbia, under the registered trade name of "Culti." "Culti" was a prefix used in conjunction with the hyphenated name of the particular farm implements or tools to which it was applied, as for instance, "Culti-Hoe", "Culti-Packer" and "Culti-

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Spreader." Under this name the products of the "old" Dunham Company became well and favorably known throughout the United States as the products of one of the foremost manufacturers of farm implements and tools. The "new" Dunham Company, since its purchase of the plant, equipment, patents, trade marks and good-will of the "old" Dunham Company, has continued the said business as manufacturer of farm tools and implements in the city of Berea, in the State of Ohio, selling the farm implements and tools in interstate commerce under the trade name "Culti."

PAR. 3. Respondent, The General Implement Company of America, Inc., purchased in August, 1932, by court order from the Standard Trust Bank of Cleveland, Ohio, the bankrupt stock of farm implements and tools which had been manufactured by the "old" Dunham Company in the liquidation proceedings of said company. On or about the date of its incorporation, to wit, February 1932, and in anticipation of the said purchase of said stock of farm implements and tools manufactured by the "old" Dunham Company, said The General Implement Company of America, Inc., caused advertisements to be inserted in newspapers and magazines of general and wide circulation, and other printed literature, to be distributed in interstate commerce. Said The General Implement Company of America, Inc., held itself out in said advertisements, catalogues, pamphlets, price lists, and other literature as the manufacturer of a complete line of farm implements and tools under the trade name "SOIL FITTER", and at the same time, said The General Implement Company of America, Inc., informed the trade that it could service and repair the "SOIL FITTER" implements at its factory located at the city of Liberty, in the State of Indiana. In fact, The General Implement Company of America, Inc., was only in a position to furnish repair parts up to January 1934, from the factory of its subsidiary at Liberty, Ind., by taking apart finished farm tools and furnishing such repair parts, and, in truth and in fact did not until January, 1934, begin manufacturing its line of farm implements and tools under the trade name "SOIL FITTER."

PAR. 4. In its catalogues, pamphlets, price lists and other advertising literature, respondent, The General Implement Company of America, Inc., represented that it would furnish from its Indiana factory all repair parts for use with tools listed on a special price sheet; that the purchaser would find the "SOIL FITTER" line the most complete line of such tools manufactured, and that, because of said facts and because of their rigid inspection in manufacturing, dealers in "SOIL FITTER" tools would be given the finest line of such tools obtainable.

Respondent, The General Implement Company of America, Inc., does not furnish from its Indiana factory repair parts for use with the tools and implements listed on its special price sheet. The "SOIL FITTER" line of respondent is not the most complete line of farm implements and tools manufactured, and said respondent does not make the most rigid inspection in manufacturing its implements in order to give its dealers the finest line of such tools obtainable.

PAR. 5. The General Implement Company of America, Inc., on the first page of its catalogue issued on March 1, 1932, pictures a factory with the following accompanying statement:

"General 'SOIL FITTER' farm implements are manufactured in the above factory located at Liberty, Indiana."

No farm implements were manufactured in said factory at Liberty, Ind., prior to January 1934, with the exception of manure spreaders. The General Implement Company of America, Inc., also has represented in its catalogues that the "combined 'SOIL FITTER' " line has been made for the past twenty years; whereas the "SOIL FITTER" line of farm implements and tools had not been manufactured either for twenty years or for any other period of time prior to January, 1934, although a combined soil fitter tool had been manufactured for some twenty years. Respondent, The General Implement Company of America, Inc., further represents that its engineers had been experimenting on depth regulators on rotary hoes and that it is maintaining an engineering staff in constantly trying out and testing improvements on farm tools, which said representations are grossly exaggerated and misleading.

PAR. 6. In the advertising literature of the respondents, The General Implement Company of America, Inc., and The General Implement Manufacturing Company, Inc., appeared what are purported to be various and sundry testimonial letters, of which the following are representative:

"NAPPANEE, IND., November 1, 1932.

THE GENERAL IMPLEMENT CO.,

Cleveland, Ohio.

GENTLEMEN: I purchased one of your GENERAL SPREADERS and am certainly pleased in every respect. I have used several different kinds of spreaders, none of which suited me like the one I now own. Your extra wide wheels and large roller bearings make the lightest draft Spreader I ever put team to. I now can unload the heaviest manure with two horses. Think that, by having roller bearings on both ends of deflector as well as main meter has a lot to do with the draft. All in all, I find it a mighty well built Spreader and would recommend it to anyone.

Sincerely yours,

FRANKLIN HOOVER."

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"CARLTON, PA.

GENTLEMEN: Spreader is doing fine. I could not ask for any better service. In snow, ice and mud, under all conditions it works perfectly with a very light draft under full load. I am well pleased.

Yours truly,

WM. SAXON."

These testimonials were not given in indorsement of tools and implements manufactured by The General Implement Company of America, Inc., and or its subsidiary, The General Implement Manufacturing Company, Inc., but were given in indorsement of farm implements and tools manufactured by the "old" Dunham Company, and the Dunham Spreader Company, Liberty, Ind., which implements and tools had been purchased from the Standard Trust Bank in the liquidation proceedings of said bank by The General Implement Company of America, Inc., as set forth in paragraph 1 hereof.

The above-quoted letters purporting to be testimonials were, along with others, taken from documents prepared by the writers thereof in connection with the farm implements and tools manufactured by the "old" Dunham Company, which said statements had been so altered and changed without the knowledge, consent or authorization of the writers of the said testimonial letters, as to make them appear to be indorsements of the "SOIL FITTER" line of farm implements and tools sold and distributed by the respondents.

PAR 7. In furtherance of its solicitation for sale and selling of its products in interstate commerce, said The General Implement Company of America, Inc., and The General Implement Manufacturing Company, Inc., employ and employed, salesmen and agents to interview and solicit the trade and prospective customers in various States of the United States and in the District of Columbia, and to which trade and prospective customers the said salesmen and agents have made statements and representations to the effect that The General Implement Company of America, Inc., and its subsidiary, The General Implement Manufacturing Company, Inc., had acquired some of the assets of the "old" Dunham Company; that the General Implement Company of America, Inc., and its said subsidiary would continue to manufacture repair parts and replacements for "old" Dunham Company farm tools and implements, and that the "old" Dunham Company became bankrupt and could not continue in business. As a matter of fact, respondent, The General Implement Company of America, Inc., and its subsidiary have not acquired the assets of the "old" Dunham Company, did not own the patents under which the "old" Dunham Company line of farm implements and tools were manufactured, and it did not and could not

continue to manufacture the full line of the "old" Dunham Company implements and tools, together with repair parts and replacements.

PAR. 8. There are among the competitors of respondents certain other corporations, individuals, firms and partnerships likewise engaged in the sale and distribution of farm implements and tools between and among the various States of the United States and in the District of Columbia and who advertise and sell their products in the same competitive areas as do the respondents herein, and who sell to agents and purchasers in the same competitive areas as do respondents. The foregoing untrue deceptive and misleading statements made by respondents as herein stated have had and have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations were and are true and to induce the purchase from respondents of their products in such erroneous beliefs. Thereby trade has been unfairly diverted by respondents from their competitors who truthfully advertise and represent their products and substantial injury has been done by respondents to substantial competition in interstate commerce.

CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings of fact are to the prejudice of the public and of competitors of respondents, and are unfair methods of competition in commerce in violation 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 respective answers of the respondent and a stipulation as to the facts entered into between the respondents and the trial attorney for the Commission, subject to its approval, which stipulation was received into the record at a hearing held in Cleveland, Ohio, on to wit, November 5, 1935, before an examiner of the Commission theretofore duly designated by it, which said stipulation as to the facts is hereby approved by the Commission, in and by which stipulation it was agreed that the statement of facts contained therein might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and which said stipulation

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further provided that the Commission might proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Thereafter, by order of the trial examiner the case was closed and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents, The General Implement Company of America, Inc., a corporation, and The General Implement Manufacturing Company, Inc., its subsidiary, their respective officers, agents, servants and employees, in connection with the sale or offering for sale in interstate commerce of a brand of farm implements and farm tools under the trade name "SOIL FITTER", forthwith cease and desist from:

(1) Using in their advertisements, catalogues, price lists, pamphlets and other literature, or in any other way, any statement that the "SOIL FITTER" line of farm implements and tools sold and distributed by the respondents is the most complete line of farm implements and farm tools manufactured;

(2) Advertising and otherwise representing that respondents manufactured farm implements and farm tools at their plant in Indiana prior to January, 1934;

(3) Advertising and otherwise representing that respondents furnish all repair parts for use with the tools and implements listed on the special price sheet from their Indiana factory until they do actually furnish all such repair parts.

(4) Advertising and otherwise representing that respondent follow the most rigid inspection in order to give their so-called dealers the finest line of "SOIL FITTER" tools obtainable until such rigid inspection is actually made;

(5) Advertising in their catalogues, and otherwise representing that respondents' "COMBINED SOIL FITTER" had been made for the past twenty years;

(6) Advertising and otherwise representing that for some time past respondents' engineers have been experimenting on the depth regulators on rotary hoes and that their engineering staff is constantly trying out and testing improvements on farm tools until such experiments and tests are actually made;

(7) Using in their advertising literature or otherwise, testimonial letters, until and unless such letters are, in truth and in fact, written and addressed to respondent companies in endorsement of their products;

(8) Advertising, or otherwise representing, to purchasers and prospective purchasers that The General Implement Company of America, Inc., a corporation, and The General Implement Manufacturing Company, Inc., its subsidiary, own the assets, including patents, of the original or "old" Dunham Company;

(9) Advertising, or otherwise representing, that said The General Implement Company of America, Inc., and its subsidiary, The General Implement Manufacturing Company, Inc., will continue to manufacture the full line of the original or "old" Dunham Company implements and tools, together with repair parts and replacements.

It is further ordered, That the respondents, The General Implement Company of America, Inc., a corporation, and The General Implement Manufacturing Company, Inc., its subsidiary, shall, within 60 days after the service upon each of them of this order, each file with the Commission a report in writing setting forth in detail the manner and form in which each has complied and is complying with the order to cease and desist hereinabove set forth.

Complaint

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IN THE MATTER OF

FRANK LIVINGSTON, DOING BUSINESS AS BERKSHIRE
TEXTILE COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2577. Complaint, Oct. 11, 1935—Order, Dec. 28, 1935*

Consent order requiring respondent, in the advertisement, sale and distribution of dress goods among the different States, to cease and desist from—

- (a) Falsely advertising or representing in any manner that he gives five yards of dress goods free to the customer with every fifteen yards ordered from him, or that customer will receive four yards of goods in each pattern or in one piece;
- (b) Advertising or representing in any manner by use of words "Direct to you", or any other words or phrases which by implication tend to create impression in minds of customers or prospective customers that he ships his products to such customers direct from a factory or mill, or that he is the owner or operator of, or controls, any factory in which his said products are made;
- (c) Advertising, etc., that his said goods, wares and merchandise are suitable for the purpose of making dresses or that they are "new and clean", when in fact soiled, stained, and damaged, or that they consist of the very newest and latest patterns for dresses;
- (d) Advertising, etc., that he guarantees satisfaction to his customers and refunds money to those purchasing his said goods, etc., who are dissatisfied therewith; or
- (e) Advertising, etc., that he sells fifteen yards of dress goods for ninety-seven cents, or that in the sale of his said goods, etc., and in quoting the price thereof, he is offering the customer a special bargain for any particular month or period of time.

Mr. John W. Hilldrop for the Commission.

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 Frank Livingston, doing business as Berkshire Textile Company, herein-after 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 the 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: