

Syllabus

IN THE MATTER OF

T. O. LOVELAND AND J. L. RECORDS, DOING BUSINESS
AS COMMERCIAL MANUFACTURING COMPANY AND
BRENARD MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2617. Complaint, Nov. 7, 1935—Decision, Mar. 17, 1936*

Where two individuals engaged in the sale and distribution of radios—

- (a) Represented themselves through advertising booklets, price lists, letter-heads, distributors' agency agreements, and other advertising literature as manufacturers of the radios distributed and sold by them and featured their two trade names, in each of which was included word "Manufacturing", on all their said literature, facts being that they were not manufacturers of said radios, but were engaged solely in distributing and selling such products made by others;
- (b) Falsely represented their said radios in their advertising literature as of superior quality and sold at exceptionally low prices, facts being that said products were only of average quality, lacked many features included in first-class radios, and were priced higher than comparable products of competitors;
- (c) Grossly misrepresented, in soliciting through salesmen supplied with their said advertising literature, execution of their dealer agency agreements and purchase of the demonstrator units and payment of sums called for thereby, advantages to dealer as to supposed exclusive territory, guaranteed profits or sales, relief of and reimbursement for unsold stock, furnishing of floor stocks, consignment shipments, liberal credit and handling of dealer customers' installment paper, and advertising and sales assistance to be rendered by them, reason for required deposit, and their own role as simply that of establishing dealers and opening up new territory at no profit or even initial loss, and set forth that they were selling their products in cooperation with dealer, through the direct advertising system, and if dealer could not make a profit, neither could they; facts being they made a substantial profit on demonstrator units, cost to them of their said products was considerably less than represented, retailers could not reasonably expect to sell the same on the open market at any price closely approximating that fixed or suggested, and said representations and promises as to credit and other assistance and all other matters were entirely or substantially false and unfulfilled;

With result that they placed in the hands of their said salesmen a means whereby the unscrupulous were enabled to commit a fraud upon retail dealers, a substantial number of such dealers and of the purchasing public were misled into the belief that they were manufacturers and their said products were of superior quality and low priced, and that dealers would receive exclusive territory, credit, and other benefits above set forth and suggested, a number of retailers executed said agreements which substantiated aforesaid claims or were susceptible of such interpretation and did

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not clearly demonstrate the exaggerated, misleading, and untrue nature thereof, substantial quantities of their said radios were sold to dealers and consuming public on account of such erroneous beliefs, and a substantial volume of trade was diverted from competitors, among whom there were those who truthfully represented themselves as manufacturers of such products, those who neither made the radios they dealt in nor represented themselves as so doing, those who made and sold products of superior quality, those who did not falsely represent themselves as so doing, and many who did not enter into agency agreements with retailers and misrepresent their terms and conditions; to the substantial injury of substantial competition:

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

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. J. T. Welch 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 T. O. Loveland and J. L. Records, trading and doing business under the names "Commercial Manufacturing Company" and "Brenard Manufacturing Company", hereinafter designated as respondents, are now, and have 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. Respondents, T. O. Loveland and J. L. Records, trading and doing business under the trade names, "Commercial Manufacturing Company" and "Brenard Manufacturing Company", have their office and principal place of business located at Iowa City, in the State of Iowa, and are now, and have been for a period of more than 2 years last past, engaged in the business of distributing and selling, principally, radios, but also selling and distributing refrigerators, oil burners for furnaces, and air conditioners to retail dealers for resale, all of said products hereinafter for brevity referred to as appliances.

PAR. 2. Said respondents, being engaged in the business of distributing and selling said appliances hereinabove referred to, cause said appliances, when sold to dealers and purchasers located in various cities in the several States of the United States, to be transported from their principal place of business in the State of Iowa 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 appliances, distributed and sold by the respondents, between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondents, in the course and conduct of their business, are, and have been at all times mentioned herein, engaged in substantial competition with other individuals, partnerships, and corporations engaged in commerce among the several States of the United States and in the District of Columbia, in the manufacture, distribution, and sale, or in the distribution and sale, of similar appliances to retail dealers for resale.

PAR. 4. Respondents, in the course and conduct of their business, as detailed in paragraphs 1 to 3 hereof, and for the purpose of inducing individuals, firms, and corporations to purchase said appliances, have had printed and circulated to customers and prospective customers throughout the various States of the United States, through the United States mails and through other means, advertising booklets or pamphlets, price lists, letterheads, invoices, so-called distributor's agency agreements, and other advertising literature wherein they claim and represent themselves to be the manufacturer of the hereinabove-mentioned appliances distributed and sold by them and wherein their two trade names, "Commercial Manufacturing Company" and "Brenard Manufacturing Company", are prominently displayed. In the so-called distributor's agency agreements hereinabove referred to respondents, in addition to using the two trade names containing the word "Manufacturing", make use of other statements such as the following:

* * * becomes a contract between the Commercial Manufacturing Company and the undersigned for the purchase and sale of the Commercial Manufacturing Company line of Plymouth Radio Receiving Sets * * *.

* * * Ship the undersigned at your earliest convenience f. o. b. factory or distributing point one Plymouth Receiving Set * * *.

* * * diligent efforts in promoting sale of Commercial Manufacturing Company products * * *.

Commercial Manufacturing Company warrants its products against defects of material or workmanship and agrees to repair or replace defective parts at the factory.

In the distributor's agency agreement above referred to issued by the respondents under the name "Brenard Manufacturing Company", that trade name is substituted for the trade name "Commercial Manufacturing Company", the statements and representations being identical to, or of similar import to, the statements hereinabove detailed.

The use of the word "Manufacturing" in respondents' trade names, as indicated on the advertisements, booklets, distributor's agency agreements, and other business correspondence, together with the statements and representations appearing therein as hereinabove detailed, purports to be descriptive of the respondents' business and the products sold by them.

In all of said advertising literature above referred to respondents represent that the appliances, particularly the radios designated as "Plymouth" and "Concord" radios, are "as good as the best, better than the rest", and that said radios are laboratory tested and guaranteed. Respondents further represent, in their advertising literature and in the direct mail advertising sent to the prospects furnished by the retail dealer, that the said radios are of a superior quality and are priced at an exceptionally low price.

PAR. 5. Respondents do not own, operate, or control any plant or machinery for the manufacture of the various appliances hereinabove named. The respondents are not engaged in the business of manufacturing and are not manufacturers as that term is understood by the trade and the public generally. Respondents are engaged solely in the business of distributing and selling radios, refrigerators, oil burners for furnaces, and air conditioners that have been manufactured by others.

In truth and in fact, the appliances, particularly the radios designated by the respondents as "Plymouth" and "Concord" radios, are not "as good as the best and better than the rest", but are inferior, off-brand radios that do not contain many of the features included in standard first-class radios and are not laboratory tested, the respondents do not have laboratory facilities for making said tests, and the respondents do not guarantee the radios or make good the defects arising in said radios. The radios sold by the respondents are not priced at low prices but are sold for prices several times in excess of the purchase price paid by the respondents therefor, and competitors of the respondents sell radios of similar character, quality, and design at and for prices substantially lower than the prices designated by the respondent as being the retail value of said radios.

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PAR. 6. A substantial portion of the retail dealers and distributors of the appliances hereinabove referred to prefer to purchase direct from the manufacturer of said products, and a substantial portion of the purchasing public prefer to purchase said appliances, or similar appliances, when they cannot purchase them from the manufacturer thereof, from the authorized agency distributor of said manufacturer and not from a distributor of one who purchases in large quantities from said manufacturer and is not the agent thereof. Both the dealers and distributors, and the general public, believe that they secure closer prices and superior quality in dealing direct with the manufacturer of the articles hereinabove described rather than with a selling agency or middleman.

PAR. 7. For more than a year last past, in the course of the operation of their said business, the respondents, acting either by themselves or in conjunction and cooperation with their traveling representatives, have engaged in a scheme to defraud, and have defrauded, the retail dealers executing the so-called distributor's agency agreement and purchasing the appliances, distributed and sold by the respondents, in the following manner:

Respondents have employed a number of traveling representatives for the purpose of securing the execution of distributor's agency agreements by, and the sale of the particular appliance described in the agency agreement to, said retail dealers and distributors, said representatives traveling throughout the several States of the United States in furtherance of their employment for the purposes hereinabove detailed. Each of said traveling salesmen is provided, by respondents, with a salesman's kit in which are included a number of blank distributor's agency agreements, distributor's promotional expansion checks, reorder blanks, advertising booklets describing the appliances, particularly radios, distributed and sold by the respondents, together with other advertising literature and instructions to the salesman.

The traveling representative, being supplied by the respondents with the said salesman's kit and its contents, calls on and visits dealers located in various States of the United States and solicits said retail dealers to become distributors for the radios, or other appliances, distributed and sold by the respondents. Said traveling representative, realizing that retail dealers who can be interested in entering into said agency agreement will be only those dealers possessing insufficient financial responsibility and credit rating to enable them to enter into agency agreements, providing for liberal credit terms or the placing of merchandise with said dealers on a

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consignment basis, with reputable and responsible manufacturers and distributors, and for the purpose of carrying out and furthering the design, on the part of the respondents and said salesman, of securing the execution of said agency agreements through fraudulent and misleading representations, calls on and solicits prospective agents that do not have high credit ratings and are unable on account thereof to secure attractive agency agreements from said reputable manufacturers and distributors.

In making said solicitations said traveling representative, acting under instructions from the respondents, as contained in memoranda placed in the hands of said representative by said respondents, and as otherwise given to said traveling representative by respondents, or acting with the respondents' full knowledge and consent, uses a sales talk for the purpose of inducing the prospective agent to execute the distributor's agency agreement. In this sales talk the representative of respondents first represents that the respondents are the manufacturers of the products distributed and sold by them. The representative next represents: (1) That, upon execution of the agency agreement, the retail dealer will secure an exclusive franchise for several counties in connection with the sale of the various appliances named in the agreement; (2) that the respondents will enter into an extensive advertising campaign, upon the retail dealer furnishing names of prospective purchasers, and will furnish said dealer with movie trailer ads to be used at the local theaters; (3) that the respondents guarantee a certain number of sales and a certain profit to the distributor as a result of his execution of the agency agreement and the advertising campaign conducted by the respondents; (4) that if the appliances are not sold, they will be taken off the dealer's hands and the dealer's money refunded together with interest; (5) that the respondents are not attempting to sell the retail dealer a stock of appliances but are establishing dealers; (6) that the respondents, with the cooperation of the dealer, sell the appliances through their direct advertising system; (7) that, for the protection of respondents, a temporary deposit to the extent of the amount of the distributor's agency agreement is required so as to secure the cooperation of the dealer in furnishing the names necessary in respondents' advertising campaign and to demonstrate the good faith of the retail dealer; (8) that upon the execution of the agreement and the purchase of the demonstrator unit appliance, respondents will ship to said dealer, as a floor stock, a supply of the various types of the appliance named in the agency agreement, ranging from 5 to 10 units, the floor stock to be either placed with the dealer or distributor on a consignment basis or on open account for

90 days, with a 90-day extension, all unsold units to be taken up by the respondents at the expiration of this period; (9) that the intent and purpose of the agreement is, primarily, to promote business in the particular trade territory and to open up the territory adjacent to the dealer for the sale of the appliances sold by the respondents; (10) that if the dealer cannot make a profit, the respondents cannot make a profit; (11) that the retail dealer will be granted the privilege of selling said radios, or other appliances, to responsible people on the installment plan and the respondents will handle the installment paper of said responsible parties who purchase said appliances from the distributor or dealer, either with or without the endorsement of said dealer thereon; and (12) that the respondents operate their business on liberal credit terms for reorders and that the said dealers, after executing the agency agreement and purchasing the demonstrator unit, can easily qualify for extension of credit by respondents and will be enabled to do a considerable volume of business as a result of respondents' liberal credit arrangements and respondents' financing of time purchases made by the dealer's customers without the necessity of the dealer placing any considerable amount of money into stocking, at the dealer's expense various models of the appliances sold by the respondents.

Further, the representative, in his said sales talk, represents that the execution of the agency agreement and the opening of a new agency franchise is attended by heavy initial expense in the way of salesmen's commission, advertising matter, and direct mailing expense and the so-called benefits accruing to the dealer from the warranties, exclusive territory, etc., contained in the agreement; that the respondents cannot break even on the first franchise order at the discounts allowed on reorders and that the first order is priced at approximately the suggested retail price of said appliances so as to defray the initial expense claimed to be incurred by the respondents, which cost is represented as being so close to the amount agreed to be paid by the dealer in connection with the execution of the agreement as to leave substantially no profit on the sale of the demonstrator unit and the other benefits.

PAR. 8. As a result of the said sales talk, as set out in paragraph 7, and as a result of the confidence and reliance placed in the statements and representations made by the said traveling representative, a number of retail dealers have executed, and they continue to execute, said distributor's agency agreements. The several forms of printed distributor's agency agreements used by the respondents under both trade names hereinabove set out in selling their various appliances, such as "Concord" radios and "Plymouth" radios, are

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incorporated herein by reference and made a part hereof the same as if copied herein in full. The agreement, in vague and indefinite language, substantiates the claims and representations made by the traveling representative in the sales talk used by him in securing the execution of said agreement. The terms and conditions as set out in said agreement, while not being as definite and positive with respect to the benefits that may be expected to accrue to the prospective distributor executing the agency agreement, are couched in such language as to be reasonably interpreted by said retail dealer to grant and provide to said dealer the privileges enumerated by the representative as set out in the representations in paragraph 7, and do not contradict said representations or demonstrate clearly and accurately the fact that said representations, when made by said traveling representative, are grossly exaggerated, misleading, and untrue in fact.

The respondents instruct the traveling representative to make and utter the representations and statements detailed in paragraph 7, or they are aware that said representative is making, and has made, said representations and statements, or similar ones, and have failed to instruct said representative to refrain from making said representations or to take away from him the agreement and other literature used in making said representations.

PAR. 9. In truth and in fact, the respondents do not grant an exclusive franchise for any particular territory to the dealers executing said agreement but, by using the two trade names hereinabove indicated, different traveling representatives with overlapping territories and appliances, particularly radios, of slightly different design and of different name, attempt to secure, and in many instances do secure, the execution of agency agreements on the part of other dealers in the same territory under the guise of competing manufacturers and competing lines of radios. The respondents do not enter into any extensive advertising campaign but when furnished names of prospective purchasers merely send out one mimeographed letter, containing the name and address of the dealer and other advertising matter, to the prospects named by said dealer, and no follow-up advertising is sent said prospects. The respondents do not furnish the movie trailer ads for use at local theaters.

The respondents, by reason of their refusal to place stocks on consignment, to grant lenient credit terms, or to handle installment papers acquired by the dealers in selling their appliances, make it impossible for said retail dealers executing the agency agreements to buy the necessary quantity of said appliances in order to enable them to make use of the promotional expansion checks issued to them

and to secure the discounts offered them on reorders of said appliances, and as a result thereof, the respondents are not required, as represented in the sales talk and as set out in the agreement, to buy back the demonstrator unit and refund the money advanced the said dealers, or in any way protect said dealers from resulting losses; said respondents and their agents knowing, or having reason to believe, at the time of the execution of the agency agreement or before the shipment of the merchandise, that said dealers would not be able to comply with respondents' requirements so as to secure credit and that said dealers could not carry out the terms of the agreement if required to buy a large number of units at the high and exorbitant prices charged, and to pay cash therefor, as a condition to placing themselves in a position whereby they can take advantage of respondents' guarantee of a sale of the appliances, a repurchase thereof or the redemption of the promotional expansion checks.

The respondents, through the aid and cooperation of their representatives as hereinabove detailed, are interested not in establishing any agency for the distribution of the appliances sold by them but in the sale to the dealer of the original so-called demonstrator order at and for a high, exorbitant, and fictitious price.

Respondents do not ship to said dealers, as a floor stock, a supply of the various types of the appliances named in the agency agreement and have not devised, and do not follow, a plan of merchandising whereby the retail dealers executing the agreements are placed in a position to handle the appliances distributed by said respondents without any considerable outlay of money. Although the sales talk of the said representative and the agency agreement itself provide for the extension of credit to dealers approved by the credit department, the respondents actually sell a very small percentage of the radios, and other appliances sold by them, on credit to anyone, and it is impossible for dealers executing the agency agreement to obtain the benefits of the credit arrangements represented. The respondents do not enter into time-payment financing arrangements with said dealers to such an extent as to enable said dealers to handle a large volume of business with a small outlay of cash, and they do not arrange for the carrying of time-payment paper taken by said dealers as a result of the representations made by the salesman and contained in the agency agreement, but refuse to accept said time-payment notes of purchasers without even making investigations as to the worth of said time-payment notes.

The cost of the various demonstrator units named in the several agency agreements is considerably less than represented by the re-

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spondents and their salesmen. In the case of the radios described in a number of the agency agreements, said radios cost the respondents 25 percent or less of the amount for which they are sold to the dealer. The cost of the advertising campaign carried on by the respondent for the benefit of said dealers is slight and said promotional expansion checks have no value whatever, except upon reorders, which checks the respondents, by reason of their credit policy as hereinabove detailed, make it impossible for the dealer to use.

The various types of appliances distributed and sold by the respondents are of inferior quality, and the retail dealer thereof cannot reasonably expect to sell the same on the open market to purchasers for any price closely approximating the price fixed or suggested by the respondents. In truth and in fact, the net price of the appliances, after deducting the value of the promotional expansion check, as paid by the agents upon reordering after the purchase of the demonstrator, is approximately the price at which similar appliances, of like quality and character, are sold in the usual course of trade by competitors of said dealers. The said respondents, although representing that substantially no profit is made on the demonstrator unit when sold to said dealers, actually make a very substantial profit that is not disclosed to the dealer executing said agreement.

PAR. 10. All of the representations and statements hereinabove set out as contained in the sales talk made by the representative of respondents, under their instruction and direction, or with their knowledge and consent, and as set out in the written agency agreement, are used as a snare and a lure to induce prospective purchasers to sign the agency agreement and purchase the demonstrator unit in the manner hereinabove detailed. After the purchase of the demonstrator unit for a high, exorbitant, and fictitious price, respondents then adopt an attitude and a course of action calculated and designed to hamper and prevent, and having the result of hampering and preventing, said dealers from securing additional similar appliances at fair and reasonable prices and on fair and reasonable terms and from securing the benefits of an exclusive agency for the distribution of appliances sold by the respondents.

PAR. 11. The false and misleading advertising and representations on the part of the respondents, as hereinabove set out, place in the hands of the aforesaid traveling representative an instrument and a means whereby the said representative may commit a fraud upon a substantial number of retail dealers by enabling such representative to represent, offer for sale, and sell the appliances sold and distributed by the respondents under the pretense of selling demonstrator units to dealers executing agency agreements.

PAR. 12. Many of respondents' competitors manufacture the radios, and other appliances, distributed and sold by them and truthfully represent themselves to be the manufacturers thereof. Many of the respondents' competitors do not manufacture radios, and other appliances, distributed by them and do not in any manner hold themselves out to be the manufacturers thereof. Likewise, many of respondents' competitors manufacture and distribute radios of superior quality and so advertise their products, and many others of respondents' competitors do not manufacture or distribute radios or other appliances of superior quality and do not advertise their products to be of such superior quality. Many of respondents' competitors enter into lawful and legitimate agency agreements with retail dealers throughout the several States of the United States and do not falsely represent any of the terms or conditions of said agreements, but faithfully carry out all of the provisions thereof.

PAR. 13. The effect of the foregoing false and misleading representations on the part of both respondents and their traveling representatives is to mislead a substantial number of retail dealers, as well as a substantial portion of the consuming public, in the several States, by inducing them to believe: (1) That the respondents are the manufacturers of the various appliances sold and distributed by them; (2) that said appliances are of superior quality, are laboratory tested and guaranteed, and are priced at low prices; and (3) that said dealers will receive all of the benefits represented by the traveling representatives as accruing to said dealers upon the execution of the agreement and as set out in said agreement, said representations being set out in full in paragraphs 7 and 8.

The foregoing false and misleading statements and representations on the part of the respondents serve as inducements for a substantial number of retail dealers, as well as consuming purchasers, to buy the appliances distributed and sold by the respondents and to execute the so-called agency agreements hereinabove referred to, and said false and misleading statements and representations have a tendency and a capacity to, and do, divert a substantial volume of trade from respondents' competitors engaged in similar businesses, with the result that substantial quantities of said appliances sold and distributed by the respondents are sold to said dealers and to the consuming public on account of said beliefs induced by said false and misleading representation. As a consequence thereof a substantial injury has been done by the respondents to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 14. The above foregoing acts, practices, and representations have been, and are, all to the prejudice of the public and respondents' competitors, and have been, and are, unfair methods of competition within the meaning and intent 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", the Federal Trade Commission, on November 7, 1935, issued and served its complaint in this proceeding upon the respondents, T. O. Loveland and J. L. Records, trading and doing business under the names Commercial Manufacturing Co. and Brenard Manufacturing Co., charging 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 respondents' answer thereto, an agreed statement of facts was dictated into the record by J. T. Welch, attorney for the Commission, before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, and said agreed statement of facts and exhibits in connection therewith were 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, and the agreed statement of facts stipulated into the record; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, T. O. Loveland and J. L. Records, trading and doing business under the trade names Commercial Manufacturing Co. and Brenard Manufacturing Co., have their office and principal place of business in Iowa City, in the State of Iowa. For a period of more than 2 years, the respondents have been engaged in the business of distributing and selling radios.

PAR. 2. Said respondents, being engaged in the business of distributing and selling radios, cause said radios, when sold to dealers and purchasers located in various cities in the several States of the United States, to be transported from their principal place of busi-

ness in the State of Iowa to the purchasers thereof located in other States of the United States. There is now, and has been at all times mentioned herein a constant current of trade and commerce in said radios distributed and sold by the respondents between and among the various States of the United States. The net volume of respondents' business, from November 1, 1934, to January 10, 1936, amounted to \$22,961.85.

PAR. 3. At all times since the respondents' entry into the business of distributing and selling radios, other individuals, partnerships, and corporations have been engaged in similar businesses in various States of the United States and there has been, at all times, substantial competition between the respondents herein and their various competitors in the distribution and sale of said radios in commerce among and between the various States of the United States.

PAR. 4. Respondents, for the purpose of inducing the purchase of radios sold by them, have had printed, and circulated to customers and prospective customers throughout the various States of the United States, advertising booklets or pamphlets, price lists, letterheads, distributor's agency agreements, and other advertising literature. In all of said literature, hereinabove referred to, the respondents represent through various statements and representations that they are the manufacturers of the radios distributed and sold by them and their trade names Commercial Manufacturing Co. and Brenard Manufacturing Co. are prominently displayed on all of said literature.

The respondents further represent, in their advertising literature and in other ways, that the radios distributed and sold by them are of a superior quality and are priced at exceptionally low prices.

PAR. 5. The respondents do not own, operate, or control any complete plant or machinery for the manufacture of the various radios sold by them, and are not engaged in the business of manufacturing, and are not manufacturers of said radios, but are engaged solely in the business of distributing and selling radios manufactured by others. The radios designated as Plymouth and Concord radios, respectively, that are sold by the respondents and that are represented as being as good as the best and better than the rest, are radios of average quality. Radios are manufactured that are superior in quality to those distributed and sold by the respondents. Radios sold by the respondents do not contain many of the features included in first-class radio sets and said radios are not furnished at prices substantially lower than those of other manufacturers or distributors and competitors of the respondents selling radios of similar character, quality, and design. These competitors, in some instances, sell radios of similar character, quality,

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and design for prices substantially lower than the prices designated by the respondents as being the retail value or list price of said radios.

PAR. 6. A substantial portion of the retail dealers and distributors of radios prefer to purchase said radios direct from the manufacturer of said product. A substantial portion of the purchasing public prefer to purchase said radios, when they cannot purchase them direct from the manufacturer thereof, from the authorized agency distributors of said manufacturer and not from a distributor or one who merely purchases in large quantities from the manufacturer and is not the authorized agent thereof. A substantial portion of the purchasing public believe that they can secure closer prices and superior quality in dealing direct with the manufacturer of radios rather than dealing with a selling agency or middleman.

PAR. 7. The respondents have employed a number of traveling salesmen to secure the execution of distributor's agency agreements by, and the sale of radios to, retail dealers and distributors. These salesmen travel throughout the various States of the United States in furtherance of their employment. All of the advertising literature used by said salesmen is furnished by the respondents, and the respondents suggest the methods to be used by the salesmen in making their sales talks or presentations.

In soliciting retail dealers to become distributors for radios distributed and sold by the respondents, the traveling salesmen, acting under instructions from the respondents as contained in the bulletins and letters of instruction furnished by the respondents or acting with the respondent's full knowledge and consent, represent that the respondents are the manufacturers of the radios sold by them. The salesmen also make a number of representations that are in some instances without respondent's knowledge or consent, but the respondents are generally familiar with the representations so made by their salesmen and have assumed full responsibility for said representations. These representations are as follows:

1. That upon execution of the agency agreement, the retail dealer will secure an exclusive franchise for several counties or a certain trade territory in connection with the sale of the radios named in the agreement;

2. That the respondents will enter into an extensive advertising campaign upon the retail dealer furnishing names of prospective purchasers and will furnish said dealers with movie trailer ads to be used at the local theaters.

3. That the respondents guarantee a certain number of sales and a certain profit to the distributor as a result of his execution of the agency agreement and the advertising campaign conducted by the respondents;

4. That if the radios are not sold they will be taken off of the dealer's hands and the dealer's money refunded, together with interest;

5. That the respondents are not attempting to sell the retail dealer a stock of appliances, but are establishing dealers;

6. That the respondents, with the cooperation of the dealer, sell the appliances through their direct advertising system;

7. That for the protection of respondents, a temporary deposit to the extent of the amount of the distributor's agency agreement is required, so as to secure the cooperation of the dealer in furnishing the names necessary in respondents' advertising campaign and to demonstrate the good faith of the retail dealer;

8. That upon the execution of the agreement and the purchase of the demonstrator unit radio, the respondents will ship to said dealer as a floor stock, a supply of the various types of radios named in the agency agreement, ranging from 5 to 10 units, the floor stock to be either placed with the dealer or distributor on a consignment basis, or an open account for 90 days, with a 90-day extension, all unsold units to be taken up by the respondents at the end of the expiration of this period;

9. That the intent and purpose of the agreement is primarily to promote business in a particular trade territory and to open up the territory adjacent to the dealer for the sale of the radios sold by the respondents;

10. That if the dealer cannot make a profit, the respondents cannot make a profit;

11. That the retail dealer will be granted the privilege of selling said radios to responsible people on the installment plan, and the respondents will handle the installment paper of said purchaser who purchased their radios from the distributor or dealer, either with or without his endorsement;

12. That the respondents operate their business on liberal credit terms on reorders, and that the dealers, after executing the agency agreement and purchasing the demonstrator unit, can easily qualify for extensive credit by the respondents and will be enabled to do a considerable volume of business as a result of respondents' liberal credit arrangement and financing of time purchases without the necessity of the dealer placing any considerable amount of money into stocking at his own expense various models of the radios sold by the respondents;

13. That the opening of a new agency franchise is attended with heavy expense to such an extent that the respondents cannot break even on the first franchise order and that there is substantially no profit on the sale of the first unit to the dealer.

PAR. 8. As a result of the sales presentation and the confidence and reliance in the statements and representations made by said salesmen, a number of retail dealers have executed the distributor's agency agreements used by the respondents in their business. The written agency agreement to some extent substantiates the claims and representations, as above indicated, made by the salesmen, and its terms are couched in such language that they may be interpreted by retail dealers to grant and provide to said dealers the privileges enumerated by the representatives as shown in paragraph 7 hereof and do not contradict said representations or clearly and accurately demonstrate that the representations are exaggerated, misleading, or untrue.

PAR. 9. Respondents do not generally grant exclusive franchises for any particular territory and do not have overlapping territories

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at the same time, but whenever a dealer falls down on his agreement with the respondents acting under one trade name, other dealers in the same territory are approached by the respondents under their other trade name and a franchise closed with said dealers. The respondents do not conduct extensive direct-mail advertising but merely send out one mimeographed letter and a pamphlet depicting several of the radios sold by them. No other advertising material is furnished and the respondents do not furnish movie trailer ads for use in theaters and do not enter into extensive advertising campaigns. They do not place stocks of radios on consignment and do not grant liberal credit terms. During the period from November 1, 1934, to January 10, 1936, the respondents' total credit business amounted to \$63.40. During the period from November 1, 1934, to January 10, 1936, the respondents have handled no installment paper such as purchasers' notes taken by the retail dealers in selling said radios. During this same period of time, the respondents' reorder business from dealers who had already purchased the demonstrator unit amounted to \$1,334.63. During the same period of time, only 77 promotional expansion checks had been redeemed from a total of 56 different distributors. The average order received is approximately \$40 to \$50 and approximately 400 to 500 dealers have executed agency agreements between November 1, 1934, to January 10, 1936. During this same period of time, the respondents have not been required, as represented in the salesmen's representations and as set out in the agreement, to buy back any distributor's demonstrator unit or to refund the money advanced by any dealer or in any way make good the guarantee set out in the agency agreement.

The respondents do not in any case ship a supply of radios to dealers on consignment and have not devised and do not follow any plan of merchandising whereby the dealers executing the agreements are enabled to handle the radios sold by the respondents without any considerable outlay of cash except in cases where the dealer is in a position to pay for each unit purchased. The cost to the respondents of the various radios sold by them is considerably less than that represented by the salesmen to the distributors. Some of the radios cost the respondents approximately one-third of the amount for which they are sold to the dealer on the original order. The cost of the advertising campaign carried on by the respondents for the benefit of the dealers is slight. The promotional expansion checks have no value except on reorders. The retail dealer cannot reasonably expect to sell the radios distributed by the respondents on the open market to purchasers for any price closely approximating the

price fixed or suggested by the respondents. The net cost to the dealer of said radios, after the purchase of the demonstrator unit and after deducting the value of the promotional expansion check, is approximately the same as the price at which some competitors of said distributors can sell radios of similar grade and quality to members of the purchasing public. The respondents actually make a substantial profit upon the sale of the demonstrator unit to the retail dealer.

PAR. 10. The various representations made by the traveling salesmen, as herein enumerated in paragraph 7, are made for the purpose of inducing prospective purchasers to sign the agency agreement and purchase the radios in connection therewith.

PAR. 11. The various advertising literature and representations made by the respondents has placed in the hands of the traveling salesmen a means whereby unscrupulous salesmen are enabled to commit a fraud upon a substantial number of retail dealers.

PAR. 12. Many of respondents' competitors manufacture and sell radios and truthfully represent themselves as the manufacturers thereof, and many of respondents' competitors do not manufacture the radios sold by them and do not, in any way, represent themselves to be the manufacturers thereof. Many of respondents' competitors manufacture and sell radios of superior quality and many other of respondents' competitors do not manufacture or sell radios of superior quality and do not advertise their products to be of such superior quality. Many of respondents' competitors enter into agency agreements with retail dealers and do not, in any way, misrepresent any of the terms or conditions of said agreements.

PAR. 13. The operation of the respondents' business has been such as to lead a substantial number of retail dealers, as well as of the purchasing public, to believe that the respondents are the manufacturers of the radios sold by them, that said radios are of the superior quality and are priced at low prices, and that the dealers will receive all of the benefits represented by the traveling salesmen as accruing to said dealers upon the execution of the agency agreement, said representations being set out in full in paragraph 7.

The statements, acts, and representations of the respondents and their traveling salesmen, for whom the respondents have assumed full responsibility, have a tendency and a capacity to divert, and have diverted, a substantial volume of trade from respondents' competitors engaged in similar businesses. Substantial quantities of the radios sold by the respondents are sold to the dealers and to the consuming public on account of the erroneous beliefs, herein set out

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induced by the representations and acts of the respondents. Substantial injury has been done by the respondents to substantial competition in commerce among the several States of the United States.

CONCLUSION

The acts and practices of the respondents are each and all to the prejudice of the public, and to the competitors of the respondents 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 matter coming on to be heard by the Commission upon the complaint filed herein on November 7, 1935, and the answer to said complaint filed November 25, 1935, by T. O. Loveland and J. L. Records, trading and doing business under the names Commercial Manufacturing Co. and Brenard Manufacturing Co., respondents herein, an agreed statement of facts stipulated into the record before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, in support of the charges to said complaint and in opposition thereto, 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."

It is ordered, That the respondents, T. O. Loveland and J. L. Records, trading and doing business under the names Commercial Manufacturing Co. and Brenard Manufacturing Co., their agents, servants, representatives, and employees, in connection with the sale and offering for sale, in commerce between and among the several States of the United States and in the District of Columbia, of radios, cease and desist from:

1. The use of the word "Manufacturing" as a part of, or in connection with, any trade name under which they carry on their said business of selling radios; or the use of the word "Manufacturing" or words of similar import, in any manner, in their various types of advertising literature as descriptive of the business conducted by them, unless and until they own, operate, and control a complete factory or factories in which they manufacture said radios sold by them.

2. Representing, directly or by implication, through advertising literature, distributor's agency agreements and contracts, or through representations and statements made by their traveling representatives or salesmen, or in any manner whatever:

(a) That the retail dealer upon execution of an agency agreement, will secure an exclusive franchise for any particular trade territory for the sale of the radios named in the agreement;

(b) That they will enter into any extensive advertising campaign or furnish the retail dealer with movie trailer ads for use at local theaters;

(c) That they guarantee any certain number of sales or a certain profit to the distributor as a result of the execution of the agency agreement;

(d) That the radios will be taken off of the dealer's hands and his money, together with interest, refunded in the event the radios are not sold within a stated period of time;

(e) That they are establishing dealers and not attempting to sell the retail dealer a stock of radios;

(f) That the sale of the radios is made through their direct-advertising campaign and the retail dealer is required only to cooperate in said campaign to accomplish the sale of said radios;

(g) That the amount paid by the retailer in acquiring the original shipment of radios is a temporary deposit for their protection to secure the full cooperation of the dealer in the advertising campaign and to demonstrate his good faith;

(h) That they will ship to said dealer, as a floor stock, a supply of the various types of radios named in the agency agreement, said floor stock being placed with the dealer either on a consignment basis or on a 90-day credit basis with a 90-day extension, all unsold units to be taken up by them at the expiration of this period;

(i) That the intent and purpose of the agreement is primarily to open up the territory adjacent to the dealer for the sale of the radios sold by them;

(j) That they make no profit unless the dealer makes a profit;

(k) That the retail dealer will be granted the privilege of selling said radios to responsible people on an installment plan and that they will handle the installment paper of such purchasers who purchase radios from the retail dealer, either with or without his endorsement;

(l) That they operate their business on liberal credit terms on reorders;

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(m) That the dealer, after executing the agency agreement and purchasing the demonstrator unit, can easily qualify for extensive credit;

(n) That the radios sold by them are of superior quality or are sold by them at exceptionally low prices;

(o) That the expense incident to the execution of the agency agreement and the advertising campaign is so high that they make no substantial profit on the sale of the original unit to the retailer.

It is further ordered, That the respondents, T. O. Loveland and J. L. Records, trading and doing business under the names Commercial Manufacturing Co. and Brenard Manufacturing Co., shall file with the Commission within 60 days from and after service of this order, a report in writing setting forth in detail the manner and form of the compliance of each of them with this order.

Complaint

CONSOLIDATED TRADING CORPORATION

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

Docket 2680. Complaint, Jan. 6, 1936—Decision, Mar. 17, 1936

Where a corporation engaged as a jobber in the sale and exportation of various articles of merchandise including hosiery, underwear, raincoats, cosmetics, and other articles and general wearing apparel—

Represented itself as a manufacturer or mill operator through letterheads, billheads, invoices, correspondence, and advertising matter, and made such use of its corporate or trade name including the word "Mills" that customers or prospective customers were led to believe that it was such an operator or manufacturer, facts being it did not make any of the products dealt in by it nor own, operate or control any plant or factory making the same;

With capacity and tendency to mislead and deceive purchasers into the belief that in buying from it they were dealing with a manufacturer or operator of established business standing and thereby benefiting by saving the middleman's profit, and to confuse, mislead, and deceive a substantial number of purchasers into the belief that it was such a manufacturer or operator, and into buying its product in such erroneous belief, and with effect of diverting trade to it from competitors, including those manufacturers and distributors of products similar to those sold by it in foreign commerce, as above set forth, who do not misrepresent their status as manufacturers or operators, and those who as similarly engaged jobbers, do not thus misrepresent themselves, and with capacity and tendency so to do, to said competitors' substantial injury and prejudice:

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 J. Keenan*, trial examiner.

Mr. T. H. Kennedy for the Commission.

Mr. William Biel, of New York City, 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 Consolidated Trading Corporation, a corporation, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, in violation of said act, and it appearing to said Commission that a proceeding by it in respect thereof would be

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in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Consolidated Trading Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with principal place of business in the city of New York, State of New York. It is, and for more than 1 year last past has been, engaged in the sale and distribution of various items of merchandise, such as fountain pens, pencils, slippers, men's shirts, undergarments, hosiery, dresses, shoes, cosmetics, rain-coats, sanitary napkins, to customers located in foreign countries, in commerce between the United States and various foreign countries, causing the same when sold to be shipped from its place of business in the State of New York or other States of the United States to purchasers thereof located in various foreign countries. In the course and conduct of its business said respondent was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in foreign commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, said respondent adopted as and for its trade name the words Modex Mills under which to carry on its business, and which trade name, containing the word "Mills", it has used continuously for several years last past and is now using in soliciting the sale of and selling its said products in foreign commerce. Respondent has caused said trade name "Modex Mills" to appear on its letterheads, billheads, invoices, and advertising matter distributed in foreign commerce. In truth and in fact respondent does not make or manufacture the products sold by it in foreign commerce, nor does it own or operate or directly and absolutely control any mill or mills wherein the products sold by it are made or manufactured, but, on the contrary, the products sold by respondent are made or manufactured in a mill or mills or factories which respondent does not own, operate, or control.

PAR. 3. There are certain corporations, associations, individuals, firms, and partnerships doing an export business in the United States, who are competitors of respondent in foreign commerce, who actually manufacture the products sold and distributed by them in foreign commerce, who truthfully represent themselves to be manufacturers, and there are certain other corporations, associations, individuals, firms, and partnerships doing an export business in the United States in competition with respondent in foreign commerce, who do not manufacture the products sold and distributed by them in foreign commerce, who do not falsely represent themselves to be

manufacturers, and respondent, by the use in its trade name and otherwise of the word "Mills", has an unfair advantage over all of said competitors. There is a preference on the part of certain purchasers in foreign countries for goods, wares, and merchandise bought directly from the manufacturer thereof, because such purchasers believe that by dealing directly with such manufacturer they eliminate the profit of the middleman and can buy goods or merchandise at a lower price or on more favorable terms than they can by buying said products from jobbers or others who do not themselves manufacture said products, and such purchasers further believe that a more uniform line of goods can be purchased from mill operators or manufacturers than from those who do not operate mills or factories. The use by respondent of the word "Mills" in its trade name, letterheads, stationery, or otherwise, has a tendency and capacity to mislead and deceive the purchasing public into the belief that respondent actually owns and operates, or directly and absolutely controls, the mill or mills or factory or factories in which such products are produced or manufactured, or that respondent itself makes or manufactures said products, thereby unfairly diverting trade from the competitors of respondent who do manufacture their products, as well as from competitors who do not so manufacture and who do not falsely so represent.

PAR. 4. The practices of respondent hereinabove described are all to the prejudice of the public and respondent's competitors and have been and are unfair methods of competition in foreign commerce, in violation of the provisions 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 January 6, 1936, issued and served its complaint in this proceeding upon the respondent, Consolidated Trading Corporation, charging it 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 expiration of the time within which respondent was allowed to answer, a hearing was held before John J. Keenan, an examiner of the Commission, theretofore duly designated by it, at which hearing respondent, through its attorney, made a statement for the record in which it admitted all

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the material allegations in the complaint to be true and waived all further hearings in the matter. Thereafter the proceeding came on regularly for final hearing before the Commission on the said complaint and the testimony of respondent's representatives given at the hearing hereinabove referred to, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Consolidated Trading Corporation, is a Delaware corporation, organized in 1932, and since such date and now has its principal place of business at 15 Moore Street, New York, N. Y.

PAR. 2. Respondent is and has been since the 30th day of July 1934, engaged as a jobber in the export business and as such, in the sale and exportation of various articles of merchandise, including hosiery, underwear, raincoats, dresses, shoes, cosmetics, sanitary napkins, and general wearing apparel, to purchasers thereof located in various foreign countries, among them Venezuela, Colombia, Peru, and South Africa, and has caused and still causes said products, when so sold by it, to be transported in commerce from its principal place of business in New York City, N. Y., or from other places in the United States to the said purchasers located in various foreign countries.

PAR. 3. During the time above mentioned and referred to, other individuals, firms, and corporations located in various States of the United States have been engaged in the manufacture and sale of similar articles of merchandise to those hereinabove referred to, which they have sold and still sell to the purchasers thereof located in various foreign countries. The respondent during the aforesaid time was and still is in competition in commerce in the sale of said products with said individuals, firms, and corporations likewise engaged in the sale and distribution of said or similar products in foreign commerce.

PAR. 4. The respondent, during the aforesaid time, in connection with the offering for sale and the sale of the aforesaid products, represented and still represents, through letterheads, billheads, invoices, correspondence, and advertising matter, that it is a manufacturer or mill operator, and respondent has and does use the word "Mills" in its trade name in such a way that its customers or prospective customers are led to believe that respondent is a mill operator or manufacturer; when in truth and in fact respondent does not manufacture any of the products offered for sale and sold by it, and

does not own or operate, or directly or absolutely own, operate, or control any plant or factory in which any of said products offered for sale and sold by it are made or manufactured.

PAR. 5. It is the common belief among purchasers of respondent's products located in foreign countries that the products above referred to can be purchased directly from a manufacturer or mill operator at a considerable saving in price. There are those among the purchasers or prospective purchasers of respondent's products located in foreign countries who prefer to purchase said products direct from the manufacturer or mill operator, and from manufacturers, mill operators, and dealers of established business standing. The representations made by respondent above referred to have the capacity and tendency to mislead and deceive the purchasers of respondent's products into the belief that when purchasing said products from respondent they are dealing with a manufacturer or mill operator of established business standing and thereby are gaining an advantage by saving the middleman's profit.

PAR. 6. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive a substantial number of the purchasers of respondent's products into the belief that respondent is a manufacturer or mill operator and to purchase respondent's products in such erroneous belief.

PAR. 7. There are among the competitors of respondent manufacturers and distributors of products similar to those sold by respondent in foreign commerce, who do not misrepresent their status as manufacturers or mill operators, who likewise sell and distribute products similar to those sold and distributed by respondent in various foreign countries, and there are jobbers engaged in business similar to that conducted by respondent who do not represent themselves to be mill owners or operators. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation 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.

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ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the complaint filed herein on January 6, 1936, and upon the testimony given at a hearing held before John J. Keenan, an examiner of the Commission theretofore designated by it, at which hearing the respondent admitted all the material allegations of the complaint to be true and consented that the Commission might find the facts in this matter as alleged in the complaint, 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."

It is ordered, That the respondent, Consolidated Trading Corporation, trading as Modex Mills, and its agents, representatives, servants, and employees, in connection with the offering for sale and sale of hosiery, underwear, raincoats, dresses, shoes, cosmetics, sanitary napkins, and general wearing apparel in foreign commerce, cease and desist from representing, directly or indirectly through and by the use of its trade name, or in any other manner, that respondent is a manufacturer, mill operator, or mill owner.

It is further ordered, That the respondent above named within 30 days after the service upon him of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with.

Complaint

IN THE MATTER OF

JULIUS ABRAHAMS, TRADING AS PHILADELPHIA
BADGE COMPANY

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

Docket 2700. Complaint, Jan. 31, 1936—Decision, Mar. 17, 1936

Where an individual engaged in the manufacture and sale of stamp photos, falsely and misleadingly represented that his said products were purchased, used, or endorsed by the Government through stating that "among our national known users are * * * United States Government" in periodical and other advertising and otherwise; with effect of misleading and deceiving substantial parts of the purchasing public and inducing them to buy said products in and because of the erroneous belief that it was purchased in large quantities by the Government, and, by inference, was endorsed thereby, and of diverting to himself trade from competitors among whom there are those who truthfully represent their products as being thus purchased and those who do not misrepresent their products as thus purchased, when such is not the case, and with capacity and tendency so to mislead, deceive, and divert; to the substantial injury of substantial competition in commerce:

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

Mr. Joseph C. Fehr for the Commission.

Mr. Maurice Stern, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Julius Abrahams, an individual trading as Philadelphia Badge Co., 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 thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Julius Abrahams is an individual trading as Philadelphia Badge Co., with his principal place of business in the city of Philadelphia, in the State of Pennsylvania. He is now and, for more than 1 year last past, has been engaged in the business of manufacturing, selling, and transporting in commerce stamp photos, causing said products, when sold, to be shipped from his place of