

Syllabus

IN THE MATTER OF
BLACKWELL JOURNAL PUBLISHING COMPANY

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

Docket 2456. Complaint, June 24, 1935—Decision, Sept. 5, 1936

Where a corporate newspaper publisher engaged in selling its daily regularly to persons within and without State, pursuant, chiefly, to subscriptions, and in soliciting and securing both local and national advertising and advertisers, and in inserting and carrying the respective advertisements of merchants, manufacturers, and others thus solicited and located in its city and vicinity and that of those who, located in other States, advertise their goods in various parts of the country, and by reasons of, (1) out-of-State advertising contracts thus solicited and secured and resulting out-of-State shipments of cuts, electrotypes, stereotypes, mats, and textual copy for the make-up and publication of advertisements involved, and, (2) shipments of its papers to out-of-State subscribers, source and destination of a course of trade and commerce in and through the various States from and to it, and dependent primarily upon advertising income for support of the enterprise and deriving a substantial, but not greater, proportion of its income from national advertising and advertisers, accustomed to select newspaper preferred by local advertisers as having "local acceptance"—

- (a) With intent to destroy a theretofore long-established, similarly situated and engaged competitor in its said city, and with capacity and tendency so to do and to give it a monopoly in the territory and business involved and in out-of-State sales, subscriptions, and advertisements, regularly quoted and charged advertising rates substantially below cost to it of setting up and publishing such advertisements and below cost at which its said competitor had been and was able to set up and publish its advertisements, with result that during two-year period of its existence involved, loss from publication, financed by ostensible loans, equalled about ninety-five percent of its capital, and said competitor was thereby forced to publish its newspaper and its advertisements at a substantial and continually increasing loss;
- (b) With intent, capacity, and tendency to cause subscribers to fail and refuse to continue to subscribe to said competitor's paper and to prevent others from subscribing, made false and disparaging statements to such competitor's subscribers and prospective subscribers relative to its financial condition and strength and its ability to continue to publish its paper, including statements, in substance, that it was in a failing financial condition and heavily indebted, and that one of several individuals, who financed by such ostensible loans its said losses, and who had no financial or stockholder interest in itself, but were personally and politically hostile to the editor-owner of said competitor, had acquired evidences of its indebtedness and would soon "close out" such competitor, and that it would be out of existence before another subscription period would expire, and that its, i. e., said corporation's, paper was being conducted at a loss for the purpose of "breaking" said competitor and that latter could not "hold out on that kind of competition"; and

Complaint

23 F. T. C.

(c) With intent and tendency to cause subscribers of said competitor to cease subscribing to such competitor's paper, offered subscriptions for substantial periods to its own paper to subscribers to the other, without cost, in case of some, and, in that of others, at an unreasonably low price;

With result that there was a tendency to destroy such competitor, and to give it a monopoly in publication of a newspaper and advertisements in territory served by it and said competitor, to interfere with and burden interstate commerce and shipment of newspapers and of electrotypes, stereotypes, mats, and textual copy in interstate commerce, and to deprive the public of benefit of competition in publication of advertisements in territory involved:

Held, That such acts and practices, under the circumstances set forth, were to the injury of said competitor and to the prejudice of the public interest, and constituted unfair methods of competition.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Robt. N. McMillen for the Commission.

Long, St. Lewis & Nyce, of Washington, D. C. and *Mr. Ned Looney* and *Mr. Edgar Fenton*, of Oklahoma City, Okla., for respondent.

COMPLAINT

Acting in the public interest, 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 Blackwell Journal Publishing Company, a corporation, hereinafter referred to as respondent, has been and now 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, states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Oklahoma, with its principal place of business at Blackwell, in said State.

PAR. 2. Respondent is, and for the past two years has been engaged in the publication at Blackwell of a daily newspaper known and designated as the Blackwell Daily Journal. A substantial number of the copies of said newspaper have been and are regularly sold to persons residing outside the State of Oklahoma and, pursuant to such sales and as a part thereof, shipment of said papers is made from respondent's place of business at Blackwell to said purchasers. The greater proportion of the copies of said newspaper are sold under and pursuant to contracts, commonly known as subscriptions, for definite periods of time, varying from one week to one or more years.

PAR. 3. Located also at Blackwell is the Blackwell Tribune Publishing Company, hereinafter referred to as the Tribune, a corporation

engaged now, and for the past fifteen years, in the publication of a daily newspaper known and designated as The Blackwell Morning Tribune. A substantial number of the copies of said newspaper have been and are regularly sold to persons residing outside the State of Oklahoma, and, pursuant to such sales and as a part thereof, shipment of said papers is made from its place of business at Blackwell to said purchasers. The greater proportion of the copies of said newspaper are sold under and pursuant to contracts, commonly known as subscriptions, for definite periods of time, varying from one week to one or more years.

PAR. 4. In connection with the publication of their respective newspapers, respondent and the Tribune solicit merchants, manufacturers, and others desiring to offer their goods to the public, to purchase advertising space in said newspapers, for which they quote rates based upon the number of inches of space used, the rate of charge differing where there is a single insertion of such advertisement or a limited number of insertions, at the option of the advertiser, and where a definite amount of space is contracted for to be used by the advertiser over a definite period. Advertising is further divided into "national" advertising, done by manufacturers, merchants, and others located in States other than Oklahoma and who offer their goods in various parts of the United States, and "local" advertising, done by those located in Blackwell and vicinity. The principal source of income to respondent and to the Tribune has been and is this sale of advertising space in their respective newspapers, and in the solicitation of and obtaining such business and in the securing of subscriptions to and sales of their newspapers respondent and the Tribune have been and are in active, substantial competition.

PAR. 5. In connection with and pursuant to the advertising contracts made by respondent and the Tribune with national advertisers, there are shipped to them by said advertisers from outside the State of Oklahoma, cuts, electrotypes, stereotypes, mats, and textual copy for use in making up and publishing said advertisements.

PAR. 6. In the course of its business of publishing said daily newspaper and of soliciting and securing purchasers of advertising space therein respondent has regularly sold, and is regularly selling, such advertising space at a price or charge substantially below the cost to respondent of setting up and publishing the advertisements therein, and substantially below the cost at which the Tribune can and does set up and publish the same and similar advertisements in its newspaper, thus forcing the Tribune either to forego this part of its business or to operate at no profit or at a loss.

Findings

23 F. T. C.

PAR. 7. In soliciting subscriptions to its said newspaper respondent has falsely stated and represented to subscribers and prospective subscribers to the Tribune's newspaper that the Tribune was on the verge of financial failure and would soon be forced to cease the publication of its paper and that subscribers thereto would lose all or the greater part of the money paid by them to the Tribune for subscriptions. Respondent has further sought to deprive the Tribune of its subscribers by offering them its own paper without charge for the remaining term of the subscriptions to the Tribune's newspaper on the condition that they thereafter subscribe only for respondent's paper.

PAR. 8. In fixing its rates and charge for advertising space below a profitable return, and in making false and disparaging statements of and concerning the Tribune's financial condition and in endeavoring to deprive the Tribune of its subscribers, all as aforesaid, it has been and is the purpose and intent of respondent to force the Tribune out of business in Blackwell and vicinity and the other territory covered and served by it and respondent, and thereby gain a monopoly of the newspaper business and the publication of advertisements in such territory.

PAR. 9. The practices of respondent hereinabove set forth result and have resulted in substantial injury to its said competitor, the Tribune; have directly burdened and interfered with, and continue to burden and interfere with, interstate commerce; tend to create in respondent a monopoly of that line of commerce in that locality; prejudice the public interest and constitute unfair methods of competition in commerce within the intent and meaning of the act of Congress hereinabove entitled.

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 issued and served its complaint on respondent, Blackwell Journal Publishing Company, a corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent filed answer, and hearings were convened and had before a duly qualified examiner of the Federal Trade Commission. At the commencement of said hearings, before the introduction of any evidence, the respondent objected to the introduction of evidence on behalf of the Commission upon the ground that none of the acts

alleged in said complaint constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress above entitled, and that the Federal Trade Commission is without jurisdiction to hear and determine the cause in that the acts alleged in the complaint as unfair practices do not constitute commerce as contemplated by said act.

This objection was overruled, to which ruling the respondent noted an exception.

Thereupon, and thereafter, evidence was introduced in support of the complaint and respondent offered and introduced evidence in defense of the charges. Thereafter, briefs were filed in support of the complaint and by respondent. Oral argument was waived by respondent.

And now the Commission having duly considered the whole record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Blackwell Journal Publishing Company, is, and has been since sometime prior to June 1, 1933, a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, with its principal place of business at Blackwell, in said State.

PAR. 2. Respondent is, and has been since June 1, 1933, engaged in the publication of a daily newspaper known as "The Blackwell Daily Journal," its first issue appearing June 11, 1933. Approximately ten percent of the number of copies of said newspaper sold are and have been regularly sold to persons residing outside of the State of Oklahoma, and pursuant to such sales, and as a part thereof, shipment of said papers is and has been made from respondent's place of business at Blackwell to said purchasers. The greater proportion of the copies of said newspaper are and have been sold, both within and without the State, under and pursuant to contracts, known as "subscriptions," for definite periods of time, varying from one week to one or more years.

PAR. 3. Located also at Blackwell during all the time above mentioned and for more than ten years prior thereto, was and is the Blackwell Tribune Publishing Company, a corporation, engaged in the publication of a daily newspaper known as "The Blackwell Morning Tribune." Approximately six percent of the number of the copies of said newspaper sold have been and are regularly sold to persons residing outside the State of Oklahoma, and pursuant to such sales, and as a

Findings

23 F. T. C.

part thereof, shipment of said paper is and has been made from its place of business at Blackwell to said purchasers. The greater proportion of the said papers are sold, both within and outside the State, under and pursuant to contracts, known as "subscriptions", for definite periods of time, varying from one week to one or more years. For convenience said newspaper and corporation will be hereinafter referred to as the "Tribune." No other newspaper, except respondent's, is now, or during the time since the establishment of respondent's paper has been, published in Blackwell, and no daily paper nearer than twenty miles. In soliciting and securing subscriptions to their respective newspapers, respondent and the Tribune have been and are in active, substantial competition.

PAR. 4. In connection with the publication of their respective newspapers, respondent and the Tribune solicit and secure, and have solicited and secured, merchants, manufacturers, and others desiring to offer their goods to the public, to insert and carry advertisements in said newspapers, for which service the respondent and the Tribune quoted and charged rates based upon the number of column-inches of space used. Among such advertising and advertisers were and are what is known in the newspaper business as "national" advertising and advertisers, that is, advertising done by manufacturers, merchants, and others located in States other than Oklahoma and who advertise their goods in various parts of the United States, as distinguished from "local" advertising and advertisers, advertising by those located in Blackwell and vicinity. In seeking and securing such advertising business the respondent and the Tribune have been and are in active, substantial competition.

PAR. 5. In connection with and pursuant to the advertising contracts made by respondent and by the Tribune with national advertisers, there are and have been shipped to them by said advertisers, from outside the State of Oklahoma, cuts, electrotypes, stereotypes, mats, and textual copy for use in making up and publishing said advertisements. So that in soliciting and securing subscriptions to their respective newspapers from and in shipping said newspapers to, subscribers located in States other than the State of Oklahoma, and in entering into contracts with national advertisers located outside the State of Oklahoma, resulting in the shipping of said cuts, electrotypes, stereotypes, mats, and textual copy, there exists and has existed a course of trade and commerce among and through various States of the Union, from and to respondent and from and to its said competitor.

PAR. 6. The sources of income of newspapers, of the class and size of the respondent's and its said competitor's newspapers, are two—from "circulation", that is, sale of newspapers, and from the publication of

advertisements. In the case of newspapers of the class and size of respondent's and its said competitor's newspapers, the proportion of income from each source to the total income is substantially uniform and constant, and being from 20% to 30% from circulation and 80% to 70% from publication of advertisements. The income from circulation is expected to do, and does, no more, or little more, than to cover the expense of the circulation department. In the two years following the establishment of respondent's paper, its income from circulation was 28½% of its total income and from advertisements 71½%. Its circulation department expense has been more than twice its circulation income.

A substantial part of respondent's and its competitor's income is and has been from national advertisers and advertising, but the greater proportion is from local advertisers and advertising. The amount of local advertising secured and carried by a newspaper directly affects its appeal as a medium for national advertising, in that national advertisers are wont to select the newspaper which has "local acceptance", that is, that is preferred by local advertisers.

PAR. 7. The primary purpose or object in the conduct of the various departments of a newspaper of the class and size of respondent's and its said competitor's newspapers is to increase the value of the newspaper as an advertising medium. Such departments consist of current news, editorials, market reports, and other special features. The number of subscribers is also a material element of its value as an advertising medium.

PAR. 8. The cost of setting up and publishing advertisements in newspapers of the size and class of respondent's and its competitor's newspapers consists of the entire expense of conducting the newspaper, except the circulation expense, which is met by income from circulation.

PAR. 9. From the time of the first issue of its said newspaper by respondent up to and including the time of the closing of hearings in this matter, the respondent has regularly quoted and charged rates for advertising in its said paper substantially below the cost to it of setting up and publishing such advertisements, so that it has not only failed to make any profit from the publication of its newspaper and the securing and publishing of advertisements therein, but has, throughout the whole of said period of time, published said newspaper and set up and published advertisements therein at a substantial loss, amounting in said two years of its existence to approximately \$94,500, or 94½% of its capital, and at the time of the close of hearings herein said loss was continuing.

Findings

23 F. T. C.

During the first approximately six months of the publication of respondent's newspaper, ended December 31, 1933, the cost of setting up and publishing advertisements therein was \$24,686.09, while its charge therefor resulted in an income of \$5,867.45; during the year 1934, the cost was \$55,117.10 and income \$16,348.26; and during the six months ended June 30, 1935, the cost was \$31,667.57, income \$10,992.21. During the same respective periods the relation of expense and income in the circulation department was: 1933, expense \$7,505.02, income \$3,842.35; 1934, expense \$12,589.14, income \$5,271.81; 1935, expense \$10,117.84, income \$4,119.81.

PAR. 10. The rates for advertising so quoted and charged by respondent have been and are below the cost at which its said competitor has been and is able to set up and publish advertisements in its said newspaper, so that during the whole time of the existence of respondent's paper its said competitor has been forced by the competition of respondent's said rates to publish its newspaper and to publish advertisements therein at a substantial, continually increasing loss.

For the period June 1 to December 31, 1933, the Tribune's income from advertisements was \$38,227.77 and its expense, less expense of its circulation department, was \$48,445.69, a loss of \$10,217.92. Its total operating loss for the period was \$5,723.88. For the year 1934, income from advertising was \$59,254.83, and its expense, less expense of the circulation department, was \$81,146.03, a loss of \$21,891.20. Its total operating loss for the year was \$12,111.61. For the year 1935 up to June 30, its income from advertising was \$29,006.82, and its expense, less expense of its circulation department, was \$40,790.00, a loss for the six months of \$11,783.18. Its total operating loss for the six months was \$7,814.35.

Comparing the number of column-inches of advertising carried by the Tribune and the income therefrom, for the five months preceding establishment of respondent's newspaper and for the seven months following its establishment, it appears that while the number of column-inches of advertising carried by the Tribune increased by 60%, its gross income therefrom increased by only 55%.

PAR. 11. Respondent's intent and purpose in quoting rates for advertising below the cost to it of setting up and publishing the same and below the cost at which its said competitor is able to set up and publish advertising in its paper, and the capacity and tendency of same, has been and is to destroy its said competitor with the result of giving respondent a monopoly, in the territory served by respondent and its competitor, of the publication of a newspaper and of the publishing of advertisements in said territory.

The only sources of income open to respondent in the publishing of its newspaper, were and are circulation and advertising. It could not gain an income from circulation substantially greater than that necessary to meet the expenses of its circulation department. All other expenses of conducting its newspaper, and all income to create a profit in its operations must come from advertising.

From the time of the first issue of its newspaper until the close of hearings in this case, the rates quoted and charged by respondent would and did produce an income lower than necessary to meet its expenses after deducting the expense of its circulation department. The rate quoted and charged during period from June 11 to July 11, 1933, was 42¢ to 27¢ per column-inch, depending upon the amount of space used by the advertiser. On July 11, 1933, it dropped its rate to 18¢ per inch and from that date to November 1, 1933, it was fixed at 1¢ per inch for each 100 subscribers. On November 1, the rate had risen to 34¢, when it was dropped to 15¢ per column-inch, and at the end of November respondent received an installment of \$8,000 of the loan hereinafter referred to in paragraph 12. This 15¢ rate continued up to August 1, 1935.

At the time of establishment of respondent's newspaper its competitor, the Tribune, was quoting and charging a rate of 62¢ to 40¢ depending upon the amount of space used. On June 14 it offered a 20% discount on this rate for any month the Tribune was used exclusively by advertisers. The rate actually received during this period was an average of 58¢. From January 29, 1934, to May 1, 1935, the Tribune's rate averaged about 37¢. On May 1, 1935, the Tribune raised its rates to 50¢ and 35¢ depending upon the amount of space used. Respondent however continued its 15¢ per inch rate until August 1, 1935, when it was raised to 42¢ to 25¢ depending upon the amount of space used.

For the 20 days of June 1933, following the first issue of respondent's newspaper it carried over half as much advertising as the Tribune carried for the full month. During the next month, July, respondent increased its advertising by 589 column-inches while its competitor increased 620 inches. In August respondent lost 547 inches as compared with July while its competitor lost 457 inches, respondent holding its relative position in the face of an increase of its rates during the month from 19½¢ to 24¢ while its competitor's rates remained constant at 62¢ to 40¢ with 20% discount for any month in which the Tribune was used exclusively as the merchant's advertising medium. During September respondent carried increased advertising to the extent of 10% over August while its competitor increased 90%. In October, the month preceding respondent's drop

Findings

23 F. T. C.

to 15¢ per column-inch, respondent lost about 41% as compared with the preceding month and its competitor lost 46%. Therefore, the respondent, during the first 5 months of its existence, starting with a circulation of nothing and an average for the period of only 32% of its competitor's circulation, carried 48% of the total amount carried by the Tribune during that period.

During the period from November 1, 1933, to August 1, 1935, respondent's circulation gradually increased from an average of about 2,825 to 6,670 subscribers. During this same period its competitor's circulation dropped from about 8,344 subscribers to about 7,600.

PAR. 12. The losses sustained by respondent in the conduct of its newspaper and in setting up and publishing advertisements therein, as hereinabove found, have not been met out of its capital or other resources but have been met by money advanced, ostensibly in the form of loans, by three persons not stockholders or otherwise financially interested in the respondent corporation.

One of these men was a lawyer residing at Blackwell, another an oil operator residing at Ponca City, Okla., and the third an oil operator residing at Blackwell. These two towns are about seventeen miles apart, connected by three paved roads, and they, and their respective merchants, are rivals in an extensive, common trade territory.

E. M. McIntyre was, and is, the sole stockholder in respondent corporation. Soon after the establishment of its newspaper, the above named three men advanced to McIntyre, in the form of a loan for use in connection with the running of the newspaper, the sum of \$40,000, each one of the three contributing one-third of the amount. This loan was made without inquiry as to McIntyre's financial responsibility, and no security was given by him except the pledge of his stock in the respondent corporation. McIntyre paid no money or other thing for his stock, and at no time contributed money to the corporation or for the conduct of the newspaper.

Thereafter and up to June 30, 1935, the last two of the three men referred to above, advanced to McIntyre in the form of loans additional amounts in monthly installments of from \$2,000 to \$8,000, until on May 25, 1935, the aggregate amount, including the first \$40,000, was \$117,400. No security other than the pledge of McIntyre's stock was given for the additional \$77,400. One of the two personally handed McIntyre some part of this sum each month throughout the period.

For a number of years prior to the establishment of respondent's newspaper, the editor of the Tribune, who owned 90% of its stock, and one of these two men had been on opposite sides of the question whether the city of Blackwell should sell its municipally-owned gas plant.

During this time there was a bitter controversy between them, recurring at each city election. Editorials in the Tribune had bitterly attacked the other and he, through circulars, had replied in the same vein. In the last four or five years the ill-feeling between them had been augmented by the Tribune championing the city's rights in the matter of the pollution of its water supply by a number of oil operators, among them this creditor of respondent, and the Tribune had printed a number of editorials directed against him and his partner.

Personal relations between the editor of the Tribune and the other of the two men were even more antagonistic. They were on opposite sides of a number of State political questions, the editor had been active in an attempt to oust him from a State office, had testified against him in a State investigation of his conduct of this office, and during this time he had made the threat that he would get even with the Tribune's editor. This controversy brought forth a number of editorials in the Tribune attacking him.

PAR. 13. During the conduct of its said newspaper in competition with its said competitor, respondent has made false and disparaging statements to subscribers and prospective subscribers to the Tribune, of and concerning the financial condition and financial strength of its said competitor and concerning its ability to continue to publish its said newspaper, in substance that the Tribune was in a failing financial condition; that the Tribune was heavily indebted and that one of the persons referred to in paragraph 12 hereof had acquired the evidences of such indebtedness and would soon "close out" the Tribune; and that the Tribune would be out of existence before another subscription period would expire. Representatives of respondent, in the course of soliciting subscriptions to respondent's paper, also spread the report among subscribers and prospective subscribers to the Tribune that respondent's paper was being conducted at a recurring monthly loss for the purpose of "breaking" the publisher of the Tribune, and that the Tribune could not "hold out on that kind of competition." The purpose, capacity and tendency of the making of such statements has been and is to cause subscribers to fail and refuse to continue to subscribe to the Tribune and to prevent others from subscribing.

PAR. 14. In the course and conduct of the publication of its said newspaper, respondent has offered subscriptions, for substantial periods to its newspaper to subscribers to the newspaper of its competitor, in some cases without cost, and in other cases at an unreasonably low price, for the purpose of causing, and with the tendency to cause, said persons to cease subscribing to its competitor's newspaper.

Order

23 F. T. C.

PAR. 15. The result of the methods of competition which have been used by respondent, as hereinabove found and set forth, has been and is to tend to destroy its said competitor; to give respondent a monopoly in the publication of a newspaper and of advertisements in the territory served by respondent and its said competitor; to interfere with and burden interstate commerce in the shipment of newspapers and of electrotypes, stereotypes, mats, and textual copy in interstate commerce; and to deprive the public of the benefits of competition in the publication of advertisements in said territory.

CONCLUSION

The acts and practices of the respondent, under the circumstances hereinabove found and set forth, have been and are to the injury of respondent's competitor, and prejudicial to the public interest, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding being before the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the evidence taken and received, and the briefs of counsel for the Commission and for the respondent;

And the Commission having made its report in writing stating its findings as to the facts and its conclusion therefrom that respondent has been and is violating 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,"

It is hereby ordered, That respondent, the Blackwell Journal Publishing Company, a corporation, its agents, employees and representatives forthwith cease and desist from:

1. Making and circulating false disparaging statements of and concerning the financial condition and responsibility of its competitor or competitors;
2. Offering to newspaper subscribers of its competitor or competitors subscriptions to respondent's newspaper without cost;
3. The practice of quoting or charging rates, for setting up and publishing advertisements, which are below the cost thereof to respondent;

413

Order

for the purpose of injuring, a competitor, or those competitors, of respondent whose newspapers circulate in interstate commerce or who solicit and secure contracts for setting up and publishing advertisements, from persons located outside the State of Oklahoma, which contracts contemplate and cause the shipment of cuts, electrotypes, or other property into said State.

It is further ordered that within 30 days from the date of the service of this order upon respondent, it shall file with the Commission a report in writing, setting forth in detail the manner and form in which it shall have complied with this order.

Complaint

23 F. T. C.

IN THE MATTER OF
THE ABORN HAT MANUFACTURING COMPANY

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

Docket 2499. Complaint, July 18, 1935—Decision, Sept. 12, 1936

Where a corporation engaged in manufacture of new men's hats from new felts and of men's made-over felt hats from previously worn and discarded hats purchased by it from concerns dealing in such articles, through process involving their dry cleaning, blocking, shellacing, powdering, and dyeing, as necessary, and re-equipment with new sweat leathers, ribbons, and linings with customary or typical stamping of designs or names such as "Quality," "Colonial," "Wellington," etc., brought from regular dealers in such various trimmings, and in sale of said processed, new appearing products direct to the trade and through salesmen—

Sold and invoiced said hats as "seconds" or "specials," with no word or mark thereon to indicate their made-over character, at substantially lower prices than charged by manufacturers of the necessarily more costly new products to jobbers, and to retailers, of whom some did not know their made-over character, and of whom some sold same to purchasers as new, or reconditioned new hats, and of whom some did not advise their purchasers as to said hats' nature except upon inquiry as to reason for their cheap price, in which event customer was advised hat was reconditioned new one;

With result of enabling jobbers, and latter's retailer customers, to sell said hats thus made, equipped, and sold, to such merchants and to purchasing public, respectively, as and for new articles, and with capacity and tendency to induce many retailers and many of purchasing public to buy said renovated and made-over, second-hand, old, theretofore used and discarded hats, indistinguishable from new and unused articles by ordinary purchaser at retail, as and for such articles, and with effect of unfairly diverting trade to it from concerns engaged in manufacture and sale of new hats throughout the various States, and from competitors engaged in sale of such renovated products, and who label, tag, and otherwise indicate thereon their renovated and not new nature; to the substantial injury of competitors in interstate commerce:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. George Foulkes for the Commission.

Mr. James A. O'Callaghan, of Chicago, Ill., 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