

Syllabus

IN THE MATTER OF

DALLAS E. WINSLOW, INC., TRADING AS DURANT
MOTOR CAR COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2628. Complaint, Nov. 14, 1935—Decision, Sept. 21, 1936*

Where a corporation engaged in sale of automobile parts and accessories as successor, elsewhere, to concern which, following purchase from receiver of unassembled parts of Durant Motor Company, theretofore assembler and distributor of Durant, Star, and Rugby cars, entered upon and widely advertised business of selling replacement parts for said automobiles, but which, as stock of parts thus bought at plant of said motor company became depleted, began purchase of new supplies from the manufacturers so that parts advertised, sold, and distributed by it came to consist, to a substantial extent, of those derived from sources other than said company—

(a) Adopted and used as a trade name, in soliciting and selling its said products, words "Durant Motor Car Company", and made use of and featured word "Durant" and purchase of authorized or genuine Durant parts and direct from factory service, through such statements in catalogues and other advertisements and advertising matter as "Buy only authorized Durant parts direct from the factory", "Prices again slashed for genuine Durant parts," " * * * We now take a pardonable pride in making the statement that today Durant owners can buy from us genuine parts for their cars MORE CHEAPLY THAN EVER BEFORE IN DURANT HISTORY. Durant Motor Car Company, Lansing, Michigan," and "We've turned the plant upside down to serve you EVEN BETTER THAN BEFORE. Direct from the factory * * * Durant Motor Car Company, Lansing, Michigan";

(b) Set forth in catalogues depiction of large plant occupied by Durant Motor Car Company prior to its adjudication as bankrupt, together with title, "The Durant factory at Lansing, Michigan", and made such statements as "Every replacement part you order is shipped to you from this mammoth plant", and invited customer's cooperation by purchasing all parts made from it so as to assist in maintaining "this most important and economical direct factory service", and invited prospective purchasers to "Send all orders for Star parts direct to the factory. Durant Motor Car Company, Lansing, Michigan";

Notwithstanding fact receiver's bill of sale of unused parts did not convey last-named company's good-will or right to use its name, and none of parts thus advertised, sold, and distributed were made by such corporation or by its predecessor nor, in substantial portion, by the Durant Motor Company, and neither it nor its predecessor owned or operated any factory wherein such parts were fabricated;

With tendency and capacity to confuse, mislead and deceive purchasers into belief that it was the Durant Motor Car Company or successor thereto,

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and to divert trade to it from competitors; to the substantial injury of competition throughout the States:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Franklin K. Lane, of Washington, D. C. and *Lightner, Crawford, Sweeny, Dodd & Toohy*, of Detroit, Mich., 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," approved September 26, 1914, the Federal Trade Commission, having reason to believe that Dallas E. Winslow, Inc., a corporation, trading as Durant Motor Car Company, 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. Dallas E. Winslow, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, trading as Durant Motor Car Company, with its principal place of business on Holden Avenue at Lincoln Street in the city of Detroit, State of Michigan. It is now and has been for several years last past engaged in the business of buying, selling, and distributing automobile parts and accessories. The respondent causes said automobile parts and accessories, when sold, to be transported from its principal place of business into and through numerous States of the United States other than the State of Michigan, to purchasers thereof at their respective points of location.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is in competition with other individuals, partnerships, and corporations engaged in the purchase, sale, and distribution of automobile parts and accessories, in commerce between and among the various States of the United States.

PAR. 3. The Durant Motor Company, a corporation, was formerly engaged, at the city of Lansing, State of Michigan, in the assembling of parts which it purchased from the manufacturers thereof, into complete cars, and in the sale and distribution of such assembled cars under the trade names of Durant, Star, and Rugby auto-

mobiles. In to wit: 1931, said company was adjudged to be insolvent, and a receiver was appointed, which receiver, acting under the authority of the United States District Court for the Southern Division of the Eastern District of Michigan, sold and conveyed its assets to one Joseph R. Deins on the 26th day of February 1932, who, on the same day, sold and conveyed said assets to Fuller-Johnson Corporation. Said assets consisted of all unassembled parts on hand, certain office furniture, machinery and bin equipment. Said last named corporation on to wit: the 5th day of June 1933, sold and conveyed said assets to the respondent herein. The respondent, Dallas E. Winslow, Inc., thereupon adopted as a trade name Durant Motor Car Company, and entered upon the business of selling and distributing replacement parts for the Durant, Star, and Rugby automobiles, and advertised the same widely under said trade name. The parts so sold and distributed by respondent at first consisted mainly of those parts purchased from the receiver by Deins and turned over at the plant, but subsequently certain of such parts became depleted, and the respondent began to order new supplies from the manufacturers thereof until the parts so advertised, sold, and distributed consisted and now consist, to a substantial extent, of parts not derived from the original Durant Company, but purchased from other sources. Subsequently respondent moved its entire business from Lansing, Mich., to Detroit, Mich. The respondent rented only a small part of the factory formerly occupied by the Durant Motor Company of Lansing, Mich., from the concern who purchased this factory from the receiver.

PAR. 4. In the course and conduct of its business as aforesaid, respondent, in soliciting the sale of and selling its parts and equipment in interstate commerce, made the following and other similar statements and representations in catalogues, advertisements, and advertising matter distributed in interstate commerce among customers and prospective customers:

Buy only authorized Durant parts direct from the factory.

Prices again slashed for genuine Durant parts.

By these economies and reductions in materials from our suppliers, we have been able to lower our costs, which in turn has enabled us to again lower our parts prices; in some instances to the extent of cutting off 50% of our former quotations. Every item has been gone over carefully and all possible reductions made. You may therefore rest assured we have gone our limit in reducing prices in that you are now buying authorized parts just as cheaply as they can possibly be sold for. We now take a pardonable pride in making the statement

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that today Durant owners can buy from us genuine parts for their cars **MORE CHEAPLY THAN EVER BEFORE IN DURANT HISTORY.**

Durant Motor Car Company, Lansing, Michigan.

We have turned the plant upside down to serve you **EVEN BETTER THAN BEFORE.** Direct from the factory. * * * Durant Motor Car Company, Lansing, Michigan.

In one of respondent's catalogues there appears a pictorial representation of the large plant occupied by the Durant Motor Car Company of Michigan prior to its adjudication of insolvency, and beneath is the title:

The Durant Factory at Lansing, Michigan.

Every replacement part you order is shipped to you from this mammoth plant.

We ask your cooperation by purchasing from us **ALL** parts needed by you, as thereby you assist in maintaining for your benefit, as well as ours, this most important and economical direct factory service.

Send all orders for Star parts direct to the factory.

PAR. 5. In truth and in fact, the use of the trade name "Durant Motor Car Company" has the tendency and capacity to confuse, mislead, and deceive purchasers into the belief that the respondent is the Durant Motor Car Company or its successor, although the decree of the United States Court for the Southern Division of the Eastern District of Michigan, on the 26th day of February 1932, did not authorize the receiver to convey to the purchaser thereof the good-will or name of said Durant Motor Company, nor did the bill of sale executed by said receiver convey such good-will or right to the use of said name.

In truth and in fact, none of the parts so advertised, sold and distributed, were manufactured by the Durant Motor Company or by the respondent, Dallas E. Winslow, Inc., and respondent did and does not own, operate, or control any factory wherein any such parts were or are fabricated.

PAR. 6. There are, among the competitors of the respondent, many who do not manufacture the automobile parts and accessories distributed by them, and do not in any way falsely represent that they do manufacture said parts and accessories, and do not in any way falsely represent the source from which said parts and accessories were obtained by said competitors for resale. There are among the competitors of the respondent, many who do not in any way represent that the automobile parts or accessories sold by them were manufactured by or purchased from the manufacturer of the automobiles for which said parts and accessories were designed or are sold. There

are likewise many among the competitors of the respondent that do not in any way represent that they own, operate, or control the factory or plant in which the automobile parts and accessories sold by them are manufactured.

PAR. 7. The foregoing false and misleading statements and representations on the part of the respondent serve as inducements for a substantial number of purchasers to buy the automobile parts and accessories offered for sale and sold by the respondent, and have a tendency and capacity to, and do, divert a substantial volume of trade from the competitors of the respondent engaged in similar businesses, to the respondent, with the result that substantial quantities of said automobile parts and accessories sold by the respondent are sold to the consuming public on account of said beliefs induced by said false and misleading representations, and, as a consequence thereof, a substantial injury has been done by the respondent to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 8. The above alleged acts and things done by respondent are all to the injury and prejudice of the public and to the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on November 14, 1935, issued and on November 18, 1935, served its complaint in this proceeding upon the respondent, Dallas E. Winslow, Inc., a corporation trading as Durant Motor Car Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Thereafter, on December 23, 1935, respondent filed its answer to said complaint through its attorneys. Subsequently, on August 25, 1936, the day set for hearing, the respondent through its attorneys filed a motion to withdraw said answer and to file in lieu thereof a substitute answer attached thereto. Respondent also executed a stipulation as to the facts. The said substituted answer admits all of the allegations of the complaint and consents that without further evidence or other intervening procedure the Commission may issue and

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serve upon respondent findings as to the facts and conclusion drawn therefrom and an order to cease and desist from the violations of the law charged in the complaint. The facts so stipulated embrace all of the allegations of the complaint and also respondent in said stipulation consented to the entry of an order to cease and desist based upon said stipulated facts. The Commission thereafter granted respondent's motion to withdraw its original answer, and received and filed respondent's substitute answer. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, substituted answer and stipulation as to the facts, 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. Dallas E. Winslow, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, and doing business under the trade name and style of Durant Motor Car Company, with its principal place of business located at the city of Detroit, in the State of Michigan. It is now and, for more than one year last past, has been engaged in the sale of automobile parts and accessories, in commerce, between and among various States of the United States; causing said products, when sold, to be shipped from its place of business in the State of Michigan to purchasers thereof located in a State or States of the United States other than the State of Michigan. In the course and conduct of its business, Dallas E. Winslow, Inc., was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 2. Durant Motor Company, a Michigan corporation, was formerly engaged, at the city of Lansing, Michigan, in the assembling of parts which it purchased from the manufacturers thereof, into complete cars and in the sale and distribution of such assembled cars under the trade names of "Durant," "Star," and "Rugby" automobiles. In the year 1931, said company was adjudged to be insolvent and a receiver was appointed, who, in disposing of the assets, sold and conveyed to Winslow-Baker-Meyering Corporation all the unassembled parts on hand at the Durant Company's plant. Said Winslow-Baker-Meyering Corporation then entered upon the business of selling and distributing replacement parts for the three auto-

mobiles named, and advertised the same widely. The parts so sold and distributed consisted, at first, entirely of those purchased from the receiver and turned over at the plant; but as time passed the stock of certain of such parts became depleted, and the selling and distributing corporation began to order new supplies from the manufacturers thereof, until the parts so advertised, sold, and distributed consisted, and now consist, to a substantial extent of parts not derived from the Durant Company but purchased from other sources. Winslow-Baker-Meyering Corporation has now been succeeded by Dallas E. Winslow, Inc., and its place of business has been removed from Lansing, Mich., and is now located at Detroit, Mich.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, Dallas E. Winslow, Inc., in soliciting the sale of and selling its said products in interstate commerce, made the following and other similar statements and representations in catalogues and other advertisements and advertising matter distributed in interstate commerce among customers and prospective customers:

Buy only authorized Durant parts direct from the factory.

Prices again slashed for genuine Durant parts.

By these economies and reductions in materials from our suppliers, we have been able to lower our costs, which in turn has enabled us to again lower our parts prices; in some instances to the extent of cutting off over 50% of former quotations. Every item has been gone over carefully and all possible reductions made. You may therefore rest assured we have gone our limit in reducing prices and that you are now buying authorized parts just as cheaply as they can possibly be sold for. We now take a pardonable pride in making the statement that today Durant owners can buy from us genuine parts for their cars **MORE CHEAPLY THAN EVER BEFORE IN DURANT HISTORY.** Durant Motor Car Company, Lansing, Michigan.

We've turned the plant upside down to serve you **EVEN BETTER THAN BEFORE.** Direct from the factory * * * Durant Motor Car Company, Lansing, Michigan.

In one of its catalogues, there appeared a pictorial representation of the large plant which had been occupied by the Durant Motor Car Company prior to its adjudication as a bankrupt, and beneath this, the title: "The Durant factory at Lansing, Michigan."

Every replacement part you order is shipped to you from this mammoth plant.

We ask your cooperation by purchasing from us ALL parts needed by you, as thereby you assist us in maintaining for your benefit, as well as ours, this most important and economical direct factory service.

Send all orders for Star parts direct to the factory.

Durant Motor Car Company, Lansing, Michigan.

The use of the trade name of "Durant Motor Car Company" had and has the tendency and capacity to confuse, mislead, and deceive purchasers into the belief that the corporation using the same is the Durant Motor Car Company or the successor of the Durant Motor

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Company, although the bill of sale from the receiver conveying the title to the unused parts did not convey the good will of the Durant Motor Company or the right to use its name; none of the parts so advertised, sold and distributed were manufactured by Winslow-Baker-Meyering Corporation, or by Dallas E. Winslow, Inc., nor were a substantial portion of said parts manufactured by Durant Motor Company; and neither said Winslow-Baker-Meyering Corporation nor said Dallas E. Winslow, Inc., owned or operated any factory wherein such parts were fabricated.

PAR. 4. The use of the aforesaid trade name and advertisement by the respondent as set forth in the foregoing paragraphs has had the capacity and tendency to divert trade to said respondent from competitors. Competition throughout the various States of the United States has been substantially injured by said respondent through the use of or by means of such representations and statements.

CONCLUSION

The aforesaid acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

The respondent, Dallas E. Winslow, Inc., a corporation trading as Durant Motor Car Company, having heretofore on December 23, 1935, filed answer herein denying the material allegations of the complaint, and, subsequently on the 25th day of August 1936, respondent having filed with the Commission a motion that it be permitted to withdraw said answer and be permitted to file in lieu thereof its substituted answer attached to said motion, and respondent having also executed a stipulation as to the facts in lieu of testimony; and the Commission having duly considered said motion, substituted answer and stipulation as to the facts, and being fully advised in the premises;

It is hereby ordered, That the said motion be and the same is hereby granted, that the said answer be and the same is hereby withdrawn, that said substituted answer be, and the same is hereby filed in lieu of said answer so withdrawn.

And the respondent in and by its substituted answer having admitted the allegations contained in the complaint, having consented

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that the Commission make its findings as to the facts and conclusion from the facts stipulated, and having consented to the entry, issuance, and service upon it of an order to cease and desist from the practices alleged in the complaint; and the Commission being fully advised in the premises and having made its findings as to the facts and conclusion that 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 hereby further ordered, That respondent Dallas E. Winslow, Inc., a corporation trading as Durant Motor Car Company, its officers, agents, representatives, and employees in connection with soliciting the sale of and selling its automotive parts and equipment in interstate commerce, do forthwith cease and desist from:

1. Directly or indirectly using or causing to be used, the trade name "Durant Motor Car Company", or "Durant Motor Company", or any other word or similar combination of words as a trade name for its business.

2. Directly or indirectly using or causing to be used, the word "Durant" in any way which may have the tendency and capacity to confuse, mislead, and deceive purchasers into the belief that the respondent is the successor of the Durant Motor Company.

3. Representing directly or indirectly through advertisements, or on stationery, invoices, and other printed matter, or in any other way that its automotive parts and equipment are "authorized Durant parts direct from the factory", "genuine Durant parts", "direct factory service", or from employing similar statements and representations which may have the tendency and capacity to confuse, mislead, and deceive purchasers into the belief that all of the parts so advertised, sold, and distributed are or were derived from the Durant Motor Company.

4. Representing directly or indirectly through the use of the word "factory" either independently or in conjunction with any other word or words, or with any pictorial representations, in its advertising matter, or in or through other means, that respondent owns, operates, or controls any factory wherein its products are made or fabricated in any way, when such is not the fact.

It is further ordered, That the respondent shall within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF

J. H. CASEY, TRADING AS J. H. CASEY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2665. Complaint, Dec. 19, 1935—Decision, Sept. 21, 1936*

Where an individual engaged in manufacture, sale and distribution of a certain medicine or remedy under designation "Casey's Compound"; in advertising same through pamphlets and other trade literature—

- (a) Represented that said product was a cure or competent treatment for rheumatism, arthritis, neuritis, and other related ailments, through such statements as "Why suffer from rheumatism, neuritis and arthritis", and had "brought lasting relief to hopeless sufferers when all other tried remedies had failed", and had "accomplished marvelous results in relieving certain forms of arthritis and various other forms of rheumatic ailments, lumbago, aches and pains", facts being it had little, if any, therapeutic value in treatment of ailments mentioned and was not a proper, suitable, and efficient remedy or treatment therefor, and had not, as claimed, accomplished any "marvelous" or other beneficial results;
 - (b) Falsely represented that said product rid the blood and system of toxic poisons and excess acidity and stimulated glands to normal functioning and improved the blood circulation and enabled stomach and other organs to function naturally, supplying them with nature's own tonic, etc., and that it was useful or beneficial in "treating bronchial asthma and eczema"; and
 - (c) Referred to said product on bottles and cartons in which shipped as an "alterative", notwithstanding the fact that it was not a medicine or treatment which gradually induces a change and restores healthy functions, etc.;
- With effect of misleading and deceiving public and particularly that portion thereof suffering from various diseases and ailments referred to, through creating erroneous impression and belief that by purchasing and using said product, they would be benefited or cured of such diseases, etc., and of inducing substantial portion of purchasing public, in such erroneous and mistaken beliefs, to buy substantial quantity of said preparation, and of unfairly diverting thereby trade to him from other individuals, concerns, etc., selling similar or like products and remedies, or those designed and intended for treatment of similar diseases, etc., but honestly and truthfully labeled and represented as to their efficiency in treatment thereof; to the substantial injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John W. Hildrop for the Commission.

Mr. Frederick H. Drake, of Portland, Oreg., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Com-