

Syllabus

IN THE MATTER OF

R. C. JENNER AND WILLIAM DeLAPP, DOING BUSINESS
AS JENNER MANUFACTURING COMPANY AND JENNER
SALES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2863. Complaint, June 30, 1936—Decision, Sept. 21, 1936*

Where two individuals engaged in business of making or assembling small, cheap electric contrivance for heating small quantities of water or other liquid, and in marketing said "Wonder Electric Water Heater"—

- (a) Advertised "Man with car to deliver and make collections. \$40.00 weekly. No selling. Must have reference and \$100.00 in cash to secure goods * * *" in "Help Wanted" or "Man Wanted" section of newspapers, and as below set forth represented in advertisements or to applicants that said two individuals had or would establish, through missionary agents or salesmen, large list of dealers in a city or vicinity, to handle said heaters on consignment, and that all that would be required of applicants would be to distribute products to replace those sold, and to make weekly collections and remittances therefor, facts being no dealers had been established nor was establishment of such a list contemplated and duties required of applicants included selling, and whole business as conducted by said individuals was fraudulent scheme to extract money through falsely representing to persons needing employment, nature of business and character and value of product and what was to be done by those answering and by themselves, and purpose of initial payment or deposit of applicant and terms of employment and salary to be paid;
 - (b) Represented that "initial deposit" required of each applicant was in lieu of temporary fidelity bond, and would be refunded in short time, facts being such "deposit" money, in most instances credited as payment for heaters shipped forthwith to depositor at price profitable to them, though in some instances retained outright, without explanation or consideration, was neither bond nor refunded;
 - (c) Falsely represented that each applicant would receive \$5 for each new dealer secured and that they would furnish servicing distributor with automobile or compensate for use of his own, facts being no such distributor was ever thus supplied or compensated; and
 - (d) Misrepresented demand on part of public for said heaters through sending employee in guise of customer to dealers or prospective dealers to make inquiry about product and purchase small number thereof and return shortly thereafter and order much larger number, thereafter left on hands of dealer and never called for;
- With result that large numbers of individuals in need of employment and relying upon truth of said representations were induced to buy quantities of said product in frequently unrealized hope of profitably reselling same to consuming public, and trade was unfairly diverted thereby to them

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from competitors engaged in distributing and selling through salesmen and dealers similar products without promoting sale thereof through false and misleading representations, plans, or methods; to the substantial injury of competition in commerce:

Held, That such acts and 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. Robert S. Hall*, trial examiner.

Mr. Wm. T. Chantland 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 R. C. Jenner, William DeLapp, Jenner Manufacturing Company, and Jenner Sales Company, hereinafter referred to as "respondents," have been, and are now, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents R. C. Jenner and William DeLapp are copartners doing business and trading under the firm names and styles of Jenner Manufacturing Company and Jenner Sales Company with their principal place of business at 31 Allison Street, Pontiac, Mich. They are now, and for some time have been engaged in buying parts, assembling them, and selling in interstate commerce, as herein set out, a small electric water heater called "Wonder Electric Water Heater" alleged to be useful in heating small quantities of water and other liquids.

PAR. 2. Said respondents being engaged in business as aforesaid caused said heater when sold to be transported from their place of business in the State of Michigan to purchasers thereof located in various points in States of the United States other than the State from which shipments are made. Respondents now maintain a constant current of trade in commerce in said heaters distributed and sold by them between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling electric water heaters in commerce among and between the various States of the United States.

In the course and operation of said business and for the purpose of inducing purchase of said heaters respondents advertised in newspapers having an interstate circulation in the "Help Wanted" or "Man Wanted" section in letter or substance as follows:

Man with car to deliver and make collections. \$40.00 weekly. No selling. Must have reference and \$100.00 in cash to secure goods. Give phone number if possible to Box N-6 care of News.

Said advertisement was false and misleading and a fraud upon those in need of employment who answered it. The whole business as conducted by respondents is a fraudulent scheme to extract money from persons in need of employment by falsely representing to them the nature of respondents' business and the character and value of their product, the character of the work to be performed, the missionary work that will be performed by respondents, the purpose of an initial payment or deposit of from \$60.00 to \$100.00 by applicant for work, the terms of employment, and the salary to be paid.

Among the misrepresentations made are:

1. That respondents are manufacturers whereas they are merely assemblers of a cheap and inefficient small electric water heater contrivance.

2. That respondents have or will establish through missionary salesmen a large list of dealers in a city handling their heaters on consignment, whereas no such list exists or is contemplated.

3. That the initial "deposit" required of each applicant is a temporary fidelity surety bond, whereas the money is either retained by respondents outright without return, or the applicant is furnished for it a supply of the heaters, usually two dozen, at a price highly profitable to respondents.

4. That applicant will receive \$5.00 for each new dealer he secures, whereas no such sum has ever been paid.

5. That respondent will furnish the servicing distributor with an automobile or compensate him for the use of his own, whereas neither is done by respondents.

6. In some instances respondents sent representatives to dealers to inquire for a supply of respondents' heaters, who then buy any small stock and place orders for larger additional quantities which, when bought by such dealers, are never called for.

PAR. 4. As a result of said respondents' false and misleading representations, plans, and methods as above set out, large numbers of individuals in need of employment, believing and relying upon the truth of respondents' representations as set forth in paragraph 3 hereof, have been induced to and have bought large and small quan-

tities of respondents' aforesaid "Wonder Electric Water Heater" in the hope of profitably reselling the same to the consuming public, which hopes were in many cases unrealized and said sales to these salesmen and dealers fraudulently induced and obtained by respondents and each of them as aforesaid have operated and do operate unfairly to divert trade to respondents from those of its competitors who are likewise engaged in the business of distributing and selling through the medium of salesmen and dealers, similar products in interstate commerce and who do not promote or attempt to promote the sale thereof to salesmen and dealers by false and misleading representations, plans, or methods, and as a result thereof, substantial injury has been and is now being done by respondents to competitors in commerce among and between the various States of the United States.

PAR. 5. The above and foregoing acts, practices and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 30th day of June 1936, issued and served its complaint in this proceeding upon respondents, R. C. Jenner and William DeLapp, copartners, trading under the firm names and styles of Jenner Manufacturing Company and Jenner Sales Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 18th day of September respondents filed their amended and substituted answers in which they admitted all the material allegations of the complaint to be true and stated that they have waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, and the Commission having duly

considered the same, and being now 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. Formerly respondents, R. C. Jenner and William DeLapp were copartners doing business and trading under the firm names and styles of the Jenner Manufacturing Company and Jenner Sales Company, with their principal place of business in Pontiac, Mich. At this time R. C. Jenner is the sole owner of the Jenner Manufacturing Company and William DeLapp is the sole owner of the Jenner Sales Company.

The sole business engaged in by all of the respondents, insofar as this proceeding is concerned, is the business of making or assembling a small, cheap, electric contrivance for heating small quantities of water or other liquid, known as the "Wonder Electric Water Heater", and of marketing the same by the methods hereinafter set forth.

PAR. 2. Said respondents being engaged in business as aforesaid cause said heaters when sold to be transported from their place of business in the State of Michigan to purchasers thereof located in various points in States of the United States other than the State from which shipments are made. Respondents now maintain a constant current of trade in said heaters distributed and sold by them in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling electric water heaters in commerce among and between the various States of the United States.

PAR. 4. In the course and operation of said business and for the purpose of inducing the purchase of said heaters respondents, either directly or through their general agents, advertised in newspapers having an interstate circulation in the "Help Wanted" or "Man Wanted" section in letter or substance as follows:

Man with car to deliver and make collections. \$40.00 weekly. No selling Must have reference and \$100.00 in cash to secure goods. Give phone number if possible to Box N-6, care of News.

PAR. 5. Said advertisements as above set out were false and misleading and a fraud upon those in need of employment who answered them. The whole business as conducted by respondents is a fraudulent scheme to extract money from persons in need of employ-

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ment by falsely representing to them the nature of respondents' business and the character and value of their product, the character of the work to be performed, the missionary work that will be performed by respondents, the purpose of an initial payment or deposit of from \$60.00 to \$100.00 by the applicants for work, the terms of employment, and the salary to be paid.

PAR. 6. Among the representations contained in the advertisements, or made to the applicants for work are:

1. That respondents have established or will establish through missionary agents or salesmen a large list of dealers in a city or vicinity to handle their heaters on consignment and that all that will be required of applicants for positions will be to distribute heaters to replace those sold and to make weekly collections and remittances for heaters that have been sold; that an initial "deposit" is required of each applicant which is represented to be in lieu of a temporary fidelity bond which would be refunded in a short time; that each applicant was to receive \$5.00 for each new dealer he secures; that respondents would furnish the servicing distributor with an automobile for his use or compensate for the use of his own.

All of these representations were deceptive and false. The facts are that no dealers had been established, nor was any such establishment of a list of dealers contemplated, and the duties required of applicant, included that of selling. The "deposit" money was not a bond, but was in some instances retained outright, without explanation or consideration, but in most instances it was credited as payment for heaters which were shipped forthwith to depositor, at a price profitable to respondents. No distributor was ever furnished with an automobile for his use, nor was any allowance paid to a distributor for the use of his own car.

2. In some instances respondents' agents sent an employee in the guise of a customer to dealers or prospective dealers to inquire about respondents' heaters. Such purported customer would buy a small number of the heaters, and would shortly thereafter return and place an order for a much larger number of heaters, which, when bought on the strength of such supposed order by the dealer from respondents' distributor, were never called for, but were left on the hands of such dealer.

PAR. 7. As a result of said respondents' false and misleading representations, plans, and methods as above set out, large numbers of individuals in need of employment believing and relying upon the truth of respondents' representations, have been induced to and have bought quantities of respondents' aforesaid "Wonder Electric Water Heater" in the hope of profitably reselling the same to the consuming

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public, which hopes were in many cases unrealized. Said sales to these salesmen and dealers, fraudulently induced and obtained by respondents and each of them as aforesaid, have operated to and do unfairly divert trade to respondents from those of their competitors who are likewise engaged in the business of distributing and selling, through the medium of salesmen and dealers, similar products in interstate commerce and who do not promote or attempt to promote the sale thereof to salesmen and dealers by false and misleading representations, plans, or methods. As a result thereof, substantial injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, R. C. Jenner and William DeLapp, copartners, trading under the firm names and styles of Jenner Manufacturing Company and Jenner Sales Company, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, R. C. Jenner, and William DeLapp, individually, and as copartners, trading under the firm names and styles of Jenner Manufacturing Company and Jenner Sales Company, their servants, representatives, agents, and employees, in connection with the advertising and offering for sale, sale, and distribution of their said electric heaters in interstate commerce or in

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the District of Columbia, do forthwith cease and desist from representing:

1. That the services required of applicants after selection by respondents, are only to make deliveries of and collections for said electric heaters and that no selling is required of said selected employees.

2. That dealers in any number have been or will be established in the city or territory in question, by the respondents or by their field agents, when in fact no such dealers have been established, and the establishment of no such dealer list is contemplated.

3. That the initial payment required of each applicant is in the nature of, or in lieu of, a temporary bond and that the sum will be refunded, when such is not the fact.

4. That the initial payment required is for anything else than payment for a certain number of their said heaters at a specified price.

5. That applicants will receive \$5.00 for each new dealer they secure, when no such sum is in fact paid or such service contemplated.

6. That applicant will be furnished a car by respondents for his use in the work, or will be given a weekly allowance in lieu of such car, when no such car is furnished or payment made or contemplated.

7. That the demand on the part of the public for their said heaters is greater than it is in fact, through the use of agents or employees who purchase small quantities of said heaters from dealers and either order additional large quantities which they do not purchase, or induce said dealers to order additional quantities in the belief that there is a demand therefor, or through any other means or subterfuge induce dealers to buy excessive quantities of heaters for which there is no substantial demand.

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

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IN THE MATTER OF

L. W. GIBSON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2766. Complaint, Apr. 15, 1936—Decision Sept. 22, 1936*

Where an individual engaged in sale and distribution of formulae and specifications for purpose of producing various products, such as cosmetics, toothpaste, hair tonic, etc., in commerce between and among the various States—

- (a) Falsely represented that he was educated in science of chemistry and had had several decades of experience in its commercial application and had devoted several years to collecting, studying, devising, and perfecting practical working formulae and processes for manufacture of his products, and had expended large sums of money in purchase of modern money-making formulae and expended large sums annually in obtaining and perfecting same and had been employed as consultant chemist and advisor to manufacturing trade for several years;
- (b) Falsely represented that he had a staff of associates who were graduates of leading American colleges and universities and possessed degrees from high institutions of learning and had had a great deal of practice and successful experience in devising formulae and manufacturing products and commodities, and had been employed because of their sound and thorough knowledge of chemistry and because they had demonstrated their ability to manufacture products successfully and teach other manufacturers every phase of successful and profitable production;
- (c) Falsely represented that he had in his establishment various departments consisting of laboratories especially equipped with modern apparatus, and that he was equipped to make analyses or develop special formulae, conduct chemical research investigations, and determine methods of salvaging waste materials;
- (d) Falsely represented that he was prepared to offer assistance to customers in securing patents on chemical processes or other subjects and had succeeded in helping exaggerated numbers of customers to establish profitable businesses, and guaranteed that his customers would make profits of \$50, or other exaggerated sums, per week; and
- (e) Falsely represented that he would give free, with orders in certain amounts, various books and pamphlets, seemingly products of establishment or of his mind, and that he had received a degree in philosophy and chemistry entitling him to use abbreviation "Ph. D." or word "Chemist" after his name, and that address "4700-4 N. Racine Avenue" was street address of his place of business, and that various telephone numbers were those of his establishment;

Facts being addressed in question was that of hotel in which he lived in a single room, and numbers listed were those of said hotel, and he had not