

IN THE MATTER OF
FRANCES BROWN, DOING BUSINESS AS AMERICAN
BANK MACHINERY COMPANY

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

Docket 2846. Complaint, June 19, 1936—Decision, Nov. 2, 1936

Where an individual engaged in the city of Philadelphia in repairing and rebuilding perforating and check endorsing machines, and in selling and supplying new parts therefor in connection therewith, in competition, among others, with three of the larger manufacturers of such machines, located in Philadelphia and Chicago, and the products of which had been widely sold and were in use by banks and others in various States, and which companies, in addition to manufacture and sale of their said products, also engaged in repairing and rebuilding all makes of such machines, and in connection therewith in installing and supplying new parts therefor—

- (a) Falsely represented, through salesmen or solicitors employed to solicit such work and the sale and supplying of new parts in connection therewith, and acting within the scope of their employment, that said individual represented one or the other of the two Chicago manufacturers and did all the repair work for one or the other, as the case might be, or that said two Chicago companies were out of business, and that one of said companies and said individual business were one and the same; facts being said individual was not in any manner directly or indirectly affiliated, or otherwise connected with, company in question, and said statements or representations were also otherwise false; and
- (b) Represented, as aforesaid, that it made and repaired the machines that were sold by said Philadelphia manufacturer, and that said individual was a member of the National Association of Manufacturers of the United States of America, and through letterheads had places of business in Chicago, Atlanta, and Philadelphia, and thereby imported and implied to the owners of such machines and to the general public that said individual owned, operated, maintained, and controlled a business of such proportion that it was necessary to have places of business as there set out; facts being said individual did not make machines sold by said Philadelphia company, and had only mailing addresses at Chicago and Atlanta locations, from which mail was sent and forwarded to said individual's sole and only place of business in Philadelphia;

With capacity and tendency to mislead and deceive owners of old machines in need of repair or new parts, and induce such owners to deliver the machines to said individual for such purposes, in the erroneous belief that said various statements, etc. were true, and particularly on account of their natural preference for dealing only with either the manufacturer or with any other large concern duly authorized by the manufacturer to do such repairing and rebuilding work; and with result that trade was unfairly diverted thereby to said individual from competitors, including said manufacturers who in nowise make such false and misleading statements and representations, but truthfully represent their status as manu-

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facturers or repairers, or both, of such machines; to the substantial injury of competition in commerce:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. John W. Hildrop for the Commission.

Howson & Howson, of Philadelphia, Pa., 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 Frances Brown, doing business under the trade name of American Bank Machinery Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to 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. Respondent, Frances Brown, is an individual trading as American Bank Machinery Co., with her office and place of business at 4626 Lancaster Avenue, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent is now and has been for more than one year last past engaged in the business of repairing and rebuilding perforating and check endorsing machines already in use, and in selling and supplying new parts therefor in connection therewith, causing such machines to be shipped by, and transported from, the owners thereof located in various States of the United States to respondent's said place of business located in the city of Philadelphia, in the State of Pennsylvania for the purpose of having such repairing and rebuilding work done thereon or the installing and supplying of new parts therein in connection therewith. In the course and conduct of her said business, as aforesaid, respondent is and has been in competition with corporations, partnerships, firms, and individuals engaged in the business of rebuilding and repairing, in interstate commerce, of old perforating and check endorsing machines and in selling and supplying new parts therefor in connection therewith.

PAR. 3. Among the larger manufacturers of perforating and check endorsing machines are the American Perforator Company and the Cummins Perforator Company, both of the city of Chicago, in the State of Illinois, and the National Perforator Company, Inc., of the city of Philadelphia, in the State of Pennsylvania. Their perforating

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and check endorsing machines have been widely sold and are in use by banks and others in various States of the United States. Each of these companies, in addition to manufacturing and selling machines, also does repairing and rebuilding of all makes of perforating and check endorsing machines, and in connection therewith installs and supplies new parts therefor. Respondent does not manufacture perforating or check endorsing machines, but is merely engaged in repairing and rebuilding machines made by other companies as heretofore alleged in paragraph 2 hereof.

PAR. 4. In the course and conduct of her business, as heretofore described and alleged in paragraph 2 hereof, the respondent, in soliciting orders for such repairing and rebuilding work and in soliciting the sale of parts to be installed in connection therewith, employed salesmen or solicitors who travelled in various States of the United States and solicited the work of repairing and rebuilding old perforating and check endorsing machines and the sale and supplying of new parts therefor in connection therewith; and in the course of such employment and acting within the scope of their employment, said salesmen or solicitors made the following statements and representations:

1. That respondent either represents the American Perforator Company or the Cummins Perforator Company;
2. That respondent does all of the repair work for the American Perforator Company or the Cummins Perforator Company;
3. That the American Perforator Company and the respondent are one and the same concern;
4. That the American Perforator Company and the Cummins Perforator Company were out of business; and
5. That the respondent manufactures and repairs machines that are sold by the National Perforator Company, Inc.

In addition to the foregoing, the respondent has represented and does represent to the said owners of old perforating and check endorsing machines and to the general public located in different States of the United States that she owns, operates, maintains, or controls a manufacturing establishment for the manufacture of such machines by carrying on her letterheads, distributed in interstate commerce, the following statements:

"MANUFACTURERS OF MACHINES FOR CANCELLING CHECKS AND VOUCHERS, RECEIPTING BILLS, IDENTIFYING POSTAGE STAMPS, DATING INCOMING MAIL, CHECK SIGNING AND ENDORSING MACHINES"

and also

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"MEMBER—NATIONAL ASSOCIATION OF MANUFACTURERS OF THE UNITED STATES
OF AMERICA"

Said letterheads, so distributed in interstate commerce, also contain therein the following addresses of the respondent:

56 W. Washington St., CHICAGO, ILLINOIS
901-6 Wm. Oliver Bldg., ATLANTA, GEORGIA

and together therewith, and in larger type,

EASTERN SERVICE CENTER
4626 LANCASTER AVENUE
PHILADELPHIA PA.

all of which, when taken together, tended to import and imply, and does import and imply, to said owners of such perforating and check endorsing machines, and to the general public, that respondent was a manufacturing concern and that she owned, operated, maintained, and controlled a manufacturing plant or plants.

PAR. 5. In truth and in fact the said representations, statements and assertions heretofore described, alleged and set forth in paragraph 4 hereof are false, misleading, and deceptive in that respondent did not and does not represent either the American Perforator Company or the Cummins Perforator Company; did not and does not do the repair work for either the American Perforator Company or the Cummins Perforator Company; was not and is not one and the same concern with, or in any manner directly or indirectly affiliated or otherwise connected with, the American Perforator Company; did not and does not manufacture the machines sold by the National Perforator Company, Inc.; and when the American Perforator Company has not gone out of business, and is still so engaged. Further, said respondent does not, nor has she, owned, operated, maintained, or controlled any plant or factory for the manufacture of machines such as machines for cancelling checks and vouchers, receipting bills, identifying postage stamps, dating incoming mail, check signing and endorsing machines, or any other like or similar machines.

PAR. 6. Said statements, representations and assertions, as heretofore alleged and set forth in paragraph 4 hereof, have the capacity and tendency to mislead and deceive the owners of old perforating and check endorsing machines, already in use and in need of repair or the installation of new parts in connection therewith, and to induce them to deliver same to respondent for such purposes in and on account of the erroneous belief that they are true, and particularly so because of their natural preference to deal only with either the manufacturer or with any other large concern duly authorized by such manufacturer to do the work of repairing and rebuilding same.

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PAR. 7. Among the competitors of the respondent, there are corporations, partnerships, firms, and individuals who are engaged in the same business as respondent, as heretofore alleged and described in paragraph 2 hereof, among them being the American Perforator Company, the Cummins Perforator Company and the National Perforator Company, Inc., who in nowise make the same or similar false and misleading statements and representations as are made by the respondent, as hereinabove described and set forth, but who truthfully represent their true status either as manufacturer or repairer, or both, of perforating and check endorsing machines. The aforesaid false representations and misleading statements made, and caused to be made, by respondent about her status as a manufacturer, and as to the status of said American Perforator Company, the Cummins Perforator Company, and the National Perforator Company, Inc., and about her relationship, connection and affiliation with each of said concerns, have the capacity and tendency to deceive and mislead owners of old perforating and check endorsing machines, causing them to deliver same to respondent for the purpose of repair and the installation of new parts in connection therewith; and thereby trade is unfairly diverted to respondent from her said competitors with the result that substantial injury has been and is being done by respondent to competition in commerce, as hereinabove set out.

PAR. 8. The acts and things done by respondent, as hereinabove alleged, described and set forth, are to the injury and prejudice of the public and to competitors of respondent, 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 the 19th day of June 1936, issued and served its complaint in this proceeding upon respondent, Frances Brown, doing business as American Bank Machinery Co., charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 21st day of October 1936, the respondent filed her answer, in which answer she admitted all the material allegations of the complaint to be true, save and except that in her said answer she alleged that in the year 1935, and at the time the complaint was issued herein and served on her, she

was manufacturing perforating and check endorsing machines, and stated that she waived hearings 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 her 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 answer thereto, 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 make this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Frances Brown, is an individual trading as American Bank Machinery Co., with her office and place of business at 4626 Lancaster Avenue, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent is now and has been for more than one year last past engaged in the business of repairing and rebuilding perforating and check endorsing machines already in use, and in selling and supplying new parts therefor in connection therewith, causing such machines to be shipped by, and transported from, the owners thereof located in various States of the United States to respondent's said place of business located in the city of Philadelphia, in the State of Pennsylvania for the purpose of having such repairing and rebuilding work done thereon or the installing and supplying of new parts therein in connection therewith. In the course and conduct of her said business, as aforesaid, respondent is and has been in competition with corporations, partnerships, firms, and individuals engaged in the business of rebuilding and repairing, in interstate commerce, of old perforating and check endorsing machines and in selling and supplying new parts therefor in connection therewith.

PAR. 3. Among the larger manufacturers of perforating and check endorsing machines are the American Perforator Company and the Cummins Perforator Company, both of the city of Chicago, in the State of Illinois, and the National Perforator Company, Inc., of the city of Philadelphia, in the State of Pennsylvania. Their perforating and check endorsing machines have been widely sold and are in use by banks and others in various States of the United States. Each of these companies, in addition to manufacturing and selling machines, also does repairing and rebuilding of all makes of perforating and check endorsing machines, and in connection therewith installs and supplies new parts therefor.

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PAR. 4. In the course and conduct of her business, as heretofore described and alleged in paragraph 2 hereof, the respondent, in soliciting orders for such repairing and rebuilding work and in soliciting the sale of parts to be installed in connection therewith, employed salesmen or solicitors who travelled in various States of the United States and solicited the work of repairing and rebuilding old perforating and check endorsing machines and the sale and supplying of new parts therefor in connection therewith; and in the course of such employment and acting within the scope of their employment, said salesmen or solicitors made the following statements and representations:

1. That respondent either represents the American Perforator Company or the Cummins Perforator Company;

2. That respondent does all of the repair work for the American Perforator Company or the Cummins Perforator Company;

3. That the American Perforator Company and the respondent are one and the same concern;

4. That the American Perforator Company and the Cummins Perforator Company were out of business; and

5. That the respondent manufactures and repairs machines that are sold by the National Perforator Company, Inc.

In addition to the foregoing, the respondent has represented and does represent to the said owners of old perforating and check endorsing machines and to the general public located in different States of the United States that she was a member of National Association of Manufacturers of the United States of America, which is an organization composed of corporations, associations, individuals, and firms engaged in the manufacture of various commodities; and also in the letterheads of respondent which she distributed in interstate commerce, respondent represented that she had places of business at 56 WASHINGTON ST., CHICAGO, ILL.; 901-6 WILLIAM OLIVER BUILDING, ATLANTA, GA.; and EASTERN SERVICE CENTER, 4626 LANCASTER AVENUE, PHILADELPHIA, PA., which tended to import and imply, and does import and imply, to said owners of such perforating and check endorsing machines, and to the general public, that respondent owned, operated, maintained, and controlled a business of such proportion that it was necessary to have places of business in the locations in this paragraph heretofore set out.

PAR. 5. In truth and in fact the said representations, statements and assertions heretofore described, alleged and set forth in paragraph 4 hereof are false, misleading, and deceptive in that respondent did not and does not represent either the American Perforator Company or the Cummins Perforator Company; did not and does not do the

repair work for either the American Perforator Company or the Cummins Perforator Company; was not and is not one and the same concern with, or in any manner directly or indirectly affiliated or otherwise connected with, the American Perforator Company; did not and does not manufacture the machines sold by the National Perforator Company, Inc.; and in that the American Perforator Company has not gone out of business but is still so engaged. In truth and in fact, the respondent has not, nor has she had, a place of business at 56 West Washington St., Chicago, Ill., nor in Oliver Building, Atlanta, Ga., nor elsewhere in said cities, but, to the contrary, for a period of time she did have mailing addresses at said location in Chicago and in Atlanta where mail would be sent and then forwarded to her sole and only place of business at 4626 Lancaster Avenue, Philadelphia, Pa.

PAR. 6. Said statements, representations and assertions, as heretofore alleged and set forth in paragraph 4 hereof, have the capacity and tendency to mislead and deceive the owners of old perforating and check endorsing machines, already in use and in need of repair or the installation of new parts in connection therewith, and to induce them to deliver same to respondent for such purposes in and on account of the erroneous belief that they are true, and particularly so because of their natural preference to deal only with either the manufacturer or with any other large concern duly authorized by such manufacturer to do the work of repairing and rebuilding same.

PAR. 7. Among the competitors of the respondent, there are corporations, partnerships, firms, and individuals who are engaged in the same business as respondent, as heretofore alleged and described in paragraph 2 hereof, among them being the American Perforator Company, the Cummins Perforator Company and the National Perforator Company, Inc., who in nowise make the same or similar false and misleading statements and representations as are made by the respondent, as hereinabove described and set forth, but who truthfully represent their true status either as manufacturer or repairer, or both, of perforating and check endorsing machines. The aforesaid false representations and misleading statements made, and caused to be made, by respondent about her status as a manufacturer, and as to the status of said American Perforator Company, the Cummins Perforator Company, and the National Perforator Company, Inc., and about her relationship, connection, and affiliation with each of said concerns, have the capacity and tendency to deceive and mislead owners of old perforating and check endorsing machines, causing them to deliver same to respondent for the purpose of repair and the installation of new parts in connection therewith; and thereby

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trade is unfairly diverted to respondent from her said competitors with the result that substantial injury has been and is being done by respondent to competition in commerce, as hereinabove set out,

CONCLUSION

The aforesaid acts and practices of the respondent, Frances Brown, doing business as American Bank Machinery Co., are to the prejudice of the public and of respondent's 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 respondent, in which answer respondent admits all the material allegations of the complaint to be true, save and except that in her answer she alleges that in the year 1935 and at the time the complaint was issued herein and served on her, she was manufacturing perforating and check endorsing machines, and states that she waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon her 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 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, Frances Brown, as an individual and under her trade name, American Bank Machinery Co., or under any other trade name, her representatives, agents and employees, in connection with the soliciting, in interstate commerce, of business of repairing and rebuilding perforating and check endorsing machines already in use and in selling, offering for sale and supplying, in interstate commerce or in the District of Columbia, new parts for use in connection with said perforating and check endorsing machines, do forthwith cease and desist from representing:

(a) That respondent either represents the American Perforator Co. or the Cummins Perforator Co.;

(b) That respondent does all of the repair work for the American Perforator Co. or the Cummins Perforator Co.;

(c) That the American Perforator Co. and the respondent are one and the same concern;

(d) That the American Perforator Co. and the Cummins Perforator Co. were, or are, out of business;

(e) That respondent is a member of National Association of Manufacturers of the United States of America, unless and until she actually becomes such a member;

(f) That respondent has places of business at 56 West Washington St., Chicago, Illinois; 901-6 William Oliver Building, Atlanta, Georgia, or elsewhere in said cities of Chicago, Ill., and Atlanta, Ga., or in any other place or places unless in truth and in fact she actually does have in Chicago, Atlanta, or such other represented city, places of business other than mailing addresses.

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

IN THE MATTER OF
THE JOHN J. McCANN COMPANY

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

Docket 2926. Complaint, Sept. 22, 1936—Decision, Nov. 2, 1936

Where a corporation engaged in manufacture of artificial limb appliances, including stump socks, as to which there is a marked preference for articles composed of wool, safe from attack by moths, and capable of great durability—

- (a) Represented and advertised that its "Comfort Stump Socks, used properly, should literally never wear out," facts being that while said products, used interchangeably with a reasonable number of others, might remain serviceable for a period of a year or longer, they were susceptible to ordinary wear and tear, and would not last indefinitely, and would wear out;
- (b) Represented and advertised, among other things, that "If any moth is unfortunate enough to come into contact with a Comfort Stump Sock, he dies before he can do any harm," and that said sock had been mothproofed, and that thereafter all such socks would be insured against moth damage for two years from date of purchase by a named insurance company, and that any socks thus damaged within said period would be replaced by said company free, and that such was its method of denying the charge that its said socks were not mothproofed; facts being they were not impervious to such damage, and neither retailers nor members of purchasing and consuming public were protected by insurance, as aforesaid, for two years, or any other period;

With capacity and tendency to deceive and mislead ultimate purchasers into buying such socks from it as and for articles which will last indefinitely and which have been so treated as to render same entirely impervious to moth damage, and which are further insured against such damage, as above set forth, and to mislead and deceive retailers and consuming public so as to induce purchase of aforesaid product in preference to that of other manufacturers, or to pay a higher price therefor than would have been paid but for reliance upon aforesaid representations; and with effect of unfairly diverting trade from competitors engaged in sale of such socks, and who truthfully represent the wearing qualities of their products, their ability to withstand moth-damage, and extent to which purchasers are insured, if at all, against such damage; to the substantial injury of 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. James M. Hammond 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 The John