

## Syllabus

## IN THE MATTER OF

## A. F. OF L. TRADE UNION COMMITTEE FOR UNEMPLOYMENT INSURANCE AND RELIEF, ET AL.

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

*Docket 2531. Complaint, Aug. 30, 1935—Decision, Nov. 18, 1936*

Where the initials "A. F. of L.", through their use by the American Federation of Labor and by its local, national, and international labor unions, its affiliated federations, central boards, and local unions, had come to be known and understood by said American Federation of Labor, and its local and other unions and affiliated organizations, etc., as above set forth, and by the general public, as the initials for and designation of said American Federation of Labor, and the word "Federationist," through long use by said American Federation for its magazine "American Federationist," had become known to said American Federation of Labor and its various unions, etc., and to the purchasing public as an abbreviated designation for its aforesaid periodical; and thereafter an unincorporated association of persons and a number of individuals who composed a "national committee" to supervise and direct the activities of said association, including publication and distribution of its magazine—

Made use of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief" and "A. F. of L. Rank and File Federationist" for their said organization and magazine, respectively, notwithstanding fact said organization or association was not a committee of the aforesaid American Federation of Labor and said association or organization's aforesaid magazine, i. e., "A. F. of L. Rank and File Federationist," was not a publication of said American Federation, and use of the aforesaid names was without latter's authority or permission;

With capacity and tendency to mislead and deceive members of such American Federation and the purchasing public into the belief that the aforesaid association or organization was a committee of said American Federation of Labor, and that said "A. F. of L. Rank and File Federationist" was its publication, and to purchase the latter in such erroneous belief, and with result that trade was thereby diverted by said association or organization and individuals from competitors who do not mislead and deceive the purchasing public by the use of names for their publications or associations; to the substantial injury of substantial competition in commerce:

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

Before *Mr. John W. Norwood*, trial examiner.

*Mr. Edward L. Smith* for the Commission.

*Mr. Harry Sacher*, of New York City, for respondents in general, and *Mr. M. Herbert Syme*, of Philadelphia, Pa., for respondent *A. Fleming*.

## Complaint

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## COMPLAINT

Pursuant to the provisions of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, hereinafter referred to as respondent association, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, Frank Mozer, J. P. Anderson, A. Allen, Elmer Johnson, Robert C. Brown, Harry Bridges, David Gordon, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), C. Taylor, Luigi Genovese, M. Manes (or Manis), T. L. Major, A. Edwards, G. Alston, M. Balya, G. Spagnol, A. W. McPherson, Karl Maisus (or Masis), A. Weiner, William Thacker, E. Crews, F. Phillips, A. Fleming, and Charles B. Killinger, hereinafter referred to as respondent individuals, have been and now are 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. Respondent association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, is an unincorporated, voluntary association of persons, having its principal office and place of business at 1 Union Square, New York City, in the State of New York. Respondent individuals, Louis Weinstock, Abraham Baskoff, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), all of the city of New York, State of New York; Richard M. Kroon, A. Allen, G. Alston, all of the city of Detroit, State of Michigan; Frank Mozer, A. Fleming, both of the city of Philadelphia, State of Pennsylvania; E. Crews of the city of Pittsburgh, State of Pennsylvania; Robert C. Brown of the city of Butte, State of Montana; Harry Bridges, of the city of San Francisco, State of California; J. P. Anderson of the city of Washington, District of Columbia; Elmer Johnson of the city of Chicago, State of Illinois; C. Taylor of the city of Cleveland, State of Ohio; David Gordon of Middle Village, Long Island, State of New York; Luigi Genovese of the city of Rochester, State of New York; A. W. McPherson of the city of Clairton, State of Pennsylvania; Charles B. Killinger of the city of Flint, State of Michigan; and M. Manes (or Manis), T. L. Major, A. Edwards, M. Balya, G. Spagnol, Karl Maisus (or Masis), A. Weiner, William Thacker and F. Phillips, whose addresses are unknown, are members of the respondent association and compose a "national committee" for the purpose of supervising and directing all of the activities of the respondent association, including the publication and distribution of the "A. F. of L. Rank and File Federationist."

One of the principal purposes for the organization of the respondent association by the respondent individuals was and is the publication each month of a magazine entitled "A. F. of L. Rank and File Federationist." The publication of this magazine began in the month of January 1934, and has, with a few exceptions, continued monthly.

PAR. 2. In the course and conduct of the business of publishing the magazine, "A. F. of L. Rank and File Federationist," hereinbefore mentioned, the respondent individuals, acting through and by the aforesaid respondent association, sell and solicit the sale of the aforesaid magazine between and among the various States of the United States and in the District of Columbia, and cause copies of the aforesaid magazine when sold, to be transported from the place of business of the respondent association in New York City to the purchasers of such copies, some located in the State of New York and others located in various other States of the United States, and there is now and has been for more than one year last past a constant current of trade and commerce by the respondent association and respondent individuals in such magazine between and among the various States of the United States.

In the course and conduct of their business the respondent association and respondent individuals are now and for more than one year last past have been in substantial competition with other associations and individuals, and with corporations, firms, and partnerships engaged in the sale of magazines between and among the various States of the United States. Among such competitors is the American Federation of Labor, hereinafter described, which now and for more than one year last past has published a monthly magazine known as the "American Federationist," hereinafter described.

PAR. 3. In 1881 an unincorporated association was organized in the United States under the name of "Federation of Organized Trades and Labor Unions of the United States and Canada," which name was, in the year 1886, changed to "American Federation of Labor." This organization consists of local, national, and international unions, and directly affiliated with it are approximately 482 federations with approximately 725 central boards and approximately 1,350 local unions. The aggregate number of persons affiliated with the American Federation of Labor is approximately 3,000,000.

The initials "A. F. of L.," through their use by the American Federation of Labor and by its local, national, and international labor unions, its affiliated federations, central boards and local unions, are now and have been for more than one year last past known and understood by the American Federation of Labor, its local, national, and

international labor unions, its affiliated federations, central boards, and local unions, and by the general public, as initials for the aforesaid American Federation of Labor, and as a designation of the aforesaid organization.

The American Federation of Labor has since 1894 published monthly as its official magazine the "American Federationist," which has a circulation throughout the various States of the United States to more than 110,000 subscribers. Through and by its use since 1894 of the term "American Federationist" by the American Federation of Labor for its aforesaid magazine, the word "Federationist," when used as a designation of a magazine, has become known to the American Federation of Labor, its local, national, and international labor unions, its affiliated federations, central boards, and local unions, and to the purchasing public as an abbreviated designation for the magazine "American Federationist."

PAR. 4. The use by the respondent association and respondent individuals of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief," and of the name "A. F. of L. Rank and File Federationist," has the capacity and tendency to mislead and deceive members of the American Federation of Labor and the purchasing public into the beliefs that the respondent association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, is a committee of the American Federation of Labor, and that the said publication is a publication of the American Federation of Labor, and to purchase the aforesaid "A. F. of L. Rank and File Federationist" in such erroneous beliefs; thereby trade is diverted by respondent association and respondent individuals from their competitors who do not by the use of names for their publications or by the use of names for associations, mislead and deceive the purchasing public, and thereby substantial injury is done by respondent association and respondent individuals to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of the respondent association and the respondent individuals are to the prejudice of the public and to the competitors of the said respondents, and constitute unfair methods of competition in 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 Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on August 30, 1935, issued and served its complaint in this proceeding upon respondents A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, hereinafter referred to as respondent association, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, Frank Mozer, J. P. Anderson, A. Allen, Elmer Johnson, Robert C. Brown, Harry Bridges, David Gordon, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), C. Taylor, Luigi Genovese, M. Manes (or Manis), T. L. Major, A. Edwards, G. Alston, M. Balya, G. Spagnol, A. W. McPherson, Karl Maisus (or Masis), A. Weiner, William Thacker, E. Crews, F. Phillips, A. Fleming, and Charles B. Killinger, hereinafter referred to as respondent individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edward L. Smith, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it (Harry Sacher, attorney for the respondents, having waived the introduction of testimony and other evidence in opposition to the allegations of the complaint), and said testimony and other evidence in support of the allegations of the complaint were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in opposition thereto, but without oral argument, respondents having waived oral argument; and the Commission having duly considered the record 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. Respondent association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, is an unincorporated, voluntary association of persons, having its principal office and place of business at 1 Union Square, New York City, in the State of New York. Respondent individuals, Louis Weinstock, Abraham Baskoff, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), all of the city of New York, State of New York; Richard M. Kroon, A. Allen, G. Alston, all of the city of Detroit, State of Michigan; Frank Mozer, A. Fleming, both of the city of Philadel-

phia, State of Pennsylvania; E. Crews of the city of Pittsburgh, State of Pennsylvania; Robert C. Brown of the city of Butte, State of Montana; Harry Bridges of the city of San Francisco, State of California; J. P. Anderson of the city of Washington, District of Columbia; Elmer Johnson of the city of Chicago, State of Illinois; C. Taylor of the city of Cleveland, State of Ohio; David Gordon of Middle Village, Long Island, State of New York; Luigi Genovese of the city of Rochester, State of New York; A. W. McPherson of the city of Clairton, State of Pennsylvania; Charles B. Killinger of the city of Flint, State of Michigan; and M. Manes (or Manis), T. L. Major, A. Edwards, M. Balya, G. Spagnol, Karl Maisus (or Masis), A. Weiner, William Thacker and F. Phillips, whose addresses are unknown, are members of the respondent association and compose a "national committee" for the purpose of supervising and directing all of the activities of the respondent association, including the publication and distribution of the "A. F. of L. Rank and File Federationist."

One of the principal purposes for the organization of the respondent association by the respondent individuals was the publication each month of a magazine entitled "A. F. of L. Rank and File Federationist." The publication of this magazine began in the month of January 1934, and continued through October 1935.

PAR. 2. In the course and conduct of the business of publishing the magazine, "A. F. of L. Rank and File Federationist," hereinbefore mentioned, the respondent individuals, acting through and by the aforesaid respondent association, sold and solicited the sale of the aforesaid magazine between and among the various States of the United States and in the District of Columbia, and caused copies of the aforesaid magazine when sold, to be transported from the place of business of the respondent association in New York City to the purchasers of such copies, some located in the State of New York and others located in various other States of the United States, and there was from January 1934, to and until October 1935, a constant current of trade and commerce by the respondent association and respondent individuals in such magazine between and among the various States of the United States.

In the course and conduct of their business the respondent association and respondent individuals have been in substantial competition with other associations and individuals, and with corporations, firms, and partnerships engaged in the sale of magazines between and among the various States of the United States. Among such competitors is the American Federation of Labor, hereinafter described, which now and for more than one year last past has pub-

lished a monthly magazine known as the "American Federationist," hereinafter described.

PAR. 3. In 1881 an unincorporated association was organized in the United States under the name of "Federation of Organized Trades and Labor Unions of the United States and Canada," which name was, in the year 1886, changed to "American Federation of Labor." This organization consists of 110 national and international unions, 1,154 local unions, and about 3,615,000 members.

The initials "A. F. of L.," through their use by the American Federation of Labor and by its local, national, and international labor unions, its affiliated federations, central boards and local unions, are now and for more than one year last past have been known and understood by the American Federation of Labor, its local, national, and international labor unions, its affiliated federations, central boards, and local unions, and by the general public, as initials for the aforesaid American Federation of Labor, and as a designation of the aforesaid organization.

The American Federation of Labor has since 1894 published monthly as its official magazine the "American Federationist," which has a circulation throughout the various States of the United States to more than 110,000 subscribers. Through and by its use since 1894 of the term "American Federationist" by the American Federation of Labor for its aforesaid magazine, the word "Federationist," when used as a designation of a magazine, has become known to the American Federation of Labor, its local, national, and international labor unions, its affiliated federations, central boards, and local unions, and to the purchasing public as an abbreviated designation for the magazine "American Federationist."

PAR. 4. Respondent association was not a committee of the American Federation of Labor nor was the aforesaid A. F. of L. Rank and File Federationist, a publication of the American Federation of Labor. The use by the respondent association and by respondent individuals of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief" and of the name "A. F. of L. Rank and File Federationist" was without the authority or permission of the American Federation of Labor.

PAR. 5. The use by the respondent association and respondent individuals of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief," and of the name "A. F. of L. Rank and File Federationist," has had the capacity and tendency to mislead and deceive members of the American Federation of Labor and the purchasing public into the beliefs that the respondent association, A. F. of L. Trade Union Committee for Unemployment Insur-

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ance and Relief, was a committee of the American Federation of Labor, and that the said publication was a publication of the American Federation of Labor, and to purchase the aforesaid "A. F. of L. Rank and File Federationist" in such erroneous beliefs; thereby trade has been diverted by respondent association and respondent individuals from their competitors who do not mislead and deceive and who have not misled and deceived the purchasing public by the use of names for their publications or by the use of names for associations. Thereby substantial injury has been done by respondent association and respondent individuals to substantial competition in interstate commerce.

## CONCLUSION

The aforesaid acts and practices of the respondent association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, and respondent individuals Louis Weinstock, Abraham Baskoff, Richard M. Kroon, Frank Mozer, J. P. Anderson, A. Allen, Elmer Johnson, Robert C. Brown, Harry Bridges, David Gordon, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), C. Taylor, Luigi Genovese, M. Manes (or Manis), T. L. Major, A. Edwards, G. Alston, M. Balya, G. Spagnol, A. W. McPherson, Karl Maisus (or Masis), A. Weiner, William Thacker, E. Crews, F. Phillips, A. Fleming, and Charles B. Killinger, 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, the answers of the respondents, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint (Harry Sacher, attorney for the respondents having waived the introduction of testimony and other evidence in opposition to the allegations of the complaint), and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents herein 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 hereby ordered,* That the respondent association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, and respondent individuals Louis Weinstock, Abraham Baskoff, Richard M. Kroon, Frank Mozer, J. P. Anderson, A. Allen, Elmer Johnson, Robert C. Brown, Harry Bridges, David Gordon, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), C. Taylor, Luigi Genovese, M. Manes (or Manis), T. L. Major, A. Edwards, G. Alston, M. Balya, G. Spagnol, A. W. McPherson, Karl Maisus (or Masis), A. Weiner, William Thacker, E. Crews, F. Phillips, A. Fleming, and Charles B. Killinger and their respective agents, servants and employees, in connection with the sale and offering for sale of magazines in interstate commerce or in the District of Columbia, do forthwith cease and desist from the use of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief" and of the name "A. F. of L. Rank and File Federationist" and of any other name indicating or suggesting that the said respondent association or any of its members constitute a committee of the American Federation of Labor, or that any publication by them or by any of them so sold and offered for sale is a publication of the American Federation of Labor.

*And it is hereby further ordered,* That the aforesaid respondent association and respondent individuals shall, within 60 days after service upon them of this order, file with this Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## IN THE MATTER OF

**J. M. TONKIN AND S. M. MODLIN, TRADING AS COLUMBIA DISTILLING COMPANY, TONKIN DISTRIBUTING COMPANY, AND OLD ABBEY DISTILLING COMPANY**

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

*Docket 2422. Complaint, June 1, 1935—Decision, Nov. 19, 1936*

Where two individuals engaged as rectifiers and wholesalers of liquor, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in making gin by redistillation of purchased alcohol, not produced by them, over juniper berries and other aromatics, with still used therefor, and in selling such various products at wholesale in competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale thereof, and with those engaged in purchasing, rectifying, blending, bottling, and selling such various beverages, and including among their said competitors those who, engaged in manufacturing and distilling from mash, wort, or wash whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, and bottling such beverages, do not use such words as above set forth—

Represented, through use of word "Distilling" in their trade names, printed on their stationery and on the labels attached to the bottles in which they sold and shipped their products, together with the words, in some cases, "Made by," or "Prepared by," or "Bottled by," or "Bottled for," and in other ways to their customers, and furnished said customers with means of representing to latter's vendees, both retailers and ultimate consuming public, that the whiskies, gins, and other spirituous beverages contained in such bottles were by them made through process of distillation from mash, wort, or wash;

Notwithstanding fact they did not own, operate, or control any such places where such beverages are made by aforesaid process, were not engaged in distilling their said beverages, as long definitely understood in the trade and by the consuming public, i. e., in making same by original distillation from grain, fruit, or vegetable mash, and were not distillers, investment and expenses of which in general are greater than those of rectifiers, and which have a prestige in the minds of the wholesale trade, of advantage to the seller of their products, as controlling the making thereof from start to finish;

With effect of misleading and deceiving dealers and purchasing public into belief that such whiskies and other spirituous beverages sold by them were by them made and distilled from mash, wort, or wash, and of inducing dealers and purchasing public, acting in such belief, to buy said whiskies, gins, and other spirituous beverages bottled and sold by them, and of thereby diverting trade to them from their competitors who do not, by their corporate names