

IN THE MATTER OF
KNIGHT ELECTRIC COMPANY, INC., 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 2656. Complaint, Sept. 1, 1936¹—Decision. May 20, 1937

Where the names, letters and symbols "Marconi," "Victor," "R. C. A.," "Edison," "Bell" and representation of a bell, "Majestic," "Brunswick," and the letters "G. E." in a circle with scroll-like interior decorations, as names and designations of well-known and long-established individuals, companies, and corporations, and long used and extensively advertised by the various owners thereof, had come to be known and identified with the radio sets, radio parts, and like products of said owners, and constituted their standard brands and symbols when used as company, corporate, and trade names, and, as well-known marks and brands on such products thus identified, had a fixed and stable value in the trade and industry generally, throughout the United States and foreign countries, upon which well-known brands, etc., purchasing public relied when thus used on radio sets, etc., and in said industries, as indicating high standard, reliable and genuine products, and use of such names, letters and symbols influenced purchase thereof and increased sales, and said names, letters and symbols, thus attached, had value to the thousands of dealers engaged in the sale and distribution of such standard brand products, and were valuable to the owners thereof, who had used, and used and employed, the same in commerce; and thereafter—

- (1) Two corporations and three individuals, officers and agents thereof, engaged in the manufacture of escutcheons and name plates upon which they etched or stamped names, marks, brands, and symbols for use on radio sets and radio parts, and in sale thereof to manufacturers and dealers in such products, (2) five corporations and five individuals, officers and agents of said corporations, engaged in manufacture, assembly, and sale of radio sets upon which they placed and caused to be placed escutcheons and name plates purchased from the heretofore described manufacturers and sellers thereof, and (3) four corporations and two individuals engaged in sale and distribution of such products purchased from the heretofore described concerns and individuals and upon which there were affixed, as above set forth, escutcheons and name plates with names, marks, brands, and symbols etched or stamped thereon to designate the names, etc., of the makers and brand names of the said products; in furtherance of a scheme engaged in by such various manufacturers and dealers to deceive the public and compete unfairly with other manufacturers and dealers in such sets and parts and escutcheons and name plates, through affixing of such articles, bearing names, marks, brands, and symbols of corporations and individuals well known and long established in the radio and similar industries, and without the authority or consent of the legal owners and users of such various names, etc., respectively, and as the case might be—
- (a) Sold, distributed, and furnished name plates and escutcheons for radio sets and similar products bearing names, letters, and symbols "Marconi,"

¹ Amended and supplemental.

"Edison," "Bell," "Victor," "Majestic," "Brunswick," "R. C. A.," and "G. E." and colorable imitations or simulations thereof, to manufacturers and assemblers of and dealers in such products as hereinbefore described, and without consent of the lawful owners or licensees of such various names, etc.; and

- (b) Represented, through use of such names, marks, letters, or symbols, and such colorable simulations and imitations thereof as "Marconi-International," "Marconi Radio Corporation," "Edison-International," "Edison-Bell," with representation of a bell, "Edison Radio Stores, Inc.," "Victor International," "Majestic International," "Brunswick," letters "R. C. I.," "R. S. A.," and "E. B.," and without the permission of the lawful owners thereof, that the radio sets, parts and like devices, appliances or products made or assembled for or by, and sold by, said various corporate and individual manufacturers of and dealers in such parts, etc., were made, assembled, sponsored, endorsed and approved, or licensed by Thomas A. Edison, or Thomas A. Edison, Inc., American Telephone & Telegraph Co., Western Electric Co., Marconi Wireless Telegraph Corporation of America, Radio Corporation of America, Victor Talking Machine Company, Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., Brunswick Radio Corporation, Grisby Grunow Company, Majestic Radio & Television Corporation, or General Electric Company, or by the agents, representatives, successors, or assigns of such various individuals and concerns:

With result that public was led to believe that products thus sold and marked and identified were those of the said well known respective companies or interests hereinabove set forth, and there was an appropriation by said manufacturers of escutcheons and name plates, and manufacturers and assemblers of and dealers in sets and parts as hereinbefore set forth, of the good will of the respective competitor companies and interests hereinbefore referred to, and an unfair diversion of business from such competitor companies to such name plate manufacturers, etc., and also such unfair diversion of business from other competitors who do not resort to such practice, and with the result, by reason of such wholly unauthorized use of names, brands, etc., of giving to the goods of aforesaid manufacturers, assemblers, and dealers a salability which they would not otherwise have, and of giving to such manufacturers, etc., an advantage over their competitors who do not similarly misrepresent the true origin of their goods and conceal the same under a reputable but false source, and of deceiving the public buying products of said manufacturers, etc., into the false belief that such products originated with well known and reputable concerns, and with the further result of placing in the hands of others, to whom said products thus marked were sold, means whereby injury might be and was done to competitors dealing in the genuine, honestly marked goods:

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

Mr. Carrel F. Rhodes for the Commission.

Mr. Charles Green, of Philadelphia, Pa., for Ross Distributing Co. and Larry B. Ross, and, along with *Mr. Julius C. Baylinson*, of Philadelphia, Pa., for Harvard Radio Tube Testing Stations of Pennsylvania, Inc., and *Julius M. Schoenberg*.

Complaint

24 F. T. C.

McQuiston & Malcolm, of New York City, for Metal Etching Corp. and M. Hermann.

Mr. Herman Goldman, of New York City, for Premier Metal Etching Co. and its officers.

AMENDED AND SUPPLEMENTAL 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 Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Radio Products Corporation, Franklin Sales and Distributing Company, Inc., and Eric Houser, individually, and as president, director, and agent of said several companies, and David I. Morrison, A. M. Frank, Leon C. Sacks, Charles Johannes, Morris A. Weiner, Otto Dreher, Charles Dreher, Ruth Wasserman, J. R. Rosenberg, and S. Buchman, individually, and as officers, directors, and agents of said companies; Harvard Radio Tube Testing Stations of Pennsylvania, Inc., and Julius M. Schoenberg, individually, and as president, director, and agent of said company; Ross Distributing Company, and Larry B. Ross, individually, and as president, director, and agent of said company; Sun Radio and Service Supply Corporation, and Emanuel Rosensweig, individually, and as president, director, and agent of said company; Schiller Brothers, Incorporated, and Louis S. Schiller, individually, and as president, director, and agent of said company; F. C. Scruggs, individually, and trading under the name Call Radio Company; Peter Robbins, individually, and trading under the names Robbins Radio Company and Ambassador Radio Company; Metal Etching Corporation, and M. Herman, individually, and as president, director, and agent of said company; Etched Products Corporation, and Albert Nierenberg and Walter H. Miller, individually, and as officers, directors, and agents of said company; Electro Chemical and Engraving Company, and F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, L. S. Southwick, individually, and as officers, directors, and agents of said company; Premier Metal Etching Company, and Herbert Pape, Carl J. Johnson, Ernest A. Rottach, Hugo Lehrfeld, individually, and as officers, directors, and agents of said company; Crowe Nameplate and Manufacturing Company, and E. C. Coolidge and I. Robinson Smith, individually, and as officers, directors, and agents of said company have been and now are 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. (A) Respondents Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Radio Products Corporation, and Franklin Sales and Distributing Company, Inc. are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York with their principal place of business at 16 Hudson Street in the city of New York in said State. The officers, directors, and agents of said companies who have participated in the practices herein alleged during all or part of the times here involved, are the following: Eric Houser president, director and agent of said several companies, and David I. Morrison, A. M. Frank, Leon C. Sacks, Charles Johannes, Morris A. Weiner, Otto Dreher, Charles Dreher, Ruth Wasserman, J. R. Rosenberg, and S. Buchman.

The said respondent corporations and the said respondent individuals individually, and as officers, directors, and agents of said corporations are, and have been for more than six years last past, engaged in manufacturing, assembling, and selling radio sets, radio tubes, and like products. The business carried on by said respondent corporations and said respondent individuals is essentially a single business, namely that of manufacturing and assembling radio sets, radio tubes, and like products and selling said products to dealers and the purchasing public, the profits from which enure to said individuals. Said respondents manufacture, sell, and ship said radio sets, radio tubes, and like products to dealers and buyers among the purchasing public throughout the United States, and in the District of Columbia, and foreign countries in interstate and foreign commerce.

Other individuals, partnerships, and corporations who have been, and now are, involved in the subject matter of this complaint, are the following:

(B) Respondent Harvard Radio Tube Testing Stations of Pennsylvania, Inc., a corporation organized under and by virtue of the laws of the State of Pennsylvania, domiciled and doing business at 208 North Broad Street in the city of Philadelphia in said State, and respondent Julius M. Schoenberg an individual, individually and as president, director, and agent of said company.

(C) Respondent Ross Distributing Company, a corporation organized under and by virtue of the laws of the State of Pennsylvania, domiciled and doing business at 2020 Chancellor Street in the city

Complaint

24 F. T. C.

of Philadelphia in said State, and respondent Larry B. Ross an individual, individually and as president, director, and agent of said company.

(D) Respondent Sun Radio and Service Supply Corporation, a corporation organized under and by virtue of the laws of the District of Columbia, domiciled and doing business at 938 F Street, N. W. in the city of Washington in said District of Columbia, and respondent Emanuel Rosensweig an individual, individually and as president, director, and agent of said company.

(E) Respondent Schiller Brothers, Inc., a corporation organized under and by virtue of the laws of the District of Columbia, domiciled and doing business at 922 F Street, N. W. in the city of Washington in said District of Columbia, and respondent Louis S. Schiller an individual, individually and as president, director, and agent of said company.

(F) Respondent Peter Robbins an individual, individually and trading under the names Robbins Radio Company and Ambassador Radio Company, domiciled and doing business at 940 F. Street, N. W. in the city of Washington in said District of Columbia.

(G) Respondent F. C. Scruggs an individual, individually and trading under the name Call Radio Company by virtue of the laws of the District of Columbia, domiciled and doing business at 636 H Street, N. E. in the city of Washington in said District of Columbia.

(H) Respondent Metal Etching Corporation, a corporation organized under and by virtue of the laws of the State of New York, domiciled and doing business at 1001 Essex Street in the city of Brooklyn in said State, and respondent M. Hermann an individual, individually and as president, director, and agent of said company.

(I) Respondent Etched Products Corporation, a corporation organized under and by virtue of the laws of the State of New York, domiciled and doing business at 3901 Queens Boulevard in Long Island City in said State, and respondents Albert Nierenberg, and Walter H. Miller individuals, individually and as officers, directors, and agents of said company.

(J) Respondent Electro Chemical and Engraving Company, a corporation organized under and by virtue of the laws of the State of New York with its principal office and place of business at 1100 Brook Avenue, in the Borough of the Bronx, city of New York in said State, and respondents F. E. Switzer, B. L. Jacobus, Robert Schlesinger, Julius Erdoes, and L. S. Southwick individuals, individually and as officers, directors, and agents of said company.

(K) Respondent Premier Metal Etching Company, a corporation organized under and by virtue of the laws of the State of New York,

1310

Complaint

domiciled and doing business at 2103 44th Avenue in the city of Long Island in said State, and respondents Herbert Pape, Carl J. Johnson, Ernest A. Rottach, and Hugo Lehrfeld individuals, individually and as officers, directors, and agents of said company.

(L) Respondent Crowe Nameplate and Manufacturing Company, a corporation organized under and by virtue of the laws of the State of Illinois, domiciled and doing business at 1749 Grace Street in the city of Chicago in said State, and respondents E. C. Coolidge and I. Robinson Smith individuals, individually and as officers, directors, and agents of said company.

Said respondents hereinabove described under sub-paragraphs (B) (C) (D) (E) (F) and (G) of paragraph 1 are dealers in radio receiving sets, radio tubes and like products. Said respondents during the course and conduct of their business sell and ship said radio sets, radio tubes and like products to the purchasing public in interstate and foreign commerce from their several places of business in Pennsylvania and the District of Columbia through and into other States of the United States, and in the District of Columbia, and foreign countries in interstate and foreign commerce.

Said respondents hereinabove described under sub-paragraphs (H) (I) (J) (K) and (L) of paragraph 1 in the course and conduct of their business manufacture and sell nameplates and escutcheons for use and used upon radio sets to describe or designate the makers or brand names of said products. Said respondents during the course and conduct of their said several businesses, have and do manufacture for sale and sell and ship to respondent Knight Electric Company, Inc., and the several other respondent corporations, associations, partnerships, and individuals designated in paragraph 1 (A) (B) (C) (D) (E) (F) and (G) escutcheons and nameplates to be used and used and sold by said respondents to dealers and others to be used on and in connection with radio sets, radio tubes and like products as marks or brands to designate the names of the makers and brand names used by makers of said products.

PAR. 2. Respondent Knight Electric Company, Inc., and all of the several respondent corporations, associations, partnerships, and individuals described in paragraph 1 (A) (B) (C) (D) (E) (F) and (G) are now and have been for several years last past engaged in manufacturing, assembling, selling, marketing, and distributing radio sets, radio tubes, and like products, and in the course and conduct of their said several businesses respondents have caused and now cause said radio sets, radio tubes, and like products when sold to be transported by them from their several respective places of business into and through the various States of the United States, the District

Complaint

24 F. T. C.

of Columbia, and in foreign commerce to the purchasers thereof in such other States, in the District of Columbia, and foreign countries in substantial competition with other corporations, partnerships, and persons engaged in the sale and transportation of radio sets, radio tubes, and like products in interstate and foreign commerce.

PAR. 3. For the purpose of selling said radio sets, radio tubes, and like products and to induce the public to buy said products, respondent Knight Electric Company, Inc., and the several other respondent corporations, associations, partnerships, and individuals set out and described in paragraph 1 (A) (B) (C) (D) (E) (F) (G) (H) (I) (J) (K) and (L) cooperating among themselves and together with one another, have been for several years last past and are now, engaged in a scheme to deceive the public and to compete unfairly with other manufacturers and dealers in radio sets, radio tubes, and like products who are in competition with respondents in interstate and foreign commerce. In furtherance of said scheme respondents have adopted, made, used, and sold and now make, use, and sell to dealers, distributors, and others to be used on radio sets, radio tubes, and like products, escutcheons or nameplates bearing the names, brands, marks, and symbols of corporations and individuals well-known and long established in the radio and like industries, which names, marks, brands, and symbols were adopted and used and are now being used by respondents and others without authority or consent from the legal owners and users of said names, marks, brands, and symbols.

Among the names, marks, brands, and symbols so made, adopted, and used by respondents are the following: Marconi, Marconi International, Marconi Radio Corporation; Edison, Edison International, Edison-Bell, Edison with a representation of a bell, Edison Radio Stores, Inc.; Bell, Bell with a representation of a bell; Victor, Victor International; Majestic, Majestic International, Majestic Radio Corporation; Brunswick (Bronswick, a colorable imitation of the name Brunswick); RCA (RCI, RSA, colorable imitations of the letters RCA); the letters EB (a colorable imitation of the letters GE) standing alone or stamped upon the representation of a bell, and the names Marconi, Edison, Bell, Victor, Majestic, Brunswick or Bronswick standing alone or in conjunction with other words, names and devices.

Said respondents, set out and described in paragraph 1 (H) (I) (J) (K) and (L), without authority or consent of the legal owners of the names, marks, brands, and symbols use, advertise, sell, and ship said nameplates and escutcheons so marked and stamped with said well-known and long established names, marks, brands and symbols as hereinabove set out, and said respondents, set out and de-

1310

Complaint

scribed in paragraph 1 (B) (C) (D) (E) (F) and (G), advertise said nameplates and escutcheons, and radio sets and like products upon which said nameplates and escutcheons so marked, stamped, and branded with said well-known and long established names, marks, brands, and symbols of others as hereinabove set out, without the authority or consent of the owners thereof, in catalogues, newspapers, and other periodicals circulated in interstate and foreign commerce, and sell and ship said nameplates and escutcheons, radio sets and like products from their respective places of business to purchasers thereof, located in States other than the State of origin of said shipments and in the District of Columbia and foreign countries in interstate and foreign commerce. All of which said acts and things are committed and done in pursuance and as a part of the scheme entered into, agreed upon and participated in by Knight Electric Company, Inc., its officers, directors, and agents and each and all of the respondents hereinabove designated in paragraph 1 (A) (B) (C) (D) (E) (F) (G) (H) (I) (J) (K) and (L).

PAR. 4. The use by respondents of the names, marks, brands, symbols, and devices as set out in paragraph 3 is wholly unauthorized by the owners of said names, marks, brands, symbols, and devices and gives to respondent's goods a salability which they would not otherwise have, and gives to said respondents an advantage over their competitors who do not similarly misrepresent the true origin of their goods and conceal the same under a reputable but false origin as do respondents. The said appropriation and use by said respondents of the reputation and good-will of others at the expense of and injury to such others who have created such reputation and good-will has the capacity and tendency to deceive, and deceives the public purchasing said products into believing that respondents' products originate with well-known and reputable concerns contrary to the fact. Thereby substantial injury is done by respondents to competitors and substantial competition in interstate and foreign commerce.

PAR. 5. (A) The name "Marconi" refers to and is generally recognized as the name of Guglielmo Marconi, the engineer and electrician who first perfected the appliances used in space telegraphy or radiography and the application of electric waves to actual telegraphy and the inventor of various electrical and radio devices among which is the celebrated "Fleming Tube," a tube used in radio sets. Marconi Wireless Telegraph Company of America, a corporation organized in 1899 under and by virtue of the laws of the State of New Jersey, acquired from said Guglielmo Marconi the exclusive right to the use and exploitation of all of the said Guglielmo Marconi patents and

inventions, including the use of the name "Marconi" in and throughout the United States and its territories and possessions. In 1919 the said Marconi Wireless Telegraph Company of America sold, transferred and assigned to Radio Corporation of America all of its right, title, and interest in and to said "Marconi" patents and inventions, including the right to the use of the name "Marconi" in connection therewith, and has been used and extensively advertised by, and is the rightful property of Radio Corporation of America and its subsidiaries.

(B) For many years last past the Victor Talking Machine Company, Camden, N. J. has been manufacturing and selling phonographs and phonograph records, which phonographs have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public. During all this period the phonographs, phonograph records and other articles manufactured and sold by said company have featured the name "Victor" as part of their trade name, which said name has been attached in a prominent place to said machines, sold and shipped in interstate and foreign commerce.

In 1929 the Radio Corporation of America obtained control of said Victor Talking Machine Company and organized a company under the corporate name "RCA-Victor Co.," and also organized a company under the name of "The RCA Manufacturing Co., Inc.," which company is engaged in the manufacture and sale of radio sets and combination radio and phonograph sets. All of said sets bear the name "Victor," either alone or in combination with other letters or words in a prominent place on said sets. Said radio sets and combination radio and phonograph sets are sold to the purchasing public by retail dealers throughout the United States. During the past twenty-five years the Victor Talking Machine Company has spent approximately \$70,000,000 in advertising, and the word "Victor" has always prominently appeared in said advertising. At the present time RCA-Victor Company is advertising its radio sets and radio tubes in a number of magazines having a large national circulation and in other publications and newspapers.

The name "Victor" when used on radio sets and radio tubes and like products is the rightful property of the RCA-Victor Co. and the Victor Division of the RCA Manufacturing Company.

The said initials "RCA" have long been used as marks or brands to designate radio sets and radio tubes and other merchandise manufactured, sold and shipped in interstate and foreign commerce by said RCA-Victor Co., the Victor Division of The RCA Manufacturing Co. and the Radio Corporation of America. Neither said Guglielmo Marconi nor Radio Corporation of America or any of its subsidiaries

1310

Complaint

have ever granted (or consented) to respondents the right to the use of the name Marconi or the name Victor or the letters RCA (or RSA and RCI colorable imitations of the letters RCA) in any manner.

PAR. 6. For more than thirty years prior to his death on October 18, 1931, Thomas A. Edison had been known and recognized throughout the various States of the United States and foreign countries as the inventor, patentee, owner and manufacturer of numerous electrical devices of various kinds and descriptions and of machines for the reproduction of the human voice, which have acquired a wide and favorable reputation and are in great demand by the trade and purchasing public who desire Edison products. Among the machines for the reproduction of the human voice manufactured by companies which the said Thomas A. Edison organized and controlled, are phonographs, dictaphones and transmitting machines, radios, combination radios and phonographs and many other articles of various kinds and character such as storage batteries, spark plugs, ignition coils and household electrical appliances. Many of the machines and articles above referred to bear the name "Edison" as part of their brand, and such name "Edison" has acquired a valuable good-will as identifying the manufacturer of said machines or articles.

Among the companies organized and controlled by the said Thomas A. Edison before his death is Thomas A. Edison, Inc., which said company is still engaged in the manufacture of the machines and articles invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the years 1926-1930 inclusive, manufactured and sold radio sets valued at many millions of dollars, and during the said period spent several millions of dollars in advertising its said radio products. All the radio sets manufactured and sold by Thomas A. Edison, Inc., feature the name "Edison" as part of their brand name.

The name "Edison" refers to Thomas A. Edison, the great inventor in the electrical field and the pioneer in the talking machine and radio industry, the right to the use of which name was vested in Thomas A. Edison, Inc., by Thomas A. Edison and was extensively advertised and has long previously been used and continues to be used by Thomas A. Edison, Inc. on radio sets, phonographs and other electrical devices and appliances, sold and shipped in interstate and foreign commerce. Neither Thomas A. Edison or the said Thomas A. Edison, Inc. have ever granted (or consented) to respondents the right to the use of the name "Edison" in any manner.

PAR. 7. The name "Bell" and the representation of a bell, when used in connection with sound reproduction and sound transmission in the electrical and radio field refers to the great inventor Alexander Graham Bell and is the property of the said Alexander Graham Bell

Complaint

24 F. T. C.

and his successors and assigns. The common law title to the name "Bell" is vested, by long and continued use since 1886, in the American Telephone & Telegraph Company, its subsidiaries and associates, and the Western Electric Company, Inc. Western Electric Company, Inc. manufactures, sells, extensively advertises and ships radio sets, radio tubes and radio batteries in interstate and foreign commerce, and uses the name "Blue Bell" and the representation of a bell as a brand name to designate its said products. The representation of a bell has long been used and extensively advertised by the American Telephone & Telegraph Company as a symbol or trade designation in its business. Neither the said Alexander Graham Bell nor the American Telephone & Telegraph Company and its subsidiaries nor Western Electric Company, Inc. have ever granted (or consented) to respondents the right to the use of the name "Bell" in any manner.

PAR. 8. The name "Majestic" is a name long associated with radio sets and is the legal property of Grigsby-Grunow Company who are the original makers of radio sets branded with the name "Majestic," which were extensively advertised, sold and shipped in interstate and foreign commerce by the said Grigsby-Grunow Company. Said name "Majestic" is now vested in Majestic Radio and Television Corporation of Illinois, which now manufactures, sells and ships in interstate and foreign commerce radio sets, radio tubes and like products branded or marked with the name Majestic. Neither Grigsby-Grunow Company, its successors or assigns nor Majestic Radio and Television Corporation of Illinois have ever granted (or consented) to respondents the right to the use of the name "Majestic" in any manner.

PAR. 9. During many years last past the Brunswick-Balke-Collender Co. has been a large manufacturer of billiard and pocket billiard tables, bowling alleys and various other articles, and its products have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public for many years last past. During all this period the products manufactured and sold by said company have featured the name "Brunswick" as part of their brand name, which said name has been attached in a prominent place to said products. In 1915 the Brunswick-Balke-Collender Co. began the manufacture and sale of phonographs and phonograph records, and some time later began the manufacture and sale of radio sets and combination radio and phonograph sets, on all of which articles the name "Brunswick" was featured in a prominent place on said products. In 1930 the radio and phonograph division of said Brunswick-Balke-Collender Co. was sold to Warner Brothers Pictures, Inc., which company organized the corporation under the corporate name Brunswick Radio Corporation to operate the business. Said latter company

1310

Complaint

obtained the exclusive right to use the name "Brunswick" in connection with said radio sets, phonographs and combination radio and phonograph sets.

Until January 1, 1933, Brunswick Radio Corporation continued the manufacture and sale of radio sets and combination radio and phonograph sets, on all of which sets the name "Brunswick" has been prominently featured. Since January 1, 1933, the manufacture of radio sets by Brunswick Radio Corporation has been suspended, but said Brunswick Radio Corporation still owns the manufacturing plants in which said sets were manufactured and may resume such manufacture at some time in the future. The radio sets and combination radio and phonograph sets manufactured by Brunswick-Balke-Collender Co. and Brunswick Radio Corporation were sold to the purchasing public by retail dealers throughout the United States and in foreign countries. During all the time the Brunswick-Balke-Collender Corporation and the Brunswick Radio Corporation were manufacturing and selling radio sets and combination radio and phonograph sets said companies expended large sums of money in advertising said sets, and the name "Brunswick" has at all times been prominently displayed in said advertising.

"Bronswick," the name used by respondents is a colorable imitation of the name "Brunswick" which has long been used by the Brunswick-Balke-Collender Co. and the Brunswick Radio Corporation on radio sets, phonographs and combination radio and phonograph sets. Neither Brunswick-Balke-Collender Co., Warner Brothers Pictures, Inc. or Brunswick Radio Corporation have ever granted (or consented) to respondents the right to the use of the name Brunswick (or Bronswick a colorable imitation thereof) in any manner.

PAR. 10. A device of a circle with scroll-like interior projections enclosing the script letters "GE" is the property of General Electric Company and has long been used and extensively advertised by said General Electric Company as a mark or brand to designate the products manufactured, sold and shipped in interstate and foreign commerce by said General Electric Company. The device used by respondents of a circle with scroll-like interior projections enclosing the script letters "EB" is a colorable imitation of this well-known device. Neither Thomas A. Edison, Thomas Edison Inc., Alexander Graham Bell, American Telephone and Telegraph Company, Western Electric Company, nor said General Electric Company or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the letters "EB" in any manner.

Findings

24 F. T. C.

PAR. 11. The offering for sale and sale and shipment by respondents in interstate and foreign commerce, as set out in paragraphs 1, 2, 3, and 4 hereof, to dealers in radio sets, radio tubes and like products of escutcheons or name-plates stamped or branded with the well-known names, marks, brands and symbols of others without their consent, and the offering for sale and sale and shipment in interstate and foreign commerce by respondents of radio sets, radio tubes and like products branded or marked with the names, marks, brands and symbols of others without authority or consent of the owners thereof, places in the hands of dealers and others the means whereby injury might be done and is done to competitors and the purchasing public, and all of the acts and things alleged and done by respondents are each and all of them to the injury and prejudice of the public and respondents' competitors and constitute unfair methods of competition in interstate and foreign 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."

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 1st day of September 1936, issued and served its amended and supplemental complaint, hereinafter known as the complaint, in this proceeding, upon the following named corporations and individuals:

Respondents, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Eric Houser, David I. Morrison, A. M. Frank, Leon C. Sacks, Charles Johannes, Morris A. Weiner, Arthur Dreher, Charles Dreher, Ruth Wasserman, J. R. Rosenberg, Harvard Radio Tube Testing Stations of Pa., Inc., Julius M. Schoenberg, Ross Distributing Company, Larry B. Ross, Sun Radio and Service Supply Corporation, Emanuel Rosensweig, Schiller Brothers, Inc., Louis S. Schiller, F. C. Scruggs, individually, and trading under the name Call Radio Company, Peter Robbins, individually, and trading under the names Robbins Radio Company and Ambassador Radio Company, Metal Etching Corporation, M. Hermann, Etched Products Corporation, Albert Nierenberg, Walter H. Miller, Electro Chemical Engraving Company, F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, L. S. Southwick, Premier Metal Etching Com-

1310

Findings

pany, Herbert Pape, Karl D. Johnson, Ernest A. Rottach, Hugo Lehrfeld, Crowe Nameplate and Manufacturing Company, E. C. Coolidge, and I. Robinson Smith.

Respondents, Radio Products Corporation, Franklin Sales and Distributing Company, Inc., and S. Buchman could not be located and were not served with the complaint.

Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and the answers thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the public interest, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Etched Products Corporation, Albert Nierenberg, Walter H. Miller, Electro Chemical Engraving Company (named in the complaint Electro Chemical and Engraving Company), F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, L. S. Southwick, Premier Metal Etching Company, Herbert Pape, Karl D. (named in the complaint Carl J.) Johnson, Ernest Rottach, and Hugo Lehrfeld filed answers in which they deny all the material allegations of the complaint;

Respondents, Leon C. Sacks, Charles Johannes, Morris A. Weiner and J. R. Rosenberg filed an affidavit signed by Sylvia Zondel, secretary to Fred Rosenberg, the attorney who drew up the incorporation papers of certain corporations, in which it is averred that said respondents' names "have been used only as dummies for the purpose of execution" certificates of incorporation. That said respondents "have never been interested in the control, management, operation and conduct of any one of said corporations," namely, "Knight Electric Company, Inc.," "Temple Electric Inc.," "Acme Radio Corporation," "Pirate Electric Corporation," "Gillet Radio Corporation," and "Franklin Sales Distributing Corporation," and that said respondents "had no financial interest whatsoever in any of said corporations."

It appears that said respondents did not participate in the acts and practices charged in the complaint, and the complaint should be dismissed as to said respondents.

PAR. 2. Respondent, Metal Etching Corporation is a corporation organized under the laws of the State of New York, domiciled and doing business at 1001 Essex Street, Brooklyn, N. Y., and respondent, M. Hermann was and is an officer and agent of said corporation.

Respondent, Crowe Nameplate and Manufacturing Company is a corporation organized under the laws of the State of Illinois, domiciled and doing business at 1749 Grace Street, Chicago, Ill., and respondents, E. C. Coolidge and I. Robinson Smith are officers and agents of said corporation.

Respondents herein named are now, and have been for several years last past, engaged in the manufacture and sale of escutcheons and name plates—upon which said products they have attached or stamped names, marks, brands, letters, and symbols—for use as marks and brands on radio sets and radio parts to designate the names, marks, brands, letters, and symbols of the makers, and brand names of said radio sets and radio parts. They have sold and shipped, and now sell and ship, said products to manufacturers and dealers in radio sets and radio parts, including the respondents named in paragraphs 3 and 4 hereof. They have caused, and now cause, said escutcheons and names plates so marked and branded when sold to be transported from their respective places of business in the States of New York and Illinois to purchasers thereof at their respective points of location in States of the United States other than the State of origin of the shipment, and in the District of Columbia, and foreign countries.

PAR. 3. Respondents, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation and Gillet Radio Corporation are corporations organized under the laws of the State of New York, domiciled and doing business at 16 Hudson Street, New York City, N. Y., and respondents, Eric Houser, David I Morrison, A. M. Frank, Arthur Dreher, Charles Dreher, and Ruth Wasserman were and are officers, agents, and representatives of said respondent corporations.

Respondents, Eric Houser, David I. Morrison, and A. M. Frank conducted business in an individual capacity as free agents, and also as agents and representatives of said respondents, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, and Gillet Radio Corporation, with their principal places of business at 16 Hudson Street, New York City, N. Y.

The respondents herein named have been for several years last past, and are now engaged in the manufacture, assembly, and sale of radio sets and radio parts, upon which said products they placed and caused to be placed escutcheons and name plates—purchased from respondents set out and described in paragraph 2—with names, letters, marks, brands, and symbols etched or stamped thereon to designate the makers and brand names of said radio sets and radio parts.

Said respondents sell and ship said products to the respondents named in paragraph 4 hereof and to other dealers and to the public, and have caused and now cause said radio parts and radio sets, and escutcheons and name plates so marked and branded, when sold, to be transported from their respective places of business in the State of New York to purchasers thereof at their respective points of location in States of the United States other than the State of origin of the shipment, and in the District of Columbia, and foreign countries.

PAR. 4. Respondent, Harvard Radio Tube Testing Stations of Pennsylvania, Inc., is a corporation organized under the laws of the State of Pennsylvania, domiciled and doing business at 208 N. Broad Street, Philadelphia, Pa., and respondent Julius M. Schoenberg is an officer, representative, and agent of said corporation.

Respondent, Ross Distributing Company, is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at 2020 Chancellor Street, in the city of Philadelphia, Pa., and respondent Larry B. Ross is an officer, agent, and representative of said corporation.

Respondent, Sun Radio and Service Supply Corporation, is a corporation organized under the laws of the District of Columbia, domiciled and doing business at 938 F Street N. W., Washington, D. C., and respondent, Emanuel Rosensweig, is an officer, agent, and representative of said corporation.

Respondent, Schiller Brothers, Inc., is a corporation organized under the laws of the District of Columbia, domiciled and doing business at 922 F Street, N. W., Washington, D. C., and respondent, Louis S. Schiller is an officer, agent, and representative of said corporation.

Respondent, Peter Robbins, is an individual trading under the names Robbins Radio Company and Ambassador Radio Company, domiciled and doing business at 940 F Street, N. W., Washington, D. C.

Respondent, F. C. Scruggs, is an individual trading under the name Call Radio Company, domiciled and doing business at 636 H Street, N. E., Washington, D. C.

The respondents herein named have been for several years last past, and are now, engaged in the sale and distribution of radio sets and radio parts, upon which said products there are affixed escutcheons and name plates with names, marks, brands, and symbols etched or stamped thereon to designate the names, marks, brands, and symbols of the makers and brand names of said products. Said radio sets and radio parts so offered for sale and sold with said escutche-

eons and name plates affixed thereto, were, and are, bought from the several respondents set out and described in paragraphs 2 and 3. Said products, so marked and branded, were, and are, sold by said respondents to the purchasing public, and, when sold, are transported from their several respective places of business in the city of Philadelphia, State of Pennsylvania, and the city of Washington, D. C. to purchasers thereof at their several points of location in States other than the State or point of origin and in the District of Columbia, and in foreign countries.

The respondents named herein in paragraphs 2, 3, and 4 all filed answers admitting the material allegations of the amended and supplemental complaint. The individuals named in paragraphs 2, 3, and 4 are officers and directors of the various corporations with which they are identified and participated in the control and direction of the activities of the respective corporations with which they are connected in performing the acts and practices hereinafter set forth.

PAR. 5. For the purpose of selling escutcheons and nameplates and of inducing manufacturers and dealers in radio sets, radio parts, and like products to buy said products, the several respondents set out and described in paragraph 2 have been for several years last past, and are now, engaged in a scheme to deceive the public and to compete unfairly with other manufacturers and dealers in escutcheons and nameplates and like products who are in competition with respondents in interstate and foreign commerce.

For the purpose of selling radio sets, radio parts, and like products and of inducing the public to buy said products, the several respondent corporations and the several respondent individuals, individually, and as officers, agents, and representatives of said respondent corporations, herein set out and described in paragraphs 2, 3, and 4, cooperating among themselves and together with one another, have been for several years last past, and are now, engaged in a scheme to deceive the public and to compete unfairly with other manufacturers and dealers in radio sets, radio parts, escutcheons, and nameplates, and like products, who are in competition with the said respondents in interstate and foreign commerce. In furtherance of said scheme, the said respondents have adopted, made, used, and sold, and now make, use, sell, and ship in interstate and foreign commerce to distributors, dealers, and others, escutcheons, and nameplates, and radio sets, radio parts and like products, upon which are attached, or to which are affixed, escutcheons and nameplates bearing the names, marks, brands, and symbols of corporations and individuals well known and long established in the radio and like industries, which names, marks,

brands, and symbols were adopted and used and are now being used by said respondents and others without authority or consent from the legal owners and users of said names, marks, brands, and symbols.

Among the names, marks, brands, and symbols so made, adopted, and used by respondents are the following:

"Marconi" and also "Marconi-International," "Marconi Radio Corporation," which are found to be colorable imitations and simulations of said name "Marconi";

"Edison" and also "Edison-International," "Edison-Bell," "Edison" with the representation of a bell, "Edison Radio Stores, Inc.," which are found to be colorable imitations and simulations of said name "Edison";

"Bell," and the representation of a bell, which is found to be a simulation of the name "Bell";

"Victor" and also "Victor International," which is found to be a colorable imitation and simulation of said name "Victor";

"Majestic," and also "Majestic International," and "Majestic Radio Corporation," which are found to be colorable imitations and simulations of the said name "Majestic";

"Brunswick" and also "Bronswick," which is found to be a colorable imitation and simulation of the said name "Brunswick";

The letters "R. C. A." and also "R. C. I." and "R. S. A.," which are found to be colorable imitations and simulations of said letters "R. C. A.";

The letters "G. E.," either alone or in the circle with scroll-like interior decorations, and also the letters "E. B.," which are found to be a colorable imitation and simulation of said letters "G. E."; and

"Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," or "Bronswick," standing alone or in conjunction with other words, names and devices, or any other colorable imitations or simulations of said trade names, or any other trade names, marks or brands.

Said respondent corporations, and said respondent individuals, individually, and as officers, agents and representatives of said corporations, set out and described in paragraph 2, with respect to escutcheons and nameplates, and said respondent corporations, and said respondent individuals, individually, and as officers, agents, and representatives of said corporations, set out and described in paragraphs 3 and 4, with respect to escutcheons, nameplates, radio sets, radio parts and like products, marked and branded with the said well known and long established names, marks, brands, and symbols hereinabove set out and described, advertise said products in pamphlets, circulars, catalogues, newspapers, and other periodicals circulated in interstate and foreign commerce, and in the District of Columbia,

and sell and ship said products so marked from their respective places of business to purchasers thereof located in the District of Columbia and in States other than the State or place of origin of said shipments, in interstate and foreign commerce and in the District of Columbia; without the authority or consent of the legal owners of said names, marks, brands, and symbols.

PAR. 6. (a) The name "Marconi" refers to and is generally recognized as the name of Guglielmo Marconi, the engineer and electrician who first perfected the appliances used in space telegraphy or radiography and the application of electric waves to actual telegraphy and the inventor of various electrical and radio devices among which is the celebrated "Fleming Tube," a tube used in radio sets. Marconi Wireless Telegraph Company of America, a corporation organized in 1899 under and by virtue of the laws of the State of New Jersey, acquired from said Guglielmo Marconi the exclusive right to the use and exploitation of all the said Guglielmo Marconi patents and inventions, including the use of the name "Marconi" in and throughout the United States and its territories and possessions. In 1919 the said Marconi Wireless Telegraph Company of America sold, transferred, and assigned to Radio Corporation of America all of its right, title, and interest in and to said "Marconi" patents and inventions, including the right to the use of the name "Marconi" in connection therewith. Said name "Marconi" is now, and has been used and extensively advertised by, and is the rightful property of Radio Corporation of America and its subsidiaries.

(b) For many years last past the Victor Talking Machine Company, Camden, New Jersey, has been manufacturing and selling phonographs and phonograph records, which phonographs have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public. During all this period the phonographs, phonograph records and other articles manufactured and sold by said company have featured the name "Victor" as part of their trade name, which said name has been attached in a prominent place to said machines, sold and shipped in interstate and foreign commerce.

In 1929 the Radio Corporation of America obtained control of said Victor Talking Machine Company and organized a company under the corporate name "RCA-Victor Co.," and also organized a company under the name of "The RCA Manufacturing Co., Inc.," which company is engaged in the manufacture and sale of radio sets and combination radio and phonograph sets. All of said sets bear the name "Victor," either alone or in combination with other letters or words in a prominent place on said sets. Said radio sets and combination

1310

Findings

radio and phonograph sets are sold to the purchasing public by retail dealers throughout the United States. During the past twenty-five years the Victor Talking Machine Company has spent approximately \$70,000,000 in advertising, and the word "Victor" has always prominently appeared in said advertising. At the present time RCA-Victor Company is advertising its radio sets and radio tubes in a number of magazines having a large national circulation and in other publications and newspapers.

The name "Victor" when used on radio sets and radio tubes and like products is the rightful property of the RCA-Victor Company and the Victor Division of the RCA Manufacturing Company.

(c) The initials "RCA" have long been used as marks or brands to designate radio sets and radio tubes and other merchandise manufactured, sold and shipped in interstate and foreign commerce by said RCA-Victor Company, the Victor Division of the RCA Manufacturing Company and the Radio Corporation of America. Neither said Guglielmo Marconi nor Radio Corporation of America or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the name Marconi or the name Victor or the letters RCA (or RSA and RCI, colorable imitations of the letters RCA) in any manner.

(d) For more than thirty years prior to his death on October 16, 1931, Thomas A. Edison had been known and recognized throughout the various states of the United States and foreign countries as the inventor, patentee, owner, and manufacturer of numerous electrical devices of various kinds and descriptions and of machines for the reproduction of the human voice, which have acquired a wide and favorable reputation and are in great demand by the trade and purchasing public who desire Edison products. Among the machines for the reproduction of the human voice manufactured by companies which the said Thomas A. Edison organized and controlled, are phonographs, dictaphones, and transmitting machines, radios, combination radios and phonographs and many other articles of various kinds and character such as storage batteries, spark plugs, ignition coils and household electrical appliances. Many of the machines and articles above referred to bear the name "Edison" as part of their brand, and such name "Edison" has acquired a valuable good will as identifying the manufacture of said machines or articles.

Among the companies organized and controlled by the said Thomas A. Edison before his death is Thomas A. Edison, Inc., which said company is still engaged in the manufacture of the machines and articles invented and developed by Thomas A. Edison. Thomas A. Edison,

Findings

24 F. T. C.

Inc., during the years 1926-1930, inclusive, manufactured and sold radio sets valued at many millions of dollars, and during the said period spent several millions of dollars in advertising its said radio products. All the radio sets manufactured and sold by Thomas A. Edison, Inc., feature the name "Edison" as part of their brand name.

The name "Edison" refers to Thomas A. Edison, the great inventor in the electrical field and the pioneer in the talking machine and radio industry, the right to the use of which name was vested in Thomas A. Edison, Inc., by Thomas A. Edison and was extensively advertised and has long previously been used and is now used by Thomas A. Edison, Inc., on radio sets, phonographs and other electrical devices and appliances, sold and shipped in interstate and foreign commerce. Neither Thomas A. Edison nor the said Thomas A. Edison, Inc., have ever granted (or consented) to respondents the right to the use of the name "Edison" in any manner.

(e) The name "Bell" and the representation of a bell, when used in connection with sound reproduction and sound transmission in the electrical and radio field refers to the great inventor Alexander Graham Bell and is the property of the said Alexander Graham Bell and his successors and assigns. The common law title to the name "Bell" is vested, by long and continued use since 1886, in the American Telephone & Telegraph Company, its subsidiaries and associates, and the Western Electric Company, Inc. Western Electric Company, Inc., manufactures, sells, extensively advertises and ships radio sets, radio tubes and radio batteries in interstate and foreign commerce, and uses the name "Blue Bell" and the representation of a bell as the brand name to designate its said products. The representation of a bell has long been used and extensively advertised by the American Telephone & Telegraph Company as a symbol or trade designation in its business. Neither the said Alexander Graham Bell nor the American Telephone and Telegraph Company and its subsidiary Western Electric Company, Inc., have ever granted (or consented) to respondents the right to the use of the name "Bell" in any manner.

(f) The name "Majestic" is a name long associated with radio sets and is the legal property of Grigsby-Grunow Company who are the original makers of radio sets branded with the name "Majestic", which were extensively advertised, sold and shipped in interstate and foreign commerce by the said Grigsby-Grunow Company. Said name "Majestic" is now vested in Majestic Radio and Television Corporation of Illinois, which now manufactures, sells and ships in interstate and foreign commerce radio sets, radio tubes and like products branded or marked with the name Majestic. Neither Grigsby-Grunow Company, its successors or assigns nor Majestic Radio and Tele-

1310

Findings

vision Corporation of Illinois have ever granted (or consented) to respondents the right to the use of the name "Majestic" in any manner.

(g) During many years last past the Brunswick-Balke-Collender Company has been a large manufacturer of billiard and pocket billiard tables, bowling alleys and various other articles, and its products have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public for many years last past. During all this period the products manufactured and sold by said Company have featured the name "Brunswick" as part of their brand name, which said name has been attached in a prominent place to said products. In 1915 the Brunswick-Balke-Collender Company began the manufacture and sale of phonographs and phonograph records, and some time later began the manufacture and sale of radio sets and combination radio and phonograph sets, on all of which articles the name "Brunswick" was featured in a prominent place on said products. In 1930 the radio and phonograph division of said Brunswick-Balke-Collender Company was sold to Warner Brothers Pictures, Inc., which company organized the corporation under the corporate name Brunswick Radio Corporation to operate the business. Said latter company obtained the exclusive right to use the name "Brunswick" in connection with said radio sets, phonographs, and combination radio and phonograph sets.

Until January 1, 1933, Brunswick Radio Corporation continued the manufacture and sale of radio sets and combination radio and phonograph sets, on all of which sets the name "Brunswick" has been prominently featured. Since January 1, 1933, the manufacture of radio sets by Brunswick Radio Corporation has been suspended but said Brunswick Radio Corporation still owns the manufacturing plants in which said sets were manufactured and may resume such manufacture at some time in the future. The radio sets and combination radio and phonograph sets manufactured by Brunswick-Balke-Collender Company and Brunswick Radio Corporation were sold to the purchasing public by retail dealers throughout the United States and in foreign countries. During all the time the Brunswick-Balke-Collender Corporation and the Brunswick Radio Corporation were manufacturing and selling radio sets and combination radio and phonograph sets said companies expended large sums of money in advertising said sets, and the name "Brunswick" has at all times been prominently displayed in said advertising.

"Brunswick", the name used by respondents, is a colorable imitation of the name "Brunswick" which has long been used by the Brunswick-Balke-Collender Company and the Brunswick Radio Corporation on radio sets, phonographs and combination radio and

Findings

24 F. T. C.

phonograph sets. Neither Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., nor Brunswick Radio Corporation has ever granted (or consented) to respondents the right to the use of the name Brunswick (or Bronswick, a colorable imitation thereof) in any manner.

(h) A device of a circle with scroll-like interior projections enclosing the script letters "G.E." is the property of General Electric Company and has long been used and extensively advertised by said General Electric Company as a mark or brand to designate the products manufactured, sold and shipped in interstate and foreign commerce by said General Electric Company. The device used by respondents of a circle with scroll-like interior projections enclosing the script letters "E.B." is a colorable imitation of this well known device. Neither Thomas A. Edison, Thomas A. Edison, Inc., Alexander Graham Bell, American Telephone and Telegraph Company, Western Electric Company, nor said General Electric Company or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the letters "E.B." or "G.E." in any manner.

Said names, letters and symbols are the names and designations of said well known and long established individuals, companies and corporations, and are standard brands and symbols when used as company, corporate and trade names, and as marks and brands on radio sets, radio parts, and like products, and said products so marked have a fixed and stable value in the trade and industry generally throughout the United States and foreign countries. The purchasing public relies upon said well known brands, marks, and symbols when used on radio sets, radio parts and like products, and in said industries as indicating high standard, reliable and genuine products. The use of such names, letters and symbols influences the purchase of said products and increases sales. The number of dealers in said products so marked, increase sales value. The said names, letters and symbols attached to said products have value to the thousands of dealers engaged in the sale and distribution of said standard brand products. The said names, letters and symbols are valuable to those persons, partnerships, and corporations owning them, and who have used and now use and employ them in commerce.

Because of the popularity of the names "Marconi", "Victor", "Bell", "Edison", "Brunswick", "Majestic", and the letters "G.E.", either standing alone or in a circle with scroll-like interior decorations, and the letters "R.C.A.", and the products bearing these names, letters, and symbols, manufactured and sold by the lawful owners thereof; the use by respondents of said names, letters and symbols, and simu-

1310

Findings

lations thereof, has led and has the capacity and tendency to lead the public to believe that the products sold by respondents and so marked or identified are the products of said well known respective companies or interests hereinabove referred to and identified and results in the appropriation by the respondents of the good will of, and an unfair diversion of business from said respective competitor companies and interests, and an unfair diversion of business from other competitors who do not resort to such practices, to the injury of the owners of said marks, letters and symbols and of said competitors, and to the prejudice and injury of the public.

PAR. 7. The use by respondents of the names, marks, brands, symbols and devices as set out in paragraph 5 is wholly unauthorized by the owners of said names, marks, brands, symbols and devices and gives to respondents' goods a salability which they would not otherwise have, and gives to said respondents an advantage over their competitors who do not similarly misrepresent the true origin of their goods and conceal the same under a disputable but false origin as do respondents. The said appropriation and use by said respondents of the reputation and good will of others at the expense of and injury to such others who have created such reputation and good will, has the capacity and tendency to deceive, and deceives the public purchasing said products into believing that respondents' products originate with well known and reputable concerns contrary to the fact. Thereby substantial injury is done by respondents to competitors and substantial competition in interstate and foreign commerce.

The purchasing public buying radio sets, radio parts and like products, marked or branded with the said well known names, letters and symbols are of a common mind or belief, regardless of the selling price or of the source of supply, that said products are manufactured and sold by the lawful owners and users of said names, marks, brands, letters, and symbols, and when said names, marks, brands, letters, and symbols are placed upon radio sets, radio parts and like products, such products are accepted as the products of those who have lawfully used and now use such names as marks, brands, letters and symbols upon like products as set out in paragraph 6 hereof. The name or brand being depended upon, influences the sale of said products.

Members of the purchasing public have purchased radio sets, radio parts and like products branded and sold to the trade by respondents and others, which products were imitations of or less than the genuine products entered in trade by the lawful owners and users of said standard names, and have been deceived in such purchases.

Order

24 F. T. C.

The manufacture, sale, and delivery by respondents set out and described in paragraphs 2, 3, and 4, of escutcheons and nameplates, and radio sets, radio parts, and like products, marked and branded with the names, letters, and symbols set out and described in paragraph 5, without authority or consent of the legal owners and lawful users thereof, places in the hands of others to whom said products are sold, the means whereby injury might be and is done to competitors dealing in the genuine products honestly marked. Injury to manufacturers and dealers in the legitimate products is suffered by the sale by respondents of said products falsely marked, sold, and shipped in interstate and foreign commerce. Injury to the lawful owners and users of said standard brands, names, marks, and symbols is suffered because of the manufacture, sale, and competition of said respondents' said products.

CONCLUSION

The aforesaid acts and practices of the said respondents, Metal Etching Corporation, M. Hermann, Crowe Nameplate and Manufacturing Company, E. C. Coolidge, I. Robinson Smith, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Eric Houser, David I. Morrison, A. M. Frank, Arthur Dreher, Charles Dreher, Ruth Wasserman, Harvard Radio Tube Testing Stations of Pa., Inc., Julius M. Schoenberg, Ross Distributing Company, Larry B. Ross, Sun Radio and Service Supply Corporation, Emanuel Rosensweig, Schiller Brothers, Inc., Louis S. Schiller, F. C. Scruggs, individually, and trading under the name Call Radio Company, and Peter Robbins, individually, and trading under the names Robbins Radio Company and Ambassador Radio Company, are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in interstate commerce, and constitute a violation 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, ETC.

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint, hereinafter designated the complaint of the Commission; the answers of those respondents upon whom the complaint was served, some of which answers deny the material allegations of the complaint, and some of which admit the material allegations of the complaint; and the Commission being fully advised in the premises,

1310

Order

It is ordered, That the complaint herein issued be and the same is hereby dismissed as to the respondents, Etched Products Corporation, Albert Nierenberg, and Walter H. Miller; Electro Chemical Engraving Company (designated in the complaint as Electro Chemical & Engraving Company), F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes and L. S. Southwick; Premier Metal Etching Company, Herbert Pape, Karl D. (designated in the complaint as Carl J.) Johnson, Ernest A. Rottach and Hugo Lehrfeld; Leon C. Sacks, Charles Johannes, Morris A. Weiner and J. R. Rosenberg, for the reason that there is no evidence to establish the allegations of the complaint as to said respondents.

It is further ordered, That the case growing out of the complaint herein as to the respondents, Radio Products Corporation, Franklin Sales and Distributing Company, Inc., and S. Buchman, be and the same hereby is closed, for the reason that the said respondents were not located and the complaint was not served upon them, without prejudice to the right of the Commission to reopen the case and resume prosecution of the complaint as to said respondents in accordance with its regular procedure should the facts so warrant.

It is further ordered, That the respondents, Metal Etching Corporation and Crowe Name Plate and Manufacturing Company, their respective officers, agents and representatives, and the respondent individuals, M. Hermann, E. C. Coolidge and I. Robinson Smith, individually and as officers, agents and representatives of said corporations, and their respective agents and representatives in connection with the offering for sale, and sale and shipment in interstate and foreign commerce and in the District of Columbia of escutcheons and name plates, cease and desist from: selling, distributing or furnishing name plates and escutcheons for radio sets and like products bearing the names, letters and symbols, "Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," the letters "R. C. A.," and the letters "G. E.," or colorable imitations or simulations of said names, letters and symbols, to any manufacturers, assemblers, or dealers in radio sets and like products, or to any other person, firm, or corporation, except to the manufacturers, assemblers and dealers owning said trade names or marks, or to the licensees of the owners thereof.

It is further ordered, That the respondents, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Harvard Radio Tube Testing Stations of Pa., Inc., Ross Distributing Company, Sun Radio and Service Supply Corporation, Schiller Brothers, Inc., and their respective officers, agents and representatives, and the respondent individuals, Eric Houser, David I. Morrison, A. M. Frank, Arthur

(named Otto in the complaint) Dreher, Charles Dreher, Ruth Wasserman, Julius M. Schoenberg, Larry B. Ross, Emanuel Rosensweig, Louis S. Schiller, and the respondent, Peter Robbins, individually, and trading as Robbins Radio Company and as Ambassador Radio Company, and respondent, F. C. Scruggs, individually, and trading as Call Radio Company, and said respondent individuals trading under any other name or names, in connection with the offering for sale and sale in interstate and foreign commerce, and in the District of Columbia, of radio sets, radio parts and like products, and es-cutchions and nameplates, do cease and desist from:

Representing directly or indirectly, through the use in any manner, of the trade names or marks, "Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," or the letters "R. C. A.," or the letters "G. E.," or through the use, in any manner, of any colorable simulations and imitations thereof, such as, but without limitation, "Marconi-International," "Marconi Radio Corporation," "Edison International," "Edison-Bell," "Edison" with the representation of a bell, "Edison Radio Stores, Inc.," the representation of a bell, "Victor International," "Majestic International," "Majestic Radio Corporation," "Bronswick," or the letters "R. C. I.," "R. S. A.," "E. B.," or through the use of any other trade names or marks of which they are not the legal owners, without the permission of the lawful owners thereof, or through any other means or device, or in any manner that the radio sets, radio parts, and like devices, appliances or products manufactured or assembled for or by, and sold by any of said respondents, are manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Inc., American Telephone and Telegraph Company, Western Electric Company, Marconi Wireless Telegraph Company of America, Radio Corporation of America, Victor Talking Machine Company, Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., and its subsidiary, Brunswick Radio Corporation, Grigsby-Grunow Company or Majestic Radio & Television Corporation, General Electric Company, or the agents, representatives, successors, or assigns of any of said persons, partnerships or corporations, or that said products are manufactured, assembled, sold, sponsored, endorsed, approved or licensed by any corporation, association, partnership or person who, in fact, did not and does not manufacture, assemble, sell, sponsor, endorse, approve or license said products.

It is further ordered, That the said 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.

Syllabus

IN THE MATTER OF
BRITISH AMERICAN TOFFEE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3085. Complaint, Mar. 23, 1937—Decision, May 22, 1937*

Where a domestic corporation engaged, at its office and principal place of business in the United States, in the manufacture and sale of confectionery products, including one known to the trade as "toffee," and making said last-named product from formulas prepared by an English stockholder and former candy manufacturer in England for a number of years and at its aforesaid office and principal place of business only, and neither owning, operating, nor controlling manufacturing plants, branches, or selling agencies in any part of England, or in any other foreign country, and in competition, as thus engaged, with many who sell toffee and other confectionery products made in England and imported therefrom, and who rightfully and lawfully represent their said merchandise as imported, and with others who make and sell such products made in the United States and in no manner represent their said domestic confectionery or toffee as an English or foreign made and imported confection, such as long popular and in demand among the consuming public throughout the United States and considered, in the case of many, as superior, and especially so in case of English-made toffee, to similar domestic products, and purchased by many of said public, in the case of such toffee, in preference to the domestic-made product—

Made use of such words and phrases, on the individual wrappers of the candy pieces, as "Delicious English Toffees," and included on the statements lithographed or printed on the cellophane bags or containers of such individually wrapped pieces, along with its name of "British American Toffee Company," words "England's Most Popular Sweet, Piccadilly Toffee," and also set forth thereon depictions of the Tower of London and London Bridge and two soldiers simulating in dress and appearance British soldiers, and upon the cartons containing said cellophane bags or toffee in bulk set forth labels, along with its aforesaid name, containing words "Piccadilly Toffee made by," etc.;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that its said toffee products, thus designated as "English" and "Piccadilly" toffee, were importations of a foreign made product and that it owned and operated factories in England in which it made the same, and with result that such public, by reason of said belief thus induced, bought substantial volume of its said products, and trade was unfairly diverted from those competitors engaged in similar businesses who do not make use of the same or similar misrepresentations, acts and practices; 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.