

IN THE MATTER OF
CRYSTALTONE RADIO CORPORATION AND SAMUEL
GLICK, INDIVIDUALLY, AND TRADING AS PONTIAC
RADIO COMPANY

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

Docket 2225. Complaint, Aug. 18, 1934—Decision, June 30, 1937

Where the names and symbols "Edison," "Victor," and "Brunswick," as names and designations of well-known, famous, or long-established individuals or companies and corporations, had long been extensively advertised and featured by the various owners thereof and had come to be standard brands and symbols when used as company, corporate, and trade names and as well-known marks and brands on radio sets, radio parts, and like products which, thus marked, had a fixed and stable value in the trade and industry generally throughout the United States and foreign countries, and were relied upon by purchasing public, when used on radio sets and like products, and in said industries as indicating high standard, reliable, and genuine products, and use thereof influenced purchase of such products and increased sales, value of which were increased by number of dealers in said products, and said names, letters, and symbols, attached to said products, 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 in their use and employment in commerce; and thereafter, a corporation and an individual, officer, and director thereof, engaged in the manufacture, sale, and distribution of radio sets, upon which they placed, and caused to be placed, escutcheons and name plates with names, letters, marks, brands, and symbols etched or stamped thereon, to designate the makers or brand names of said sets; in furtherance of a scheme to deceive the public and compete unfairly with other manufacturers of and dealers in such products—

Adopted and made use of names, marks, brands, and symbols of corporations and individuals well-known and long-established in the radio and like industries, without the authority of the legal owners and users thereof, and included among such names, marks, brands, and symbols, thus adopted and used by it, "Edison," "Victor," and "Brunswick," and such colorable imitations and simulations thereof as "Edison" with representation of a bell, "Victor International," and "Bronswick," and made, sold, and shipped in interstate commerce their said sets, upon which were placed escutcheons and name plates bearing such names, marks, brands, and symbols;

With result that public was led to believe that products thus sold, marked and identified were those of the well-known companies or interests referred to and identified, there was an appropriation by them of the good will of, and an unfair diversion of business from, such competitor companies and interests and from other competitors who do not resort to such practices, their said goods were given a salability which they would not otherwise have, and they, themselves, had an advantage over their competitors who

Complaint

do not similarly misrepresent true origin of their goods and conceal the same under a reputable, but false, origin, and with effect of deceiving public purchasing said products into the false belief that they originated with well-known and reputable concerns, and of placing in the hands of others by whom their said products were sold, means whereby injury might be and was done to competitors dealing in genuine products honestly marked; to the injury of the lawful owners and users of said marks and symbols of said competitor companies and interests, and of competitors, and of manufacturers of and dealers in the legitimate products, and of substantial competition in commerce, and to the prejudice and injury of the public: 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.

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 Crystalstone Radio Corporation and Samuel Glick, individually and trading as Pontiac Radio Company and as Crystalstone Radio Corporation, hereinafter referred to as respondents, have been or 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 complaint, stating its charges in that respect as follows:

PARAGRAPH 1. (a) Respondent, Crystalstone Radio Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York in November 1933, with its principal office and place of business located at 611 Broadway in the city of New York, State of New York. The officers of respondent corporation are Samuel Glick, president and treasurer, and Edith Marcus, secretary. Since its incorporation, said respondent has been engaged in the business of manufacturing or assembling, and selling and distributing radio sets to the retail trade. Respondent sells its said radio sets to retail dealers located in various States of the United States other than in the State of New York, and when so sold respondent causes said radio sets to be transported from the city of New York, State of New York, through and into other States of the United States, to the purchasers thereof at their respective locations. In the course and conduct of its said business the respondent is in competition with various other persons, partnerships, and corporations engaged in the business of manufacturing or assembling and selling and distributing radio sets to retail dealers and the public in interstate commerce.

Complaint

25 F. T. C.

(b) Respondent, Samuel Glick, is an individual and from June 1933 to November 1933 was engaged in business under the trade name and style of Pontiac Radio Company, with his principal office and place of business located at 44 Bond Street in the city of New York, State of New York. Said trade name Pontiac Radio Company is owned by said respondent Glick, and is registered as a trade name in the County Clerk's Office of the County of New York, State of New York. During the time that he was engaged in business under the trade name Pontiac Radio Company, respondent Glick manufactured or assembled radio sets and sold them to the retail trade. Respondent Glick sold the radio sets manufactured or assembled by him to retail dealers located in various States of the United States other than in the State of New York, and when so sold respondent caused said radio sets to be transported from the city of New York, State of New York, through and into other States of the United States to the purchasers thereof at their respective locations. In the course and conduct of his said business respondent Glick was in competition with various other persons, partnerships, and corporations engaged in the business of manufacturing or assembling radio sets, and selling them to retail dealers in interstate commerce. Respondent Glick still owns the name "Pontiac Radio Company," which is registered as a trade name, as heretofore set forth.

Immediately upon the incorporation of respondent, Crystaltone Radio Corporation, said respondent succeeded to the business theretofore conducted by the respondent Glick, under the name and style of Pontiac Radio Company and said business is now being conducted by respondent corporation. Respondent Samuel Glick at all times since the organization of the respondent Crystaltone Radio Corporation has been president thereof, has owned and controlled substantially all of its issued and outstanding capital stock, and has controlled and dominated said Crystaltone Radio Corporation. Said respondent Crystaltone Radio Corporation, although a corporation, is a means by which said respondent Samuel Glick as an individual carries on the business hereinbefore described of said Crystaltone Radio Corporation.

PAR. 2. Respondent, Crystaltone Radio Corporation, and respondent Samuel Glick, in the course and conduct of their respective businesses have adopted and followed the scheme or method of appropriating the names of well-known manufacturers and applying them to the radio sets manufactured or assembled and sold by them, thereby appropriating to themselves their goodwill by the sale of their radio sets to the purchasing public as sets made by such manufacturers.

PAR. 3. 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, dictaphone and transcribing 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 names, and said name "Edison" has acquired a valuable good will as identifying the manufacturer of such 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 many of the machines and articles invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the years 1928 to 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 of the radio sets manufactured and sold by Thomas A. Edison, Inc., featured the name "Edison" as part of their brand name.

PAR. 4. Respondents, Crystalstone Radio Corporation and Samuel Glick, individually and trading as Pontiac Radio Company and as Crystalstone Radio Corporation, in the course and conduct of their business have purchased what is known as escutcheon plates, which escutcheon plates bear various names, and which are attached in a prominent place to radio sets. Respondents have purchased and attached to radio sets manufactured or assembled, and sold by them, escutcheon plates bearing the name "Edison" together with the representation of a bell. Respondents have no authority or license from Thomas A. Edison, Inc., to use the name "Edison" on the radio sets manufactured or assembled, and sold by them, and their said use of that name in the manner described has a capacity and tendency to and does mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets manufactured, or assembled and sold, by respondents are radio sets which have been manu-

factured by Thomas A. Edison, Inc., and to cause the trade and purchasing public to buy said radio sets in that belief.

PAR. 5. 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 brand names, which said name has been attached in a prominent place to said machines. 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 Company, which company is engaged in the manufacture and sale of radio sets, combination radio and phonograph sets, and other articles. All of said machines bear the name "Victor," either alone or in combination with other letters or words, in a prominent place on said machines. 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 25 years, the Victor Talking Machine Company and its successor corporation, RCA Victor Company, have spent approximately \$70,000,000 advertising their products, and the word "Victor" has always prominently appeared in said advertising. At the present time the RCA Victor Company is advertising its radio sets in a number of magazines having a large national circulation, and in other publications and newspapers.

PAR. 6. Respondents, Crystaltone Radio Corporation and Samuel Glick, individually and trading as Pontiac Radio Company and as Crystaltone Radio Corporation, in the course and conduct of their business, have purchased radio sets with escutcheon plates attached thereto bearing the words "Victor," and "Victor International," which sets they sell to the retail trade. On the escutcheon plates attached to said radio sets the name "Victor" is in large and prominent letters, and the word "International" is in small letters which are not readily seen by a prospective purchaser. Respondents have no authority or license from the RCA Victor Company to use the name "Victor" on the radio sets sold by them, and their said use of that name, in the manner described, has the capacity and tendency to and does mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets sold by respondents are radio sets which have been manufactured by the RCA Victor Company, and to cause the trade and purchasing public to buy said radio sets in that belief.

PAR. 7. 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. During all this period the products manufactured and sold by said company have featured the name "Brunswick" as part of their brand names, 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 sometime 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 machines. In 1930 the radio and phonograph division of the business was sold to Warner Bros. Pictures, Inc., which company organized under the corporate name of "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 accessories thereto. 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" was prominently featured. Since January 1, 1933, the manufacture of radio sets has been stopped, 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. During all of the time that the Brunswick-Balke-Collender Company and the Brunswick Radio Corporation were manufacturing and selling radio sets and combination radio and phonograph sets, said companies expended large sums of money advertising said sets, and the name "Brunswick" has at all times been prominently displayed in said advertising.

PAR. 8. Respondents, Crystaltone Radio Corporation and Samuel Glick, individually and trading as Pontiac Radio Company and as Crystaltone Corporation, in the course and conduct of their business have purchased radio sets with escutcheon plates attached thereto bearing the word "Bronswick," which sets they resell to the retail trade. The said name "Bronswick" is so nearly like the name "Brunswick" in appearance and sound that it is difficult for a purchaser to

Findings

25 F. T. C.

distinguish the difference, and the use of said name "Brunswick" by respondents in the manner described on radio sets sold by them has the capacity and tendency to and does mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets sold by respondents are radio sets which have been manufactured by the Brunswick Radio Corporation, and to purchase such radio sets in such erroneous belief.

PAR. 9. The use by respondents on the radio sets manufactured, or assembled, and sold by them of the names "Edison," "Victor," "Victor International," and "Brunswick," in the manner set forth hereinabove is false, deceptive and misleading to the trade and purchasing public, and tends to and does, divert trade to respondents from their said competitors who do not use such false, deceptive and misleading names for the radio sets manufactured, assembled, and sold by them. Thereby substantial injury has been done and is being done by all of the said respondents to substantial competition in interstate commerce.

PAR. 10. The above alleged acts and things done by respondents are each and all of them to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in interstate 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 18th day of August 1934, issued, and served, its complaint in this proceeding upon respondents, Crystaltone Radio Corporation and Samuel Glick, individually, and trading as Pontiac Radio Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents filed a consolidated answer to the complaint with the Commission dated June 12, 1937, in which they admit all the material allegations of the complaint to be true, and waive hearings on the charges set forth in the complaint, and consent that without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion drawn therefrom and an order to cease and desist from the violations of law charged in the complaint.

Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and answer 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. The respondent, Crystaltone Radio Corporation, is a corporation existing and doing business under the laws of the State of New York. Respondent, Samuel Glick, is an individual operating under the trade name of Pontiac Radio Company, and is also an officer and director of respondent, Crystaltone Radio Corporation. All of the respondents aforesaid have their principal place of business at 44 West 18th Street, New York City, N. Y., and are now, and for several years last past, have been engaged in the manufacture, sale, and distribution of radio sets, upon which said products they place and cause to be placed escutcheons and nameplates, with names, letters, marks, brands, and symbols etched or stamped thereon to designate the makers or brand names of said radio sets. Respondents sell and transport said products so marked from their place of business in the State of New York to purchasers thereof at their respective points of location in the States of the United States other than the State of origin of the shipment, and in the District of Columbia.

PAR. 2. For the purpose of selling radio sets and inducing the public to buy said products, the respondent corporation and respondent individual, individually, and as officer, agent, and representative of said respondent corporation, herein set out and described in paragraph 1, 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 who are in competition with the said respondents in interstate and foreign commerce. In furtherance of said scheme, the respondents have adopted, made, used and sold, and now make, use, sell and ship in interstate commerce to distributors, dealers and others, radio sets upon which are placed 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 of the legal owners and users of said names, marks, brands and symbols.

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

"Edison" and also "Edison" with the representation of a bell, which is found to be a colorable imitation and simulation of said name "Edison";

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

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

Said respondent corporation and said respondent individual, individually, and trading under the name Pontiac Radio Company, and as officer, agent, and representative of said respondent, Crystalltone Radio Corporation, with respect to radio sets and like products marked and branded with the said well known and established names, marks, brands, and symbols hereinabove set out and described, sell and ship said products so marked from their place 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 commerce without the authority or consent of the legal owners of said names, marks, brands, and symbols.

PAR. 3. (a) 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 goodwill 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 1926-30, 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 to respondents the right to the use of the name "Edison" in any manner or consented to such use.

(b) For many years last past the Victor Talking Machine Company, Camden, New Jersey, has been manufacturing and selling phonographs and phonograph records, which 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 Company and the Victor Division of the RCA Manufacturing Company.

Neither the said Victor Talking Machine Company, Radio Corporation of America, The RCA Manufacturing Company, Inc., nor any of their subsidiaries or assigns have ever granted to respondents the right to use the name "Victor" in any manner or consented to such use.

(c) 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 to manufacture and sell phonographs and phonograph records, and sometime 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.

"Bronswick," 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 phonograph sets. Neither Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., nor 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.

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 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 "Edison," "Victor," "Brunswick," and the products bearing these names and symbols, manufactured and sold by the lawful owners thereof; the use by respondents of said names and symbols, and simulations 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 and symbols and of said competitors, and to the prejudice and injury of the public.

PAR. 4. The use by respondents of the names, marks, brands, symbols, and devices as set out in paragraphs 2 and 3 is wholly unauthor-

ized 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 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.

The purchasing public buying radio sets and like products, marked or branded with the said well known names 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, and symbols, and when said names, marks, brands, 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, and symbols upon like products as set out in paragraph 3 hereof. The name or brand being depended upon influences the sale of said products.

Members of the purchasing public have purchased radio sets 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.

The manufacture, sale and delivery by respondents set out and described in paragraph 1, of radio sets and like products, marked and branded with the names, and symbols set out and described hereinabove, 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, Crystalstone Radio Corporation, and Samuel Glick individually and trading as Pontiac 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on the 12th day of June 1937 by respondents admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondents, Crystalstone Radio Corporation, its officers, agents, and representatives, and respondent, Samuel Glick, individually, and trading under the name Pontiac Radio Company or under any other name, and their respective agents and representatives, in connection with the offering for sale and sale in interstate commerce and in the District of Columbia of radio sets and like products, do forthwith cease and desist from representing:

Directly or indirectly through the use in any manner of the trade names or marks "Edison," "Victor," or "Brunswick," or through the use in any manner of any colorable imitations and simulations thereof, such as, but without limitation, "Edison" with the representation of a bell, "Victor International," and "Brunswick," 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 and like products, devices, or appliances manufactured and sold by any of said respondents are manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Inc., Radio Corporation of America, Victor Talking Machine Company, Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., or the successors or assigns of any of said persons, partnerships, or corporations, or that said products

Order

25 F. T. C.

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, and sell said products.

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

Syllabus

IN THE MATTER OF
HELEN ARDELLE, INC.

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

Docket 2775. Complaint, Apr. 20, 1936—Decision, June 30, 1937

Where a corporation engaged in manufacture and sale of so-called "draw" or "deal" assortments of candy, sale and distribution of which type candy, by retailers by lot or chance, has capacity and tendency to and does decrease sale of candy sold without any sales plan or device involving lottery or game of chance, i. e., the "straight" goods, and sale of which type, providing, in connection with its sale to public, means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling, and is in violation of various municipal ordinances and regulations and state statutes and constitutions, and provides retail merchants with a means of violating the laws of the several states, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to wholesale and retail dealers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of lottery scheme when sold and distributed to consumers thereof, and which included assortment composed of a number of boxes of assorted chocolate candies, together with a punchboard, for sale to consuming public under a plan, and in accordance with said board's explanatory legend, pursuant to which purchaser received, for five cents paid, and dependent upon number punched by chance or purchase of last punch on board, one of aforesaid boxes, value of which was in excess of aforesaid amount, or nothing other than privilege of making a punch; so assembled and packed that such assortments might be and were displayed and sold to consuming public by retail dealer purchasers thereof by lot or chance, and with knowledge and intent that such assortments could and would thus be resold to public by retail dealers without alteration, addition, or rearrangement as above set forth, in competition with many who do not make and sell "draw" or "deal" assortments, but sell their "straight" goods in interstate commerce in competition with the others;

With result that competitors who refused to, or do not, sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage by competing with it and with others employing methods similar to those described herein, trade was diverted to it and others using similar methods from those who do not use same, by reason of attraction to customers of so-called "draw" or "deal" assortments, there was diversion of trade to it from its said competitors, and a restraint upon and a detriment to the freedom of fair competition in trade concerned; to the prejudice and injury of the public and of competitors:

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