

## Syllabus

IN THE MATTER OF  
 RELIABLE TYPEWRITER AND ADDING MACHINE  
 COMPANY

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

*Docket 3110. Complaint, Apr. 23, 1937—Decision, Aug. 6, 1937*

Where a corporation engaged in sale and distribution, to retailers and direct to consuming public, of its "VE-PO-AD," so-called vest-pocket type of adding machine, in substantial competition with others engaged in manufacture, sale, and distribution of like and similar products in commerce and in the District of Columbia; in advertising its said product through newspaper and magazine advertising and other trade literature—

- (a) Made such statements as "If there is a Ve-Po-Ad on every desk, no one ever need worry about using the big machine and Ve-Po-Ad is every bit as fast and as capable as any adding machine you ever saw," and "Store-keepers cannot always afford a large adding machine. Ve-Po-Ad will take its place," and "Does exactly the same work as that done by big, expensive machine," etc., facts being such representations were deceptive and misleading in that said machine would not do the work of making permanent records or giving sub-totals as would certain types of much more costly or substantially more costly machines, and its said product did not possess many of the features of the more expensive adding machines, such as permanent records, sub-totals, or release features for correction of errors, and would not, therefore, accomplish certain of the work done by the more costly products, and also was not, in respect to certain features such as permanent records, sub-totals and release features, the equal of such more costly machines in performance or any other characteristic;
  - (b) Misrepresented its business status through use of words "Manufactured by Reliable Typewriter and Adding Machine Company" upon its finished product, facts being it did not manufacture same, but said machine actually was made by others for it; and
  - (c) Misrepresented, in advertisements and sales literature, wholesale price of its said machine, which it, in fact, had sold in wholesale quantities for sum substantially less than usual purported wholesale price thereof;
- With effect of misleading customers and prospective customers into erroneous and mistaken belief that said product would take place of, or do same work as, large and expensive adding machine, and that it was the equal of products having such features as permanent records, sub-totals, and release features, and that it was the manufacturer thereof, and that its purported wholesale price was the actual and true price, and of inducing substantial numbers of retailers, as well as consumer-purchasers of said product, to buy the same on account of aforesaid erroneous and mistaken beliefs, and of unfairly diverting trade to it from competitors engaged in similar businesses, who do not misrepresent the character and nature of their respective products or their business status; to the substantial injury of competitors in commerce:

## Complaint

25 F. T. C.

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

*Mr. S. Brogdyne Teu II*, for the Commission.

*Wetten, Pegler & Dale*, of Chicago, Ill., for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Reliable Typewriter and Adding Machine Company, a corporation, hereafter referred to as respondent, has been and is now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Reliable Typewriter and Adding Machine Company, is a corporation organized and doing business under the laws of the State of Illinois, having its principal place of business at 303 W. Monroe Street, in the city of Chicago, State of Illinois. It is now, and for more than one year last past has been, engaged in the sale and distribution of adding machines, typewriters, and other business machines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said products are sold, respondent transports or causes the same to be transported from its principal place of business in the State of Illinois to purchasers thereof located in States of the United States other than the State of Illinois and in the District of Columbia. There is now, and has been for more than one year last past, a constant current of trade and commerce in said products so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and has been for more than one year last past, engaged in substantial competition with other individuals, partnerships, firms and corporations engaged in the manufacture and in the sale and distribution of adding machines, typewriters, and other business machines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, the respondent has caused and still causes to be inserted in newspapers and magazines having a general interstate circulation and in its other advertising literature statements purporting to be descriptive of its prod-

ucts. The following is representative of such statements appearing in advertisements inserted by respondent in newspapers and magazines and in the advertising literature published and distributed by respondents:

Just look at the number of people right in your own locality and neighboring communities who need just this kind of a handy machine. Store-keepers, housewives, doctors, dentists, every office, every place where business is transacted  
\* \* \*

Think of a small adding machine that adds with the accuracy of a machine costing \$100.00 to \$300.00 \* \* \* .

If there is a Ve-Po-Ad on every desk, no one ever need worry about using the big machine and Ve-Po-Ad is every bit as fast and as capable as any adding machine you ever saw.

Store-keepers cannot always afford a large adding machine. Ve-Po-Ad will take its place.

Does exactly the same work as that done by big, expensive machine. And you can depend upon its accuracy—every time!

It's so simple to operate—anybody can master it in a jiffy. Pick out your figures as you would on any adding machine, glide into position and zip!—there's the sum total as sure and accurate as a bank statement.

PAR. 5. Through use of the foregoing statements and others similar thereto, the respondent represents that said adding machine is comparable to and equivalent to adding machines costing greatly in excess of or substantially more than respondent's and will always accomplish the same work as done by such other machines with equal speed and accuracy; that there is a substantial demand among storekeepers, housewives, doctors, dentists, and offices generally for respondent's machine; and that everyone can easily learn how to accurately operate said machine.

PAR. 6. In truth and in fact, the respondent's machine will not do the work of adding machines costing greatly in excess or substantially more than respondent's. It will not accomplish the same work as done by machines costing greatly in excess of or substantially more than respondent's with equal speed and accuracy. There is not a substantial demand among storekeepers, housewives, doctors, dentists, and offices generally for the respondent's machine. Not all persons can easily learn how to operate said machine. Respondent's machine does not possess many of the features of more expensive adding machines; such as, permanent records, totals, subtotals, or release features for the correction of errors, and is therefore not to be considered the equal of such machines in performance or any other characteristic.

PAR. 7. In the course and conduct of its business as described in paragraph 1 hereof, respondent represents by use of the words "Manufactured by Reliable Typewriter and Adding Machine Com-

pany" and in its advertisements, sales literature and upon its finished product, that it is a manufacturer of the products which it sells.

In truth and in fact, the respondent does not own, operate, or directly control a manufacturing establishment wherein it manufactures the products sold and distributed by it in any manner or form whatsoever. In fact, the respondent has the Ve-Po-Ad manufactured by an independent manufacturing establishment.

PAR. 8. In the course and conduct of its business, respondent through its advertisements and sales literature, represents that the wholesale price of the Ve-Po-Ad is \$1.95 per unit.

In truth and in fact, \$1.95 is not the wholesale price of the Ve-Po-Ad. Said machine is generally sold in wholesale quantities for sums substantially lower than \$1.95 per unit. The respondent has on numerous and divers occasions quoted a wholesale price lower than the amount of \$1.95.

PAR. 9. For many years a substantial part of the consuming public has expressed and has had a marked preference for products sold and distributed to the public by the manufacturer of the same. A substantial part of the consuming public is aware of the prevailing economies that are reflected in the price to the ultimate consumer when as many middle men's profits as is possible are eliminated. The public generally understands how these economies are brought about. It places confidence in the manufacturers of such products and as a result of such knowledge, purchases a substantial volume of merchandise in reliance upon this aforesaid practice.

PAR. 10. The above statements made by the respondent in its advertising literature and advertisements and upon its finished products have the capacity and tendency to and do mislead customers and prospective customers into the erroneous and mistaken beliefs that the product of the respondents will take the place of the large and expensive adding machine; that it is accurate; that the operation of same is easy to master; that it is simple to operate; and that anybody can operate it; that the sum total of the machine's work is accurate; that the respondent is a manufacturer of said product; that there is a great demand for said product among storekeepers, housewives, doctors, dentists, and office workers; and that the wholesale price of the respondent's product is \$1.95; and into the purchase of respondent's product on account of such beliefs.

PAR. 11. As a result of the use of the aforesaid advertising and the claims made therein, trade has been unfairly diverted to the respondent from its competitors who sell and distribute adding machines, typewriters, and other business machines to the buying public and who truthfully represent, advertise and sell their products, who

correctly represent the wholesale price of their products and who further truthfully represent to the purchasing public their business status.

PAR. 12. The above acts and practices of the respondent are all to the prejudice of the public and the respondent's competitors and constitute unfair methods of competition in commerce with 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 April 26, 1937 issued and served its complaint in this proceeding upon respondent, Reliable Typewriter and Adding Machine Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts was entered into between Richard P. Whiteley, Acting Chief Counsel of the Commission, and Wetten, Pegler & Dale, counsel for respondent. Said stipulation was thereafter approved by the Commission and duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto and the stipulation as to the facts (the filing of briefs having been waived); and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Reliable Typewriter and Adding Machine Company, is a corporation with its principal place of business at 303 West Monroe Street, in the city of Chicago, State of Illinois.

PAR. 2. The respondent is now, and has been for more than one year last past, engaged in the business of selling and distributing a small so-called vest pocket type of adding machine, under the trade name of VE-PO-AD, to retailers and direct to the consuming public.

PAR. 3. In the sale of said product respondent has transported or caused the same to be transported from its principal place of business

in the State of Illinois to purchasers thereof located in the States of the United States other than the State from which shipment originated and in the District of Columbia.

There has been for more than one year last past, and still is, a constant current of trade and commerce in said product so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals, and with partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of like and similar products and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business as aforesaid respondent, in soliciting the sale, and in the selling, of its product, and for the purpose of creating a demand on the part of the consuming public for said product, causes, and for more than one year last past has caused, its product to be advertised through the media of newspaper and magazine advertisements and other advertising literature. In said ways and by said means respondent has made to the general public false and misleading statements with reference to the commodity offered for sale by it.

PAR. 6. The following statements are representative of the statements and claims made by respondent in its advertisements and advertising literature:

Just look at the number of people right in your own locality and neighboring communities who need just this kind of a handy machine. Store-keepers, housewives, doctors, dentists, every office, every place where business is transacted \* \* \*.

Think of a small adding machine that adds with the accuracy of a machine costing \$100.00 to \$300.00 \* \* \*.

If there is a Ve-I'o-Ad on every desk, no one ever need worry about using the big machine and Ve-Po-Ad is every bit as fast and as capable as any adding machine you ever saw.

Store-keepers cannot always afford a large adding machine. Ve-Po-Ad will take its place.

Does exactly the same work as that done by big, expensive machine. And you can depend upon its accuracy—every time!

It's so simple to operate—anybody can master it in a jiffy. Pick out your figures as you would on any adding machine, glide into position and zip!—there's the sum total as sure and accurate as a bank statement.

PAR. 7. The statements and representations made by respondent with respect to the commodity described in the above quoted excerpts from advertisements and sold by it were, and are, deceptive and misleading in the following respects:

The respondent's machine will not do the work of making permanent records or giving subtotals as will certain types of adding machines costing greatly in excess of or substantially more than respondent's.

The respondent's machine does not possess many of the features of more expensive adding machines such as permanent records, subtotals, or release features for the correction of errors, and therefore will not accomplish certain of the work done by adding machines costing greatly in excess of or more than respondent's, and is not in respect to certain features such as permanent records, subtotals, and release features to be considered the equal of such machines in performance or any other characteristic.

PAR. 8. In the course and conduct of its business the respondent has misrepresented its business status by the use of the words "Manufactured by Reliable Typewriter and Adding Machine Company" upon its finished product. The respondent does not manufacture the machine sold by it, said machine actually being manufactured by others for the respondent.

PAR. 9. The respondent in the course and conduct of its business has, through its advertisements and sales literature, misrepresented the wholesale price of the VE-PO-AD machine. In fact, the respondent has sold the VE-PO-AD machine in wholesale quantities for a sum substantially lower than the usual purported wholesale price of the machine.

PAR. 10. For many years a substantial part of the consuming public has had, and has so expressed, a marked preference for the products sold and distributed to the public by the manufacturer of the same. A substantial part of the consuming public is aware of the prevailing economies that are reflected in the price to the ultimate consumer when as many middlemen's profits as possible are eliminated. The public generally understands how these economies are brought about and places its confidence in the manufacturer of said products, and as a result of such knowledge purchases a substantial volume of merchandise in reliance upon this aforesaid practice.

PAR. 11. The statements made by respondent in its advertising literature and advertisements, and upon its finished product known as the VE-PO-AD, have the capacity and tendency to and do mislead customers and prospective customers into the erroneous and mistaken belief that the product of the respondent will take the place of, or do the same work as, a large and expensive adding machine; that the product of respondent is the equal of machines having such features as permanent records, subtotals, and release features; that

the respondent is the manufacturer of said product; that the purported wholesale price of respondent's product is the actual and true wholesale price.

PAR. 12. The foregoing false and misleading statements and representations have induced and still induce a substantial number of retailers as well as consumer purchasers of said product to buy the product offered for sale, sold, and distributed by the respondent on account of the aforesaid erroneous and mistaken beliefs.

PAR. 13. As a result thereof trade has been unfairly diverted to respondent from those competitors of respondent engaged in similar businesses who do not misrepresent the character and nature of their respective products or their business status. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

#### CONCLUSION

The aforementioned acts and practices of the respondent, Reliable Typewriter and Adding Machine Company, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and the stipulation as to the facts entered into between Richard P. Whiteley, Acting Chief Counsel of the Commission, and Wetten, Pegler & Dale, counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is ordered*, That the respondent, Reliable Typewriter and Adding Machine Company, a corporation, its representatives, agents, and employes, in connection with the offering for sale, sale, and distribution of a small size vest pocket adding machine now known as the Ve-Po-Ad Adding Machine in commerce among and between the various States of the United States and in the District of Columbia,

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## Order

do forthwith cease and desist from representing, directly or indirectly, through advertisements, price lists, circulars, labels, containers, or any other form of printed matter, or by radio broadcasting, or in any other manner:

(1) That its said adding machines will do the same work as adding machines possessing features which its machines do not possess; (2) that said adding machines possess many features of more expensive adding machines, such as permanent records, subtotals, or release features for correction of errors, or are to be considered the equal of machines having such features; (3) that it is a manufacturer of adding machines; (4) that the wholesale price of its adding machines is other than the true wholesale price at which said machines are sold in the regular course of trade.

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

## IN THE MATTER OF

**J. K. LEVY, ALIAS J. K. LEE, AND DAVID LEVY, CO-PARTNERS, TRADING AS LEVORE COMPANY, AND J. K. LEVY, ALIAS J. K. LEE, INDIVIDUALLY**

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 2607. Complaint, Oct. 31, 1935—Decision, Aug. 9, 1937*

Where certain individuals engaged in sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities, directly to purchasers and through sales distributors or agents for resale direct to consumers on time payments, and also for resale under their so-called "give away" plan, in competition with those engaged in sale and distribution of such products in commerce among the various States—

- (a) Sold, under latter plan, to their distributor-agents, their aforesaid so-called premium goods, together with push cards or punch boards termed "sales booklets," for disposition to sub-agents and distribution to consuming public under a plan by which final purchasers or customers selected from card one of a number of feminine names displayed thereon and paid for chance, subject to certain limitations, in accordance with number and name selected and punched, and received article being disposed of, or nothing other than privilege of making selection, for money paid, in accordance with his success or failure in selecting name corresponding to that concealed on card, as revealed after sale of all chances thereon, and under which plan, and after which time, distributor agent or sub-agent was likewise entitled to a radio or some other article of so-called "free" merchandise, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their said products as a means of inducing purchase thereof in preference to similar articles offered and sold by competitors, and in competition with many who are unwilling to adopt and use such methods of sale, or any method involving scheme of chance, as contrary to public policy and good morals, not in accordance with business ethics, a detriment to legitimate business, and as gambling;
- (b) Represented to prospective distributor-agents that they could make big money "giving away these wonderful radios," and described their said plan as the "give away" plan, and referred, as above set forth, to the premiums or articles secured by the holder of the winning name and the distributor-agent or sub-agent as "free" merchandise, facts being those receiving same through such selection paid therefor amount determined, as indicated, wholly by lot or chance, and they did not give away any merchandise, but sold same and received value therefor; and
- (c) Represented themselves as manufacturers, through use of words "Successors to Beco Mfg. Company," placed upon their advertisements and advertising matter distributed in interstate commerce, facts being, notwithstanding their ownership of stock of licensed radio manufacturing