

## Syllabus

## IN THE MATTER OF

## DAVIS PAINT 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 2737. Complaint, Mar. 5, 1936—Decision, Oct. 1, 1937*

Where two corporations engaged in sale to purchasing public of paint, varnish, enamel, and allied products made by third concern, owner of their capital stock, and likewise engaged, along with the president thereof and said concern's principal stockholder and founder, in sale to purchasing public, directly or indirectly, through wholesale and retail dealers and through agents—

- (a) Made use of words, in advertising and soliciting the sale of the products sold by them, "Direct from factory to you," or of words of like and similar import, notwithstanding fact they did not, themselves, as above set forth, manufacture products thus offered and sold by them; and

Where said manufacturing concern, in course and conduct of its business, and to induce customers and prospective customers to purchase its products—

- (b) Represented, through guarantees, that claims by customers for refunds or adjustments would be allowed, through such statements in its advertisements and advertising matter, and on the labels attached to the containers of its products, as "GUARANTEE \* \* \* Double-Barreled Money-Back GUARANTEE," If, for any reason, Davis' Ever-Bright Guaranteed Paint does not come up to your expectations after applying a portion of it, you may return the remainder and we will refund all you have paid for your entire order," along with offer, after all the paint had been applied according to directions and had failed to give "the service you have a right to expect of any paint, regardless of price," to replace same free of charge, paying all shipping charges and for applications "ON YOUR BUILDINGS. Or, if you prefer, we will REFUND YOUR MONEY IN FULL," facts being such claims were not in fact thus allowed, through conceded exaction of questionnaire compliance, subjection of customers to considerable correspondence and, in some cases, refusal to accede to customers' claims;

- (c) Caused to appear on its price lists, circulated widely among its agents and dealers, customers and prospective customers, depiction of "Three Large Factory Buildings," together with statement that such "up-to-date modern paint and varnish factories" were located at Kansas City, Cleveland, and Berkeley, Calif., facts being said manufacturing concern never actually owned entire paint factory in said last-named city, though stock therein was assertedly owned by its founder, president, principal stockholder, and then vice-president; and

Where an agent of a corporation, then dormant and thereafter dissolved, but capital stock of which was owned by said manufacturing concern—

- (d) Represented, through letters mailed to customers and prospective customers, that paints of said various companies and individual could be purchased for prices substantially lower than the regular or current prices, and that said paints ordinarily sold for prices substantially higher than

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the asserted special prices, through stating, among other things, in said letters that said company "has authorized me to dispose of as much paint as possible between now and Saturday," and that, because of the short time for such disposal, he was offering "any paint, varnish, enamel, etc., at EXACTLY ONE-HALF the list prices on the enclosed price list," facts being enclosed list was an old one which did not reflect current prices at which paint was being offered by aforesaid company at times such letter was forwarded;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into erroneous belief that all said representations were true, and with result that a number of the consuming public, as a direct consequence of the mistaken and erroneous belief induced by advertisements and misrepresentations of said companies and the aforesaid president, etc., of such manufacturing concern, purchased substantial volume of their product and trade was unfairly diverted to them from those likewise engaged in sale of paint, varnish, enamel, and allied products and who truthfully advertise the same; to the substantial injury of competition in commerce;

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

*Mr. George Foulkes* for the Commission.

*Mr. Harold E. Neibling*, of Kansas City, Mo. and *Mr. Clinton Robb*, of Washington, D. C., for respondents.

## 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 each and all of the corporations and the individual named in paragraph 1 hereof, hereinafter referred to as respondents, have been and 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Davis Paint Company, Inc., is a corporation organized January 2, 1924, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal offices and place of business at 14th and Iron Streets, in Kansas City in said State. Respondent, Davis Paint Company, Inc., does business and trades under its corporate name and also under the trade name, Burlington Paint Company, in Kansas City in the State of Missouri, and also under the trade name, Robertson Products Company, in Cleveland in the State of Ohio. Respondents, W. H. Beard Paint

Company, Farm and Home Paint Company, Manchester Paint Corporation, New Method Paint Company, Painter's Paint Company, and World Star Paint Company, are all corporations organized, existing, and doing business under and by virtue of the laws of the State of Missouri and have their respective principal offices and places of business located in Kansas City in the said State. Respondent, Berry J. Davis, is now and since the date of the incorporation of each of said corporations has been the principal stockholder in each of the corporate respondents and now has his principal office and place of business at 14th and Iron Streets in Kansas City, Mo. Said individual respondent manages, controls and directs the policies and operations of all the corporate respondents named herein. Said Berry J. Davis is the president of the corporate respondents, Davis Paint Company, Inc., and Manchester Paint Corporation, and is vice president of the corporate respondents, W. H. Beard Paint Company, Farm and Home Paint Company, New Method Paint Company, Painter's Paint Company, and World Star Paint Company.

PAR. 2. Respondent corporations named herein doing business under their respective corporate names and the respondent, Davis Paint Company, Inc., doing business also under the trade names, Burlington Paint Company and Robertson Products Company, now are and have been for many years engaged in the sale of paint, varnish, enamel, and allied products to members of the public either directly to the purchasing public or indirectly through wholesale and retail dealers and through agents. Said corporate respondents in the course and conduct of their respective businesses ship, or cause to be shipped or transported, their products when sold by them, from the States of Missouri and Ohio or the State of origin of the shipment to the purchasers thereof located at points in various States of the United States other than in the States of Missouri and Ohio or in the State of origin of the shipment. There is now and has been during all the times hereinbefore mentioned a constant current of trade or commerce in the products sold by the several corporate respondents between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their respective businesses all of the respondent corporations now are, and have been during all the times hereinabove mentioned, engaged in substantial competition with various other corporations, firms, and individuals selling or offering for sale paint, varnish, enamel, and allied products to members of the general public in the several manners set out in paragraph 2 hereof in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 4. In the course and conduct of its business respondent, Davis Paint Company, Inc., acting under the direction of respondent, Berry J. Davis, is now and has been during all of the times above mentioned, both under its corporate name and under the trade names, Burlington Paint Company and Robertson Products Company, manufacturing, offering for sale and selling paint, varnish, enamel, and allied products, to members of the public directly and to wholesalers and retailers who in turn sell to members of the public and to the public through its own agents. Said respondent, Davis Paint Company, Inc., operates retail stores in Kansas City, Mo., Kansas City, Kans. and Wichita, Kans. The business of said respondent is solicited by various advertising methods such as circulars, catalogues, price lists, and publications mailed to customers, prospective customers, agents, and dealers throughout the United States.

Respondent, Davis Paint Company, Inc., has been and now is manufacturing all the paint, varnish, enamel and allied products sold and offered for sale by it and by all the respondent corporations named herein.

PAR. 5. Respondent, Davis Paint Company, Inc., not only manufactures all of the products sold and offered for sale by the respondent corporations named herein, but owns and controls said respondent corporations and directs their policies. Respondent, Davis Paint Company, Inc., in the course and conduct of its business and acting under the direction of the respondent, Berry J. Davis, conceals the fact that the Davis Paint Company, Inc., owns or has a controlling interest in the other respondent corporations named herein, and causes said corporations to be held out and advertised through the use of labels on containers bearing the corporate name of the particular corporation making the sale together with such phrases as "direct from factory to you," and in other ways, as being the manufacturer of the products respectively sold by each of said respondents and as being wholly apart from, independent of, and having no connection with the Davis Paint Company, Inc. By so concealing the fact that said respondent corporations are its subsidiaries, it permits said corporations to be held out as competing with it.

PAR. 6. Respondent, Berry J. Davis, as principal stockholder and manager of respondent, Davis Paint Company, Inc., organized and created all the other respondent corporations named, for the purpose of soliciting business for the sale of the products of the Davis Paint Company, Inc., in such a way as to conceal the fact that said respondent corporations and the businesses conducted by the respondent, Davis Paint Company, Inc., under the several trade names indicated

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herein are in any way connected with or controlled by respondent, Davis Paint Company, Inc. For example, some of the respondent corporations above referred to solicit business only from paint contractors and retailers; others solicit business direct from the consumer by mailing lists; others solicit business by dealing only through agents; and still others solicit business through department stores by means of a leased department arrangement. By this method of doing business respondent, Davis Paint Company, Inc., is able to and does in fact vary the prices of its products, depending upon which class of trade it seeks, and to increase its business by concealing the fact that the products, supposedly manufactured by one of the corporations above referred to sold or offered for sale by an agent, by a retail dealer or by a department store in one and the same locality, are in fact all the same products and manufactured by respondent, Davis Paint Company, Inc.

PAR. 7. Respondent, Davis Paint Company, Inc., acting under the direction of respondent, Berry J. Davis, in the course and conduct of its business and for the purpose of inducing customers and prospective customers to purchase its products, in its advertisements and advertising matter circulated generally throughout the United States among agents and customers and prospective customers, and on the labels attached to the containers of the paint sold under its corporate name, has caused and still causes a form of guarantee which contains the following, among other statements, to be used:

## GUARANTEE

Davis Ever-Bright Brand  
Double-Barreled Money-Back  
GUARANTEE

Here is our Guarantee printed in black and white. Always demand a printed Money-Back Guarantee, signed by the Manufacturer, before you buy Paints \* \* \*

If, for any reason, Davis' Ever-Bright Guaranteed Paint does not come up to your expectations after applying a portion of it, you may return the remainder and we will refund all you have paid for your entire order.

After you have applied all the paint to your buildings according to our directions and if it does not give you the service you have a right to expect of any paint, regardless of price, we will replace it free of charge, pay all shipping charges and PAY FOR PUTTING IT ON YOUR BUILDINGS. Or, if you prefer, we will REFUND YOUR MONEY IN FULL.

Could any Guarantee be more fair? \* \* \*

Why not buy your paint where you are fully protected by a printed Guarantee that means something?

Said guarantee is false and misleading in that respondent, Davis Paint Company, Inc., upon the report to it of dissatisfaction of the

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products purchased by the customer, has not complied, and does not comply with or fulfill the terms of the guarantee, but in truth and in fact, respondent, Davis Paint Company, Inc., has made it a practice to evade the guarantee hereinbefore mentioned by forcing such customers who are dissatisfied to adjust their claims in a manner different from that set forth in its guarantee.

PAR. 8. In the course and conduct of its business respondent, Davis Paint Company, Inc., acting under the direction of Berry J. Davis, has caused to appear on its price list which it circulates widely among its agents, dealers, customers and prospective customers, the false and misleading pictorial representation of "three large factory buildings," together with the following words:

These three up-to-date modern paint and varnish factories are located at Kansas City, Mo., Cleveland, Ohio, and Berkeley, California \* \* \* Three great factories ready to serve you.

The said pictorial representation, together with the statements appearing in connection therewith, serve as a representation to the purchasing public that the respondent, Davis Paint Company, Inc., actually owns, controls, and operates paint and varnish factories located at Kansas City, Mo., Cleveland, Ohio, and Berkeley, Calif. In truth and in fact said respondent, Davis Paint Company, Inc., does not have and never did have any factory at Berkeley, Calif.

PAR. 9. All the respondent corporations except respondent, Davis Paint Company, Inc.; acting under the direction and control of respondent, Berry J. Davis, in the course and conduct of their respective businesses, describe and represent themselves, by false and misleading representations appearing in their catalogues, price lists, and advertisements circulated widely among their customers and prospective customers, and among members of the public, and on labels attached to the containers of their products; to be the manufacturers of the products sold and offered for sale by them, such representations being made by the statement "Direct from Factory to You" and in other ways. In truth and in fact no one of the respondent corporations hereinabove named is the manufacturer of the products sold or offered for sale by it, nor does any of them own, control, or operate any factory for the manufacture of said products.

PAR. 10. In the course and conduct of its business and for the purpose of inducing customers and prospective customers to purchase its products, respondent, World Star Paint Company, acting under the direction of respondents, Berry J. Davis and Davis Paint Company, Inc., causes to be inserted in its advertisements and advertising matter circulated among agents, dealers, customers and prospective cus-

tomers, and on labels attached to the containers of its products, a "Guarantee" which contains the following, among other statements:

We guarantee to refund your money in full or replace any paint with which you are not completely satisfied.

Said guarantee is false and misleading in that respondent, World Star Paint Company, upon the report to it of dissatisfaction of the products purchased by the customer, has not complied, and does not comply with or fulfill the terms of the guarantee, but in truth and in fact respondent, World Star Paint Company, has made it a practice to evade the guarantee hereinbefore mentioned by forcing customers who are dissatisfied to adjust their claims in a manner different from that set forth in its guarantee.

PAR. 11. In the course and conduct of its business and for the purpose of inducing customers and prospective customers to purchase its products, World Star Paint Company, acting under the direction of respondents, Berry J. Davis and Davis Paint Company, Inc., caused to be mailed to customers and prospective customers a letter written on stationery bearing the name of an attorney-at-law and signed by said attorney, in which letter the following statements and representations were made:

I am handling the affairs of the World Star Paint Company of this city.

This company has authorized me to dispose of as much paint as possible between now and Saturday, May 26. Consequently, because I must dispose of quite a lot of paint in this short time, I offer you any paint, varnish, enamel, etc., at EXACTLY ONE-HALF the list prices on the enclosed price list.

The said letter hereinabove referred to had the capacity to and did mislead purchasers and prospective purchasers to believe that said products offered for sale were distress merchandise, that said company was insolvent, and that it would be closing out. In truth and in fact said merchandise being sold and offered for sale was not distress merchandise, said company was not insolvent and said company was not closing out. The merchandise offered for sale was being supplied at all times to the respondent, World Star Paint Company, by respondent, Davis Paint Company, Inc. Further, said letter contained false and misleading statements in that it offered said merchandise for "Exactly one-half Price," when in truth and in fact the merchandise sold and offered for sale was not sold or offered for sale at exactly one-half the list price, but at the price at which said products were, and had been, usually sold to members of the public by the said respondent, World Star Paint Company, and by other subsidiary corporations of respondent, Davis Paint Company, Inc., hereinbefore named.

PAR. 12. The above and foregoing fraudulent acts, practices and representations of the respondents in the course of their advertising, offering for sale and the selling of their products in commerce as aforesaid have the capacity and tendency to mislead and deceive, and have misled and deceived, a substantial portion of the purchasing public in various States of the United States into the erroneous belief that the products sold by the respective corporate respondents other than the respondent, Davis Paint Company, Inc., are in fact manufactured by such respondents; that said corporate respondents are independent of and in no way connected with the respondent, Davis Paint Company, Inc., that said corporate respondent, Davis Paint Company, Inc., and other of the corporate respondents would in fact guarantee their products as set forth in paragraphs 7 and 10 hereof; that the corporate respondent, World Star Paint Company, was about to close out its business and dispose of distress merchandise, as a result of which high grade merchandise could be purchased at exactly one-half the regular price, as set forth in paragraph 11 hereof; that respondent, Davis Paint Company, Inc., owned three large factories as set forth in paragraph 8 hereof; and thereby induce the ultimate consumer to purchase a substantial quantity of the products of the respondent, Davis Paint Company, Inc., in reliance upon such erroneous beliefs.

There are manufacturers of paint, varnish, enamel, and allied products who sell and offer for sale their products in commerce as aforesaid, who do not in any way misrepresent the size or character of their respective businesses or otherwise misrepresent their business or products. There are dealers of paint, varnish, enamel, and allied products who are not manufacturers of said products and who sell and offer for sale their products in commerce as aforesaid, and who do not in any way misrepresent the size or character of their respective businesses or otherwise misrepresent their business or products. Thereby trade is diverted to the respondent, Davis Paint Company, Inc., and to the other respondents named herein, from other competitors who do not make such misrepresentations and thereby substantial injury is done by the respondents to substantial competition in commerce as aforesaid.

PAR. 13. The above acts and things done and caused to be done by the respondents were and are each and all to the prejudice of the public and of the respondents' competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on March 5, 1936, issued and served its complaint in this proceeding upon the respondents herein, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 29, 1936, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents' counsel, Harold E. Neibling, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and that the Commission may proceed upon said statement of facts to make its report as to the findings of facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, 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 its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Davis Paint Company, is a corporation organized January 2, 1924, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal offices and place of business in Kansas City, Mo. Respondent, Davis Paint Company, also formerly did a limited business in the State of Ohio under the name of Robertson Products Company (a corporation whose assets it purchased). Respondent, Davis Paint Company, owned the capital stock of the following corporate respondents, to wit:

| <i>Name of Corporation</i>        | <i>Date Dissolved</i> |
|-----------------------------------|-----------------------|
| Burlington Paint Company-----     | April 24, 1935        |
| Painter's Paint Company-----      | May 1, 1925           |
| World Star Paint Company-----     | September 12, 1935    |
| W. H. Beard Paint Company-----    | January 2, 1936       |
| Manchester Paint Corporation----- | December 15, 1936     |

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which, on the dates set forth above, were duly, actually, and finally dissolved according to law, and since said dates have transacted and attempted to transact no business whatsoever, but prior to said dissolution dates, each of said corporations were duly organized, existing and carrying on business under and by virtue of the laws of the State of Missouri, with their respective principal offices and places of business located in Kansas City in said State. Respondents, New Method Paint Company, and Farm and Home Paint Company, are corporations organized, existing, and now doing business under and by virtue of the laws of the State of Missouri, and have their respective principal offices and places of business located in Kansas City, Mo. Respondent, Berry J. Davis, an individual, is the founder, President, and principal stockholder of the Davis Paint Company, which company is the owner of the stock of respondents, New Method Paint Company and Farm and Home Paint Company.

PAR. 2. All of the above respondents named in paragraph 1 were, and some now are, as set forth in paragraph 1, engaged in the sale of paint, varnish, enamel and allied products to members of the public, either directly to the purchasing public or indirectly through wholesale and retail dealers and through agents. Said corporate respondents, in the course and conduct of their respective businesses, cause or caused to be shipped or transported their products, when sold by them, from the State of Missouri, or the State of origin of shipment to purchasers thereof located in various points of the United States other than in the State of Missouri or in the State of origin of the shipment, and said respondents are in substantial competition with other firms and individuals engaged in similar business among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their respective businesses all of the respondent corporations now are, and have been during all the times hereinabove mentioned, engaged in substantial competition with various other corporations, firms, and individuals selling or offering for sale paint, varnish, enamel, and allied products to members of the general public in the several manners set out in paragraph 2 hereof in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, Davis Paint Company, has been and now does manufacture the paint, varnish, enamel, and allied products offered for sale by the respondents named herein, which were and are now engaged in offering said products for sale to the public under their respective corporate and trade names. The business of all the respondents was, and is, solicited by various advertising

methods, such as circulars, catalogs, price lists, and publications mailed to prospective customers, agents, and dealers throughout the United States.

Formerly it was the practice of the said non-manufacturing corporate respondents, in advertising and soliciting the sale of the products sold by them, to use the words "Direct from factory to you," or words of like and similar import, which practice, however, was voluntarily abandoned by the respondents herein, and since the abandonment of said practice, the same has never been renewed; said products sold or offered for sale by said non-manufacturing corporate respondents for more than a year last past have been labeled with the words "Manufactured for," or "Mfgd. for," or words of similar import, indicating to the general public that the said non-manufacturing corporate respondents do not claim to manufacture the said products.

PAR. 5. Respondent, Davis Paint Company, in the course and conduct of its business and for the purpose of inducing customers and prospective customers to purchase its products, in its advertisements and advertising matter circulated generally throughout the United States among agents and customers and prospective customers, and on the labels attached to the containers of the paint sold under its corporate name, formerly used a form of guarantee which contained the following, among other statements,

#### GUARANTEE

Davis Ever-Bright Brand  
Double-Barreled Money-Back

#### GUARANTEE

Here is our Guarantee printed in black and white. Always demand a printed Money-Back Guarantee, signed by the Manufacturer, before you buy Paints \* \* \*

If, for any reason, Davis' Ever-Bright Guaranteed Paint does not come up to your expectations after applying a portion of it, you may return the remainder and we will refund all you have paid for your entire order.

After you have applied all the paint to your buildings according to our directions and if it does not give you the service you have a right to expect of any paint, regardless of price, we will replace it free of charge, pay all shipping charges and PAY FOR PUTTING IT ON YOUR BUILDING. Or, if you prefer, we will REFUND YOUR MONEY IN FULL.

Could any Guarantee be more fair? \* \* \*

Why not buy your paint where you are fully protected by a printed Guarantee that means something?

Complaint alleges that respondent, Davis Paint Company, has not complied and did not comply in full with the terms of said guarantee, but had made a practice to require customers who were dissatisfied

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to adjust their claims in a manner different from that set forth in its guarantee. Respondents admit that a few customers have complained to respondents concerning adjustments proposed by them under said guarantee and respondents further admit that in answer to said complaints reporting dissatisfaction with the paint purchased by them, respondents sent to said customers questionnaires, which respondents required to be filled out by the complainants, and sometimes subjected said customers to considerable correspondence, and in some cases respondents admit that they refused to accede to the customer's claims. Respondents further state that over a year ago they voluntarily revised the terms of said guarantee in such a manner as to narrow the scope of the same.

PAR. 6. Formerly, in the course and conduct of its business, respondent, Davis Paint Company, caused to appear on its price list, which it circulated widely among its agents, dealers, customers, and prospective customers, a pictorial representation of "Three Large Factory Buildings" together with the following words:

These three up-to-date modern paint and varnish factories are located at Kansas City, Missouri; Cleveland, Ohio, and Berkeley, California \* \* \* Three great factories ready to serve you.

Respondent, Davis Paint Company, admits that it never actually owned an entire paint factory in Berkeley, Calif., but states that at the time said representations were made, respondent, Berry J. Davis, was vice-president of and owned capital stock in a large paint factory in Berkeley, Calif., which factory was represented in said pictorial advertising; but respondents state that long since they have voluntarily completely abandoned representing that they own or control any other factories except those in Kansas City, Mo., and Cleveland, Ohio.

PAR. 7. Prior to the dissolution in September 1935, of the respondent, World Star Paint Company, and while said company was in a dormant condition, an agent of said company caused to be mailed to customers and prospective customers a letter, in which letter the following statements and representations were made:

I am handling the affairs of the World Star Paint Company of this city.

This company has authorized me to dispose of as much paint as possible between now and Saturday, May 26. Consequently, because I must dispose of quite a lot of paint in this short time, I offer you any paint, varnish, enamel, etc., at EXACTLY ONE-HALF the list prices on the enclosed price list.

Respondents state that the price list enclosed in the letter as above set forth was an old price list which did not reflect the current prices at which paint was being offered by respondent, World Star Paint Company, at the time said letter was forwarded.

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PAR. 8. Each and all of the false and misleading statements and misrepresentations made by respondents as hereinabove set forth had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous belief induced by the advertisements and misrepresentations of the respondents as hereinabove enumerated, a number of the consuming public purchased a substantial volume of respondents' product, with the result that trade has been unfairly diverted to respondents from corporations, firms and individuals likewise engaged in the business of selling paint, varnish, enamel and allied products and who truthfully advertise their products. As a result thereof, substantial injury has been done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

## CONCLUSION

The aforesaid acts and practices of the respondents have been and are to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and the agreed stipulation of facts entered into between the respondents herein, by their attorney of record, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and 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 respondents, Davis Paint Company, Inc., a corporation, trading under its own name and also as Robertson Products Company; Farm and Home Paint Company, a corporation; and New Method Paint Company, a corporation; and Berry J. Davis,

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an individual, their officers, representatives, agents, and employees in connection with the offering for sale, sale and distribution of paint, varnish, enamel, and allied products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that any of said corporate respondents, with the exception of the Davis Paint Company, owns, controls and operates any factory wherein the products, which they sell and distribute, are manufactured;

2. Representing that respondent, Davis Paint Company, has factories located elsewhere than in Kansas City, Mo., and Cleveland, Ohio;

3. Representing in guarantees, or in any other manner, that claims by customers for refunds or adjustments will be allowed when such claims are not in fact so allowed;

4. Representing that their paints can be purchased for prices substantially lower than the regular or current prices, and that said paints ordinarily sell for prices substantially higher than the prices represented to be special, when such are not the facts.

It appearing that the respondents herein:

Burlington Paint Company, Painter's Paint Company, World Star Paint Company, W. H. Beard Paint Company, and Manchester Paint Corporation, have been duly, actually and finally dissolved according to law, the complaint as to them shall be, and the same hereby is, dismissed.

*It is further ordered*, That the respondents herein shall within 30 days from the date of the serving upon them of this order, file with the Commission, their report in writing stating the manner and form in which they have complied with this order.

## Complaint

## IN THE MATTER OF

## FEDERAL ENAMELING AND STAMPING COMPANY

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

*Docket 2842. Complaint, June 11, 1936—Decision, Oct. 1, 1937*

Where a corporation engaged in manufacture, sale, and distribution of enamel kitchen and other enamelware, under trade name "FEDERALWARE," in competition with many engaged in sale and distribution, among the various States and in the District of Columbia, of such ware and who do not misrepresent the quality thereof or resort to unfair acts and practices in sale and distribution of their said products; in advertising its said products through radio announcements and programs, hand bills, booklets, display cards, window trims, sales promotion announcements, letters, etc., and through advertisements in periodicals, newspapers and catalogs—

- (a) Represented that its said product would not chip and was thirty-six times more durable than ordinary enamelware and would save its cost to the ultimate purchaser, in one year or less, through fuel savings, facts being said products were not, and never had been, chip-proof or chip-proofed as represented, nor thirty-six times more durable, nor to a substantial degree more durable, than ordinary enamelware, would not and did not save their cost to the purchaser as above set forth, nor save purchaser any material amount in fuel; and
- (b) Represented that its said product was stainless, facts being its said enamelware would not withstand, without showing signs of etching or stain, tentative test of boiling in citric and malic acid solution under certain conditions arrived at by Committee on Standardization of Tests of Technical Research Service of the Porcelain Enamel Institute;

With tendency and capacity to mislead and deceive purchasing public and retail dealers, and with effect of so misleading such public and dealers into erroneous belief that aforesaid various representations were true, and into buying its said products on account of such mistaken beliefs, and with effect of placing in hands of wholesalers and retailers means of deceiving ultimate purchasers through its said advertising and representations, and of unfairly diverting trade to it from competitors likewise engaged in sale, in commerce among the States and in the District of Columbia, of truthfully advertised products of the same kind and nature:

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

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

*Mr. T. H. Kennedy* and *Mr. Floyd O. Collins* for the Commission.  
*Stebbins, Blenko & Parmelee*, of Pittsburgh, Pa., for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the