

Complaint

IN THE MATTER OF

LAWTON V. CROCKER AND HENRY F. CROCKER, TRADING AS THE NATIONAL SURVEY COMPANY, THE NATIONAL SURVEY, AND NATIONAL SURVEY

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

Docket 3103. Complaint, Apr. 10, 1937—Decision, Dec. 23, 1937

Where a firm engaged, as "The National Survey Company" and "The National Survey," in publication of maps and sale and shipment thereof in interstate commerce, in competition with others similarly engaged—

Made use of such designations, in advertising and conspicuously labeling their various maps, as "The National Survey Map of," etc., "The Official National Survey Map of," etc., together with imprint facsimile, in certain cases, of coat of arms of States involved, and together with legend in small type "Compiled from U. S. Government Surveys, Official State Surveys, and original sources," and "Published by The National Survey Co.," etc., notwithstanding fact that while some of said maps were purchased and used by certain State departments and organizations, none of them had been published by, or upon the order of, or with the sanction of, any authority of any Federal, State, or other political entity;

With tendency to deceive and mislead public into erroneous belief that said maps were official, national survey maps and Federal or State Government publications, and unfairly to divert trade to them from competitors similarly engaged in business of distributing and selling maps, and who do not use such false and deceptive labels and designations; to their substantial injury:

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

Mr. Wm. T. Chantland for the Commission.

Mr. Joseph Fairbanks, 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 Lawton V. Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co., The National Survey, and National Survey, hereinafter referred to as "respondents," have been, and are now, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commis-

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sion 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. Respondents, Lawton V. Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co., The National Survey, and National Survey, have their principal office and place of business in the city of Chester, State of Vermont. Respondents are now, and for many years last past have been, engaged in the business of publishing, distributing, and selling, in commerce as herein set out, certain advertising folders and maps.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said products, when sold, to be transported from their office and place of business in the State of Vermont to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondents now maintain a constant current of trade in commerce, in said products distributed and sold by them, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling advertising folders and maps in commerce among and between the various States of the United States and in the District of Columbia.

In the course and operation of said business, and for the purpose of inducing the purchase of their said maps, respondents, in their advertising folders and on their maps transmitted in commerce, represented, designated and labelled their maps as "official." Some of these were as follows:

- Official Map of the World
- Official Map of the United States
- Official Map of New England
- Official Map of New York
- Official Map of Maine

In the course of the operation of said business, and for the purpose of inducing the purchase of their maps, respondents have caused, and now cause, one or another of their several trade names, The National Survey Co., National Survey and The National Survey, to appear on their advertising folders and maps together with such designations and labels, among others, as "Official National Survey Maps," "Official Map of the World," "Official Map of the United States," "Official Map of New England," "Official Map of New York,"

and "Official Map of Maine." On some of said maps respondents also make use of an imprint of a State seal together with statements such as "The Official Map of Maine." Through use of such statements as herein set out, and others similar thereto, respondents represent, directly and by implication, that their maps have been prepared by, or under the direction of, or authorized, adopted or recognized by proper or duly authorized State or Federal officials.

PAR. 4. The representations, designations and labellings made by respondents as above set out, are deceptive, misleading, and untrue, in that none of said maps had been prepared by, or under the direction of, or authorized, adopted, or recognized by any proper or duly authorized officials of any State or of the Federal Government, and no authority or permission had been so granted to respondents to represent, designate or label any of their maps as official.

The designation and labelling of some of their maps by respondents as "Official National Survey Maps" are misleading and deceptive, in that said maps are not prepared or made or authorized to be made from any "Official National Survey," although many maps are in fact so made and issued by various departments of the United States Government. Such representations, designations, and labelling have a tendency to confuse and mislead purchasers and prospective purchasers into the belief that respondents' maps are some of such official maps.

PAR. 5. There are among respondents' competitors many who distribute and sell maps who do not thus or in any way misrepresent their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondents as to their maps, as hereinabove set out, in the course of distributing their products, were and are calculated to, and had, and now have a 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, and that their maps are official State or Federal Government publications. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondents as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' maps with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling maps, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondents to competition

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in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices and representations of the respondents have been and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 10, 1937, issued, and on April 12, 1937 served, its complaint in this proceeding upon respondents, Lawton V. Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co., The National Survey, and National Survey, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint and the filing of respondents' answer, a stipulation as to the facts, in lieu of testimony and documentary evidence, which waived further and all other intervening procedure, was entered into between the chief counsel for the Commission and counsel for respondent, and was duly accepted and approved by the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer, and stipulation, briefs and oral arguments of counsel 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. The respondents, Lawton V. Crocker and Henry F. Crocker, are copartners doing business under the firm name and style of "The National Survey Company" and "The National Survey," having their principal place of business at Chester, Vt., and part of their business has been and is the publication and sale of maps and the sale and shipment of some of said maps in interstate commerce in competition with others similarly engaged.

PAR. 2. Of maps so sold and shipped by respondents, during five years last past, maps to the average annual aggregate sales price of \$2,069, were labeled or designated "Official Map" or "Official National Survey Map," followed by the name of the States, State, Territory or region shown by such maps, and for the purpose of promoting the sale of these maps, certain advertising material has been circulated in interstate commerce by the respondents, describing these maps by the aforesaid designations.

PAR. 3. Of such maps so labeled, designated, advertised, and sold:

None of "The Official Map of the World" has been sold during the last four years, and said item has been abandoned;

Of "The Official Map of the United States" the annual sales during the four years last past have not exceeded \$25, and its publication has been discontinued;

Of New England, since 1926, respondents have advertised, published and sold as aforesaid, maps, in various forms and sizes, and variously labeled and designated. Among such designations were:

1. The National Survey Map of New England.
2. The Official National Survey Map of New England.
3. Official National Survey Maps of New England.
4. Official National Survey Map—New England.

Within the latter, which is in book form, appears designations as follows:

(a) "The Official Map of Maine," with an imprint facsimile of the coat of arms of Maine within such large type wording.

(b) Official National Survey "Bookform" Maps of Vermont and New Hampshire.

(c) Official National Survey "Bookform" Maps of Southern New England.

Following such designations which are in large type, appears the following in small type:

Compiled from U. S. Government Surveys, Official State Surveys, and original sources.

and the following:

Published by
The National Survey Co.
Chester, Vermont.
L. V. Crocker, Topographer.

Of the State of Maine, in addition to the one aforementioned, respondents have advertised, published and sold as aforestated, a certain large map designated in large type "The Official Map of Maine", with an imprint facsimile of the coat of arms of Maine within such wording.

Of the State of New York, respondents have advertised, published and sold as aforestated, maps labeled and designated in large type—"The Official National Survey Map of New York", with a facsimile imprint of the coat of arms of New York within said lettering.

Following the foregoing designations on said maps of Maine and New York appears the same wording as appears in the various New England maps, as above set out.

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PAR. 4. No one of the aforementioned maps were in fact "Official," or "National," or "National Survey" maps, as having been either published by, or upon the order of, or with the sanction of, any authority of any federal, state, or other political entity, although certain of said maps were purchased and used by certain State departments and organizations.

PAR. 5. Certain Federal agencies publish maps using the words "National" and "Survey" as a part of their designation of source.

PAR. 6. The use of the words "Official," "National," and "National Survey" in labels and designations by respondents in the manner hereinbefore described, signifies to some of the public that such maps were in fact issued by, or with the authorization or sanction and approval of, properly constituted national, Federal, or State authorities, as the case might be, and such labeling and designation constitute, and are, false representations that such maps have been issued or sanctioned by such proper authorities, and such advertising, labeling, and designation have the tendency to deceive and mislead the public into the erroneous belief that said maps are official, national survey maps, and Federal or State government publications.

PAR. 7. The foregoing actual and implied misrepresentations and erroneous beliefs induced thereby have a tendency unfairly to divert trade to respondents from individuals, firms, and corporations similarly engaged and competing in the business of distributing and selling maps who do not use such false and deceptive labels and designations, to the substantial injury of said competitors engaged in interstate commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents Lawton V Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co., and The National Survey, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondents and the stipulation as to the facts in lieu of evidence, 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, Lawton V. Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co. and The National Survey, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of maps in interstate commerce or in the District of Columbia, do forthwith cease and desist, directly or indirectly, either personally or through any corporate or other device, from:

Representing, directly or by implication, by or through use of the word "Official," either alone or in conjunction or connection with the words "National" or "National Survey" printed on their maps, or in any other manner, that said maps are "Official" publications of, or are authorized or sanctioned by federal or state authorities, unless said maps are in fact official publications of Federal or State authorities and have been authorized and sanctioned by such authorities; provided, however, that whenever the respondents print, issue, and distribute maps sanctioned, adopted and used by any organization, they are not hereby prohibited from using the word "official" in conjunction, and connection with the name of such organization actually sanctioning, adopting and authorizing the issuance of said maps when the name of said organization appears in close connection and conjunction with the word "official" in letters of equal prominence.

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.

IN THE MATTER OF
ANTHONY J. HILDRETH AND JOSEPH FISCHLER, TRADING AS SANITAS FUNDOSHI COMPANY

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

Docket 2797. Complaint, May 5, 1936—Decision, Dec. 28, 1937

Where a firm engaged, as "Sanitas Fundoshi Company," in selling and distributing combination loin cloth and suspensory to purchasers in other States, in substantial competition with those engaged in sale and distribution of undergarments and other articles designed for the same general uses and purposes; in advertising their said product in various periodicals of nation-wide circulation and in folders mailed to customers and prospective customers in the various States—

Represented that the same was a builder and restorer of health and was scientifically designed to preserve, and would preserve, the strength, vigor, vitality and nervous energy of the wearer and relieve him of fatigue, through such statements, among others, as " * * * of specially treated hand-woven Oriental fabric * * * Conserves vitality," etc., " * * * new, scientific article of clothing, for men * * * American adaptation of a garment centuries old in the Orient," etc., " * * * every thread * * * has been treated by a secret, scientific and sanitary process," etc., " * * * preserves strength and vigor to a marked degree," etc., "HEALTH BUILDER—HEALTH RESTORER," facts being cloth was not specially treated, etc., or unlike other cloths on the market with respect to its functions and properties, other similar articles had same functional characteristics, said article would not restore or correct anatomical conditions, was not a builder or restorer of health, or constructed to fill particular requirements, developed as result of scientific investigation, or scientifically designed to preserve the strength, vigor, etc., of the wearer, and was incapable of so doing, and belonged to a class not required by normal persons; With capacity and tendency to mislead and deceive members of purchasing public into erroneous belief that their said product, thus advertised, offered and sold, would build health and restore lost health, and that it was scientifically designed to and would accomplish the various results claimed therefor, and to induce members of buying public to purchase said article because of such erroneous beliefs thus engendered, and to unfairly divert trade to them from competitors engaged in sale of garments with such features or other articles designed for same general usage and purposes; 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.

Before *Mr. Edward M. Averill* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Astor Hogg for the Commission.