

Syllabus

IN THE MATTER OF

WALDO W. TOWNSLEY, DOING BUSINESS AS SERVAL-SYSTEM

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

Docket 3197. Complaint, Aug. 6, 1937—Decision, Apr. 29, 1938

Where an individual engaged in sale and distribution of bookkeeping system known as "Serval-System," designed primarily for farmers and consisting of a card system for items of expense and income, a pocket adding machine, a cardboard file and a cabinet, together with instructions for use, and price-marked to sell for \$7.50, regular price, or \$5.75, special price; in connection with a plan of selling said systems in group lots to so-called distributors or territorial supervisors, usually farmers, for resale to ultimate purchaser, under contracts covering territory assigned to supervisor, maximum number of systems he undertook to purchase, and total amount of cash deposit paid on number of sets contracted for—

- (a) Represented, directly and through agents, that said systems were easy to sell, and that he had sold a large number thereof in the community and displayed signed orders of a number of farmers with whom prospect was acquainted, and bank deposit slips indicating sizeable accounts in local banks as result of sale of systems locally, and falsely represented that local bankers and business men had endorsed said system and, in support of such representation, displayed one of systems containing advertisements from a number of the local bankers and business men; facts being systems were not easy to sell, sales made to farmers in prospect's community, evidenced as aforesaid, were not made at either the regular or special price as prospect was led to believe, but at substantially lower prices, and bank deposits, evidenced as aforesaid, were not made as a result of such sales but from funds obtained by him from other sources, and said systems were not thus endorsed;
- (b) Represented that he was in search of a local distributor to supervise sales of such systems in certain territories and that supervisor was not required to put up any cash or required to do any selling, and that he would organize and train sales forces to do the actual selling, and that all supervisor was required to do was to take in the money, pay the salesmen their commissions, deduct his own share, and send the balance to him; facts being any member of any community could become his local distributor if he had sufficient capital to make required advance payment on required number of systems when contract was signed, at which time supervisor was required to advance a cash deposit of 50 cents on each system contracted for, on basis of estimate as to probable number that could be sold in designated territory, he did not actually grant any exclusive territory if other sales could be made to other distributors therein, and representations that supervisor was not required to do any actual selling, etc., as above set forth, were false, and said individual, once contract was signed and cash deposit or initial payment specified made, left community, without training any sales force, never to return, and so-called supervisor was left to dispose of said systems in any manner possible; and

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- (c) Represented that a new plan had been devised whereby prospect could be paid a greater commission on each sale of system than was formerly the case, but that in order to make same possible, he, the vendor, had been required to make cash advance of 50 cents per set to printing company to have specified number of said systems printed at one time and placed in their warehouse subject to call, and that it would therefore be necessary for supervisor to reimburse him, the said vendor, for such cash advance made, amounting, at very least, to \$402, and at most, usually, to \$1,206, and that after contract had been undertaken and cash deposit paid over, supervisor was entitled to order from printer number of sets contracted for, upon the payment of the additional sum of \$1.70 per set to the printer; facts being that while said individual did have contract with printing company for printing sets, as orders were placed, he made no cash advance or deposit thereon, and printer's bill for printing sets was paid by supervisor when he received same;

With capacity and tendency to mislead and deceive and with effect of misleading and deceiving substantial number of purchasing public into erroneous beliefs that such representations were true and into purchasing a substantial number of said sets, acting in such mistaken and erroneous beliefs, induced by said false and misleading statements and representations, and with effect that trade was unfairly diverted to him from competitors engaged in sale and distribution, or in manufacture, sale and distribution of bookkeeping sets, card indexing systems, and cost accounting systems in commerce among the various States and in the District of Columbia:

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Waldo P. Johnson, of Kansas City, Mo., 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 Waldo W. Townsley, an individual, doing business as Serval-System, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, 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, Waldo W. Townsley, is an individual doing business as the Serval-System. His business address is P. O. Box #3005 Kansas City, Mo. His home address is 627 South Dearborn Street, Iowa City, Iowa.

Respondent is now, and for several years last past has been, engaged in the sale and distribution of a bookkeeping system to the purchasing public located in various States of the United States. Respondent

now causes, and at all times since he has been in said business has caused, his said products when sold by him, to be shipped from Kansas City, Mo., to the purchasers thereof located in the various States of the United States. There is now, and has been at all times since respondent has been in business, a constant current of trade and commerce by the respondent in bookkeeping systems between and among the various States of the United States.

Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, and with partnerships, and corporations engaged in the sale and distribution of bookkeeping systems in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent is now, and has been for several years last past, engaged in the sale and distribution of a bookkeeping system known as the "Serval-System." It is designed primarily for farmers' use and consists of a card system for items of expense and income, a pocket adding machine, a cardboard file and a cabinet, together with instructions for using the system. The system is price-marked to sell for \$7.50, regular price, or for \$5.75, special price. Until about the beginning of 1936, the respondent sold said system direct to the user; however, during the past year or more, he has been selling said system to so-called distributors or territorial supervisors for resale to the ultimate purchaser. With these said territorial supervisors, respondent enters into a written contract which specifies, among other things, the territory assigned to the supervisor, the maximum number of Serval Systems allotted to the supervisor which he is privileged to demand upon the payment of the balance of the purchase price, and the total amount of the cash deposit paid by said supervisor on said allotment of Serval sets at the time the contract is signed and the sale is made.

PAR. 3. Respondent's sales method is to contact a prospective distributor or territorial supervisor, usually a farmer, and convince said prospect that the Serval-System is something every farmer should have. He then proceeds to sell the said prospect on the idea that it is a proposition out of which he can make some money in his spare time.

As an inducement to prospects to enter into the said written contract to become respondent's distributors or territorial supervisors and to purchase a specified number of the Serval-Systems, the respondent, in person or through his agents, has represented, and still represents, to prospects, among other things, that the Serval-Systems are easy to sell and that he has sold a large number of said systems in the community, displaying to the prospect the signed orders of

a number of farmers with whom the prospect is acquainted and also displaying to the prospect bank deposit slips indicating sizeable bank accounts in the local banks as a result of the sale of the systems locally. Respondent also represents to the prospect that the local bankers and business men have indorsed the Serval-System and in support of this representation, respondent displays to the prospect one of the systems containing advertisements from a number of the local bankers and business men.

In truth and in fact, the said Serval-Systems are not easy to sell and the sales made to farmers in the prospect's community, evidenced by signed orders displayed to the prospect, are not made at the regular or special marked price, as the prospect is led to believe, but at prices substantially lower than said regular or special marked price, although the prospect is not apprized of that fact. The bank deposits, evidenced by deposit slips exhibited to the said prospect, are not made as a result of sales of the Serval-System, as the prospect is led to believe, but are made from funds obtained by respondent from other sources. Furthermore, the representation that the system has been indorsed by local bankers and business men is untrue.

PAR. 4. As a further inducement to said prospects to become respondent's distributors, respondent has represented and still represents to prospects, that he is in search of a local representative or distributor to supervise sales of the Serval-Systems in certain territories; that said supervisor is not required to put up any cash and is not required to do any actual selling; that the respondent will organize and train sales forces to do the actual selling and all the supervisor is required to do is take in the money, pay the salesmen their commissions, take out his share, and send the balance to the respondent.

The representation that respondent is in search of a local distributor or representative for a designated territory or community is untrue, in that any member of any community can become respondent's representative or supervisor if he has capital sufficient to make the advance payment on the required number of respondent's Serval-Systems at the time the contract is signed. The representations that the supervisor is not required to do any actual selling and that the respondent will organize and train sales forces is untrue. Once the contract between respondent and the supervisor is signed and the amount of cash deposit or initial payment specified in the contract is paid over to the respondent, said respondent leaves the community without training any sales force, never to return, and the so-called supervisor is left to dispose of the Serval-Systems in any manner possible. The representation that the supervisor is not required to put up any cash

is untrue. At the time the aforementioned contract is signed between respondent and his territorial supervisor, said supervisor is required to advance a cash deposit of 50 cents on each Serval-System contracted for, the number of systems being arrived at by estimating the probable number that can be sold in the designated territory.

PAR. 5. As the final step in respondent's sales method and as a further inducement to the prospect to sign the aforementioned contract and purchase a specified number of the Serval-Systems, the respondent calls on the prospect a second time and represents to him that a new plan has been devised whereby the prospect can be paid a greater commission on each sale of the Serval-Systems, but that in order to make this new plan possible respondent has been required to make a cash advance to a printing company to have a specified number of the Serval-Systems made up at one time and placed in their warehouse, subject to call from the supervisor, and it will therefore be necessary for the said supervisor to reimburse the respondent for the said cash advance made. The minimum amount to be advanced is \$402, and the maximum amount is usually \$1,206. After the contract is entered into and the cash deposit is paid over to the respondent, the said supervisor is then entitled to order from the printer the number of sets called for in his said contract upon the payment of the additional sum of \$1.70 per set.

In truth and in fact, respondent's representation that he has contracted with the printer for a large number of Serval sets upon which he has made a cash advance of 50 cents per set is untrue. Respondent has a contract with the printing company to make up the sets as orders are placed for them, but respondent makes no cash advance or deposit upon the sets. The printer is paid for said sets when they are shipped out to the supervisors.

PAR. 6. The use by respondent of the representations set out above has had, and now has, the capacity and tendency to mislead and deceive, and has misled a substantial number of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said bookkeeping sets as a result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of bookkeeping sets, card indexing systems, and cost accounting systems, who do not misrepresent the manner in which sales of their commodities are made to the public or the prices at which their products are sold, and who do not, in any manner, publish claims in promoting the sale of their products, which are untrue, who likewise sell and distribute their products among the various States of the United States and in the District of Columbia. By the

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representations aforesaid, trade is unfairly diverted to respondent from such competitors and as a result thereof, substantial injury is being, and has been done, by respondent to competition in commerce as herein set out.

PAR. 7. The above alleged acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning 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 the Federal Trade Commission Act, the Federal Trade Commission, on August 6, 1937, issued, and on August 14, 1937, served, its complaint in this proceeding upon respondent, Waldo W. Townsley, an individual, doing business as Serval-System, charging him 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, no briefs having been filed and no oral argument having been requested, 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, Waldo W. Townsley, is an individual doing business under the trade name Serval-System. His business address is P. O. Box No. 3005, Kansas City, Mo. His home address is 627 South Dearborn Street, Iowa City, Iowa.

Respondent is now, and for several years last past has been, engaged in the sale and distribution of a bookkeeping system to the purchasing public located in various States of the United States. Respondent now causes, and at all times since he has been in said business has caused, his said products, when sold by him, to be shipped from Kansas City, Mo., to the purchasers thereof located in the various States of the United States other than the State of Missouri. There

is now, and has been at all times since respondent has been in business, a course of trade and commerce by the respondent in such bookkeeping systems between and among the various States of the United States.

Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, and with partnerships and corporations likewise engaged in the sale and distribution of bookkeeping systems in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent is now, and has been for several years last past, engaged in the sale and distribution of a bookkeeping system known as a "Serval-System." It is designed primarily for farmers' uses and consists of a card system for items of expense and income, a pocket adding machine, a cardboard file and a cabinet, together with instructions for using the system. The system is price-marked to sell for \$7.50, regular price, or for \$5.75, special price. Until about the beginning of 1936, the respondent sold said system direct to the user. During the past year or more, he has been selling, and is now selling, said system in group lots to so-called distributors or territorial supervisors for resale to the ultimate purchaser. With these said territorial supervisors, respondent enters into written contracts which specify, among other things, the territory assigned to the supervisor, the maximum number of Serval-Systems he agrees to purchase, and the total amount of the cash deposit paid by said supervisor on the number of Serval sets contracted for.

PAR. 3. Respondent's sales method is to contact a prospective distributor or territorial supervisor, usually a farmer, and convince said prospect that the Serval-System is something every farmer should have. He then proceeds to sell the prospect on the idea that it is a proposition out of which he can make some money in his spare time.

As an inducement to prospects to enter into the said written contracts to become respondent's distributors or territorial supervisors and to purchase a specified number of the Serval-Systems, the respondent, in person and through his agents, has represented, and still represents, to prospects, among other things, that the Serval-Systems are easy to sell and that he has sold a large number of them in the community, displaying to the prospect the signed orders of a number of farmers with whom the prospect is acquainted and also displaying bank deposit slips indicating sizeable bank accounts in the local banks as a result of the sale of the systems locally.

Respondent also represents to the prospect that the local bankers and business men have indorsed the Serval-System and in support of this representation, respondent displays one of the systems containing advertisements from a number of the local bankers and business men.

As a further inducement to said prospects to become respondent's distributors, respondent has represented, and still represents, that he is in search of a local representative or distributor to supervise sales of the Serval-Systems in certain territories; that said supervisor is not required to put up any cash and is not required to do any actual selling; but that the respondent will organize and train sales forces to do the actual selling and all the supervisor is required to do is take in the money, pay the salesmen their commissions, take out his share, and send the balance to the respondent.

As a final step in respondent's sales method and as a further inducement to the prospect to sign the aforementioned contract and purchase a specified number of the Serval-Systems, the respondent represents to the prospect that a new plan has been devised whereby the prospect can be paid a greater commission on each sale of the Serval-System than was formerly the case but that in order to make this new plan possible respondent has been required to make a cash advance of 50 cents per set to a printing company to have a specified number of the Serval-Systems printed at one time and placed in their warehouse, subject to call from the supervisor, and it will therefore be necessary for the said supervisor to reimburse the respondent for the said cash advance made. The minimum amount to be advanced is \$402, and the maximum amount is usually \$1,206. After the contract is entered into and the cash deposit is paid over to the respondent, the said supervisor is then entitled to order from the printer the number of sets called for in his said contract upon the payment of the additional sum of \$1.70 per set to the printer.

PAR. 4. The said Serval-Systems are not easy to sell and the sales made to farmers in the prospect's community, evidenced by signed orders displayed to the prospect, are not made at either the regular or the special price, as the prospect is led to believe, but at prices substantially lower than either said regular or special price, although the prospect is not apprized of that fact. The bank deposits, evidenced by deposit slips exhibited to the said prospect, are not made as a result of sales of the Serval-System in a nearby community, as the prospect is led to believe, but are made from funds obtained by respondent from other sources. Furthermore, the representation that the system has been indorsed by local bankers and business men is untrue.

The representation that respondent is in search of a local distributor or representative for a designated territory or community is untrue, in that any member of any community can become respondent's representative or supervisor if he has capital sufficient to make the advance payment on the required number of respondent's Serval-Systems at the time the contract is signed. Respondent does not actually grant any exclusive territory to such distributors, if other sales can be made to other distributors in the same territory. The representations that the supervisor is not required to do any actual selling and that the respondent will organize and train sales forces are untrue. Once the contract between respondent and the supervisor is signed and the amount of cash deposit or initial payment specified in the contract is paid over to the respondent, said respondent leaves the community without training any sales force, never to return, and the so-called supervisor is left to dispose of the Serval-Systems in any manner possible. The representation that the supervisor is not required to put up any cash is untrue. At the time the aforementioned contract is signed between respondent and his territorial supervisor, said supervisor is required to advance a cash deposit of 50 cents on each Serval-System contracted for, the number of systems being arrived at by estimating the probable number that can be sold in the designated territory.

The respondent's representation that he has contracted with the printer for a large number of Serval sets upon which he has made a cash advance of 50 cents per set is untrue. Respondent has a contract with the printing company to make up the sets as orders are placed for them, but respondent makes no cash advance or deposit upon the sets. The printer's bill for printing the sets is paid by the supervisors when they receive the sets.

PAR. 5. The use by respondent of the representations described above has had, and now has, the capacity and tendency to mislead and deceive, and has misled a substantial number of the purchasing public into the erroneous beliefs that such representations are true. Acting under such mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the public has purchased a substantial number of said bookkeeping sets with the result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the sale and distribution, and in the manufacture, sale, and distribution, of bookkeeping sets, card indexing systems, and cost accounting systems, in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondent Waldo W. Townsley, an individual, doing business under the trade name Serval-System, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

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 March 21, 1938, whereby respondent admitted all the material allegations of the complaint to be true, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Waldo W. Townsley, an individual, doing business under the trade name Serval-System, or under any other trade name, his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of a book-keeping system now designated a Serval-System, whether sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, in any manner whatsoever:

1. That said bookkeeping system is easy to sell;
2. That large numbers of sets of said system have been sold in any given community unless such is the fact;
3. That the system is indorsed by local banks and business concerns;
4. That the respondent is in search of a local representative or territorial distributor to supervise the sale of said systems in a given territory;
5. That no cash outlay is required by so-called local representatives or territorial supervisors;
6. That the so-called local representatives or territorial distributors are required to do no selling; and that their only duty is to handle the money, supervise and pay the salesmen;
7. That respondent will organize and train sales forces to sell the sets under the supervision of a so-called local representative or territorial supervisor;

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8. That greater commissions are obtainable if a cash advance sufficient to cover cost of printing the systems contracted for is made by the so-called local representative or territorial distributor.

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

IN THE MATTER OF
MORRIS E. NEWMAN, INDIVIDUALLY, AND TRADING AS
AUTOMOTIVE TEST LABORATORIES OF AMERICA

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

Docket 3328. Complaint, Feb. 9, 1938—Decision, Apr. 29, 1938

Where an individual engaged in preparation, printing and sale of so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products, for their use in advertising same in interstate commerce, and customarily typing in said certificates the claims made by the various manufacturers, and not the results of scientific, impartial tests, and customarily soliciting and accepting suggestions made by such manufacturers as to contents and wordings of said certificates and changing same to correspond with wishes and requests of such manufacturers, without investigation of or regard to truth or falsity of statements—

- (a) Used word "Laboratories" in his trade-name and displayed same in his letterheads, advertising and correspondence cards, and depicted on his letterheads lithographed pictures of scientists and scientific equipment to imply and suggest that he had a laboratory, notwithstanding fact he neither owned nor operated any laboratory, but only office space in the rear of an automotive trade school, and employed no technicians;
- (b) Represented that he made independent, impartial and scientific tests of products submitted, in a laboratory containing apparatus necessary for testing products involved in each case, notwithstanding fact he neither made nor was equipped to make such tests, and issued fictitious "Certificates of Merit" and "Seals of Approval" and mailed same to individual concerns throughout the United States;
- (c) Referred to himself, in his correspondence with prospective customers and in other advertising matter, as a "safety engineer," and as president of his organization and referred to his laboratory as an engineering department, and represented that he had in his employ "Laboratory Engineers," and had laboratory equipment, and made a practice of having various individuals sign the so-called "Certificates of Merit" as "Laboratory Engineers," notwithstanding fact he was not an engineer of any kind, and his organization was nothing more than a trade-name used by him and was not a corporation and he had neither engineering department, laboratory, nor laboratory engineers;
- (d) Listed in his advertising and letterheads a Consultant Advisory Board of 11 men, with their respective official titles, and held out and represented same as assistants and consultants who assisted him in conducting tests, notwithstanding fact that some of them had never given their consent to the use of their names and none of them had ever received anything to test;
- (e) Represented in correspondence with prospective customers and in his advertising matter that his organization was the only one of its kind in the country and was comparable to the Good Housekeeping Institute, and was recognized currently as the adopted standard in the automotive, chemical and accessories field, and used on personal cards and letterheads picture of