

IN THE MATTER OF
WILLYS-OVERLAND MOTORS, INC.

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

Docket 3368. Complaint, Mar. 31, 1938—Decision, July 21, 1938

Where a corporation engaged in the manufacture of passenger automobiles under its trade name, and in sale thereof to distributors at its place of business, for shipment therefrom to their ultimate destination by its dealers and distributors and resale by latter for their own account to ultimate purchasers, in substantial competition with others similarly engaged—

Represented, in an extensive advertising campaign in newspapers and periodicals, in which it described and illustrated its automobile, that fully equipped vehicles might be purchased, ready for operation, at its said place of business for the figure featured, or at other or distant points for said figure, plus cost of actual transportation thereto from said point, through newspaper advertisements in which the conspicuous heading, "50,000 Cars Ordered From a Picture," was accompanied by a view of what appeared to be a four-door sedan, equipped with bumpers, bumper guards, etc., and the words, "The New Willys, \$395," and in much smaller and less conspicuous type, "List f. o. b. factory, Toledo—for the Standard Coupe—other models at higher prices";

Facts being said price was not the factory list price for the car depicted, but for one of its less expensive vehicles of a different type or model, which itself could not be bought at retail for such price at said point, or at its ultimate destination, plus actual transportation charges, without additional charges being made for said items such as bumpers, bumper guards, windshield wipers, etc., and other accessories necessary for the actual or legal operation of the automobile, and constituting a part of what the public understands to be a complete car, ready for operation, with addition, frequently and generally, of other additional charges to retail purchasers for items such as taxes, advertising, handling, and conditioning;

With effect of misleading and deceiving substantial portion of purchasing and consuming public into mistaken and erroneous belief that upon payment of said designated f. o. b. price, plus transportation charges to point of actual delivery, full title to and possession of said car as depicted, equipped with usual and standard accessories and ready for operation, might be had, and with tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true, and with result that substantial number of consuming public, as direct consequence of mistaken and erroneous beliefs induced by such acts and practices, bought considerable volume of its said cars, and trade was thereby diverted unfairly to it from others likewise engaged in the manufacture, distribution, and sale of passenger motor vehicles, truthfully advertised and represented by them and sold at the retail delivered price by them represented, published, or designated:

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

Complaint

Mr. Fletcher G. Cohn for the Commission.

Ritter & Dougherty, of Toledo, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the Willys-Overland Motors, Inc., hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the 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, Willys-Overland Motors, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its office and principal place of business located at Toledo, Ohio. It is now, and for more than 1 year last past has been, engaged in the business of manufacturing passenger automobiles and in the sale and distribution thereof under the trade name "Willys" in commerce between and among the various States of the United States and in the District of Columbia. It causes and has caused said vehicles, when sold, to be shipped from its place of business in the State of Ohio to dealers and distributors located in the different States of the United States, and in the District of Columbia, by whom, and for whose account, such motor vehicles have been purchased from said respondent. Such dealers and distributors, for their own account, sell and have sold such motor vehicles at their respective places of business to purchasers thereof.

In the course and conduct of its business, respondent has been at all times herein referred to, in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in similar business involving the sale and distribution of passenger motor vehicles in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent's retail price is predicated on an F. O. B. or delivered retail price at its place of business in Toledo, Ohio, plus additional charges for transportation from Toledo, Ohio, to its distributors and dealers in the various States of the United States and in the District of Columbia, plus the cost of certain equipment, such as bumpers, bumper guards, windshield wipers, spare tires, and similar material necessary for the proper or legal operation of the vehicle, all of which are considered the standard and usual equipment for passenger automobiles. This so-called extra equipment is charged for in addition to respondent's advertised retail price. Other addi-

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tional charges are generally and frequently made by respondent to its distributors and dealers, such as taxes, advertising assessments, handling and conditioning charges. All of these additional charges are added to the advertised F. O. B. or delivered price of each automobile sold by respondent and are, in turn, included in the retail price charged the local purchaser by respondent's distributors and dealers. The actual delivered price of respondent's passenger automobiles to a retail purchaser is therefore far in excess of respondent's published F. O. B. price at Toledo, Ohio, plus actual transportation costs to place of sale and delivery, and the retail purchaser is not informed of these additional charges over and above respondent's advertised F. O. B. price at Toledo, Ohio.

PAR. 3. In the course and conduct of its business, as described hereinabove, respondent, for the purpose of promoting the sales of its passenger automobiles to the purchasing public from its dealers and distributors located in different States of the United States and the District of Columbia, conducts and has conducted an extensive advertising campaign in newspapers and magazines of interstate circulation, whereby it describes and illustrates its products. Accompanying the illustration or description, it features in large numerals "\$395" as the designated F. O. B. price for the passenger automobiles so illustrated and described. The following is a form of advertisement which has been used by respondent in said campaign:

A newspaper advertisement pictures, under the conspicuous heading, "50,000 cars ordered from a picture," a perspective view of what appears to be a four-door sedan equipped with bumpers, bumper guards, windshield wiper, spare tires and the like. Below such picturization appears "The New Willys \$395" and, in much smaller and less conspicuous type, "List F. O. B. factory, Toledo—for the standard coupe—other models at higher prices."

Other advertisements, with slight variations, but of the same type as the above, were and are used by respondent in said campaign.

The purpose, purport, intent, and effect of said advertisements was, and is, to convey or create the impression in the minds of members of the purchasing public that fully equipped cars so illustrated may be purchased complete and ready for operation at Toledo, Ohio, for \$395, or at other or distant points for \$395 plus actual cost of transportation thereto.

In truth and fact the featured F. O. B. price of \$395 was not, and is not, the list or factory price for which said pictured car was or is offered for sale and sold by the aforementioned distributors and dealers of respondent to the public, but the said price of \$395 was, and is, a price asked for one of the less expensive cars of a

different type or model than that pictured or represented in said advertising.

And said less expensive car, for which said featured price of \$395 was asked, cannot be purchased at retail for this price at Toledo, Ohio, or at its ultimate destination, plus actual freight or transportation charges thereon, without the additional charges for added items, such as bumpers, bumper guards, windshield wipers, spare tires, tools, and other accessories necessary for the actual or legal operation of the automobile or constituting part of what the public understands to be a complete car ready for operation. To these charges, over and above respondent's advertised price of \$395 F. O. B. Toledo, Ohio, also frequently and generally are added further and additional charges to retail purchasers for items, among others, such as taxes, advertising, handling, and conditioning. In instances where statements were and are made in advertisements by respondent of charges in addition to the specified F. O. B. prices at Toledo, Ohio, such statements were printed in such fine type as to be almost obscured by the large figures featuring the F. O. B. price.

PAR. 4. The practice of respondent in falsely picturing in said advertisements a fully equipped and higher priced passenger automobile for sale at the price of a lower priced car, and charging purchasers a price much higher, than the featured price for the car so pictured; and in the other ways and methods set out hereinbefore, was and is calculated to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing and consuming public into the belief that upon the payment of the designated F. O. B. price plus transportation charges from Toledo, Ohio, to the point of actual delivery, full title and possession of said automobile, as pictured, equipped with usual and standard accessories and ready for operation, may be had.

PAR. 5. Motor vehicles of sundry competitors of respondent, especially those selling low priced cars, likewise engaged in commerce as herein set out, are and have been sold and distributed to the purchasing and consuming public in the various States of the United States and in the District of Columbia, in competition with respondent's passenger automobiles, but without misleading and erroneous advertising with reference to "F. O. B." or delivered or retail price as used by respondent herein.

PAR. 6. Each and all of the false and misleading statements and representations made by respondent as hereinabove set out, in offering for sale and selling its passenger vehicles, was and is calculated to, and had and now has, 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. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and other representations of respondent as hereinabove set out, a substantial number of the consuming public have purchased a substantial volume of respondent's passenger motor vehicles with the result that trade has been unfairly diverted to the respondent from corporations, firms, partnerships, and individuals likewise engaged in the business of manufacturing, distributing and selling passenger motor vehicles, who truthfully advertise and represent their products, and who sell the same at the retail delivered prices published, represented or designated by them. As a result thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 31, 1938, issued, and on April 1, 1938, served, its complaint in this proceeding upon the respondent, Willys-Overland Motors, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent filed an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, briefs having been waived and oral argument not 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, Willys-Overland Motors, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its office and principal place of business located at Toledo, Ohio. It is now, and for more than 1 year

past has been, engaged in the business of manufacturing passenger automobiles, and in the sale and distribution thereof, under the trade name of "Willys," in commerce between and among the various States of the United States and in the District of Columbia.

Respondent ships a portion of said automobiles, when sold, from its place of business in the State of Ohio to dealers and distributors thereof located in the States of the United States, other than the State of Ohio, and in the District of Columbia, on sight draft, bill of lading attached. In a large majority of cases, said automobiles are sold directly by respondent to distributors at respondent's place of business in Toledo, Ohio, from which point they are shipped to their ultimate destination by said distributors.

The dealers and distributors, to whom the respondent sells its automobiles by either of the aforementioned methods, sell such motor vehicles for their own account in their respective places of business to the ultimate purchasers thereof.

PAR. 2. In the course and conduct of its business, respondent is, and has been, in substantial competition with other corporations, and with partnerships and individuals likewise engaged in similar businesses involving the sale and distribution of passenger motor vehicles in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's retail price to the ultimate purchasers is predicated on an f. o. b. or delivered retail price at its place of business in Toledo, Ohio, plus additional charges for transportation from Toledo to its distributors and dealers in the various States of the United States and in the District of Columbia, plus the cost of certain equipment such as bumpers, bumper guards, windshield wipers, spare tires, and similar material necessary for the proper and legal operation of the vehicle, all of which are considered standard and usual equipment for passenger automobiles. This so-called extra equipment is charged for in addition to respondent's advertised retail price. Other additional charges are, and have been, generally and frequently made by respondent to its distributors and dealers, such as taxes, advertising assessments, handling and conditioning charges. All of these additional charges are added to the advertised f. o. b. or delivered price of each automobile sold by respondent, and are, in turn, included in the retail price charged the local purchaser by respondent's distributors and dealers. The actual delivered price of respondent's passenger automobile to the retail purchaser is, therefore, far in excess of respondent's f. o. b. published price at Toledo, plus actual transportation costs to place of sale and delivery. The retail purchaser is not

informed of these additional charges over and above respondent's advertised f. o. b. price at Toledo, Ohio.

PAR. 4. In the course and conduct of its business, as described herein, respondent, for the purpose of promoting the sales of its passenger automobiles to the purchasing public and to dealers and distributors located in the various States of the United States and in the District of Columbia, conducted an extensive advertising campaign in newspapers and magazines of interstate circulation, whereby it described and illustrated its automobiles. Accompanying the illustration or description, it featured in large numerals "\$395" as the designated f. o. b. price for the passenger automobiles so illustrated and described. The following is a form of the advertisement which has been used by respondent in said campaign:

A newspaper advertisement pictures, under the conspicuous heading, "50,000 Cars Ordered From a Picture," a perspective view of what appears to be a four-door sedan equipped with bumpers, bumper guards, windshield wiper, spare tire, and the like. Below such picturization appears the words "The New Willys, \$395," and in much smaller and less conspicuous type, "List f. o. b. factory, Toledo—for the Standard Coupe—other models at higher prices."

Other advertisements, with slight variations, but of the same type as the above, were used by the respondent in said campaign.

The purpose, purport, intent, and effect of said advertisements was to convey or create the impression in the minds of members of the purchasing public that fully-equipped automobiles so illustrated might be purchased ready for operation at Toledo, Ohio, for \$395 or at other or distant points for \$395 plus actual cost of transportation thereto from Toledo, Ohio.

In truth and in fact, the featured f. o. b. price of \$395 was not, and is not, the list or factory price for which said pictured automobile is sold by the aforementioned distributors or dealers to the public, but the said price of \$395 was, and is, the price asked for one of the less expensive cars of a different type or model than that pictured in or represented by said advertising.

The said less expensive car, for which said featured price of \$395 was asked, cannot be purchased at retail for this price at Toledo, Ohio, or at its ultimate destination, for this price plus actual freight or transportation charges thereon, without additional charges being made for added items, such as bumpers, bumper guards, windshield wipers, spare tires, tools, and other accessories necessary for the actual or legal operation of the automobile, or constituting a part of what the public understands to be a complete car, ready for operation. To these charges, over and above respondent's advertised price of \$395, f. o. b. Toledo,

Ohio, also frequently and generally are added further and additional charges to retail purchasers for items, among others, such as taxes, advertising, handling, and conditioning. In instances where statements were made in advertisements by respondent of charges in addition to the specified price at Toledo, Ohio, such statements were printed in such fine type as to be almost obscured by the large figures featuring said f. o. b. price.

PAR. 5. The practice of respondent in falsely picturing in said advertisements a fully-equipped and higher priced passenger automobile for sale at the price of a lower priced car, and charging purchasers a price much higher than the featured price for the car so pictured, and in the other ways and methods set out hereinbefore, was calculated to mislead and deceive, and did mislead and deceive, a substantial portion of the purchasing and consuming public into the mistaken and erroneous belief that upon payment of the designated f. o. b. price plus transportation charges from Toledo, Ohio, to the point of actual delivery, full title to, and possession of said automobile, as pictured, equipped with the usual and standard accessories and ready for operation, might be had.

PAR. 6. Respondent discontinued the advertising hereinabove referred to prior to the filing of the complaint herein, but subsequent to the institution of the investigation of said charges by the Commission.

PAR. 7. Motor vehicles of sundry competitors of respondent, especially those selling low priced cars, likewise engaged in commerce as hereinabove set out, are, and have been, sold and distributed to the purchasing and consuming public in the various States of the United States and in the District of Columbia, in competition with respondent's passenger automobiles, but without misleading and erroneous advertising with reference to f. o. b. or delivered or retail price as used by the respondent.

PAR. 8. Each and all of the false and misleading statements and representations made by respondent, as hereinabove set out, in offering for sale and selling its passenger vehicles, were calculated to have, and had, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations were true. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and other representations of respondent, as hereinabove set out, a substantial number of the consuming public have purchased a considerable volume of respondent's passenger motor vehicles, with the result that trade has been diverted unfairly to the respondent from corporations, firms, partnerships, and individuals likewise engaged in the business of manufacturing, distributing, and selling passenger motor vehicles, in

commerce as herein defined, who truthfully advertise and represent their products, and who sell the same at the retail delivered price represented, published or designated by them.

CONCLUSION

The aforesaid acts and practices of the respondent, Willys-Overland Motors, Inc., are all 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 the 31st day of March 1938, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Willys-Overland Motors, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of passenger automobiles in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, through the picturization or description of a passenger automobile, in connection or conjunction with a stated price; or through any other means or device or in any other manner:

1. That said automobile may be purchased for \$395, or any other designated price, unless the designated price is, in fact, the price of, and does refer to, the automobile so pictured or described;

2. That the retail purchaser of said automobile, except for the payment of state and local taxes, assessments, and sales taxes of any kind, can obtain legal title to and possession of same at the point of delivery for \$395, or any other designated price, unless such is the fact;

3. That the designated price of said automobile includes all accessories pictorially represented or referred to in said advertisement, and all other charges of whatever kind or character, except freight or transportation charges where the price is advertised "f. o. b." or "listed factory," and State and local taxes, assessments, and sales taxes of any kind incident to the sale of said automobile, unless such is the fact; *provided, however*, that if said designated price does not

include the cost of said accessories, pictorially or otherwise represented or referred to, and any other charges except those covering freight, taxes, or assessments, said designated price shall be accompanied by suitable words or phraseology printed in plain, prominent, and easily readable type, clearly indicating this fact.

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

IN THE MATTER OF

A. K. HARPER, TRADING AS HARPER MANUFACTURING
COMPANY AND HARPER BRUSH WORKSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3374. Complaint, Apr. 9, 1938—Decision, July 21, 1938*

Where an individual engaged in making, selling, and distributing sweeping and cleaning brushes, in advertising for sales people to sell his said products in various newspapers and periodicals having interstate circulation—

- (a) Represented "Make up to \$25 a day," "Make up to \$12 a day," facts being that only on rare and exceptional occasions had any of his said distributors made net profits of from \$12.00 to \$25.00 a day or over; very few of his distributors made an average net profit ranging between said sums for more than a few months consecutively, and such distributors do not make such a profit selling his said products under normal conditions after selling expense is deducted, such profit is determined by distributor's sales ability, selling costs, particular territory, and other business conditions, and no distributor is assured of any specified net profit by reason of engaging in aforesaid business;
- (b) Represented, as aforesaid, "We leave nothing undone toward your success and promotions are rapid," fact being that no promotions were contemplated or made, except that extra rates of compensation were given when certain monthly volume of sales was attained, and in a few instances salesmen were put on a salary basis and some made sales managers of assigned territory; and
- (c) Represented, as aforesaid, "Free fountain pen," and "Free brushes with your starting order," facts being that pens were furnished by him to his distributors only in consideration of placement of an order by them with him, including payment for goods thus purchased within specified period, and brushes were supplied by him to his distributors only when starting order was of a certain size, and were not in any way free, as cost thereof was included in total price paid for entire order, and said articles were furnished only to distributors who bought specified amounts of merchandise within specified periods of time;

With effect of misleading and deceiving persons into mistaken and erroneous belief that said representations were true, and into purchase of his said products in and on account of such beliefs thus induced, and of diverting trade unfairly to him from competitors similarly engaged who do not in any wise misrepresent the earnings to be made by distributors of their products, and do not make other misrepresentations made by him; to the prejudice of competition in commerce among the States and in the District of Columbia:

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.