

IN THE MATTER OF
MELVIN HINER, TRADING AS COOPERATIVE LIBRARY
COMPANY

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

Docket 3349. Complaint, Mar. 4, 1938—Decision, Aug. 10, 1938

Where an individual engaged in purchasing for resale and in offering, selling and distributing to the general public a set of reference books or encyclopedia entitled and known as "American Educator Encyclopedia in Ten Volumes," together with a "Ten Years Loose Leaf Service" for use in connection therewith, through personal solicitation and through various agents, salesmen, solicitors, and employees—

- (a) Represented, personally and through verbal statements by his agents, etc., and through his order blanks, prospectuses, and other literature used and distributed and exhibited to prospective purchasers and purchasers, and aided, abetted, assisted, and encouraged his said salesmen and representatives, through placing in their hands order blanks and other trade literature with instructions to exhibit, distribute, and use the same in selling and soliciting such books and services, to represent that the selling price of the reference books was \$9.50, but that, as a special introductory offer for advertising purposes, a limited number of persons were being offered a set thereof free of charge, or at a nominal price, if they subscribed for the loose-leaf extension service for a period of 10 years at price of \$5 a year, facts being such books were regularly sold for \$59.50, of which \$9.50 was down payment therefor, with balance payable \$5 a month for the succeeding 10 months, and price at which books were sold was not a special price and they were not given away free or at a nominal price for advertising or as a special introductory offer, or to a limited number of people, and regular and usual price was available to anyone who could be induced to purchase the same;
- (b) Represented, as aforesaid, and aided, abetted, assisted, and encouraged his salesmen, etc., in representing that the subscriber would be credited with \$5 for each set of reference books sold in the community in which he resided, and that the books would be sent out for approval, and that the subscriber would receive an additional book or copy each year for the succeeding 10 years to accommodate the loose leaf extension service, so that at the end of said period set would be increased to a total of 20 books, facts being subscriber was not thus credited, books were not sent out for approval, but contract or order blank signed by subscriber was unconditional and not subject to cancellation, and acceptance of books returned by dissatisfied subscriber was invariably refused, and no additional books were sent out as above set forth;
- (c) Represented, as aforesaid, and aided, abetted, assisted, and encouraged his salesmen, etc., in representing, that his said reference books had been recommended by the local county school superintendent or by the American Library Association or by the immediate superior of the subscriber, and that they

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were modern and up to date and had been prepared especially for high-school teachers, facts being they had not been thus approved or recommended, and could not properly be referred to as "modern" or "up to date," or as prepared especially for high-school teachers; and

- (d) Adopted and used name "Cooperative Library Company," notwithstanding fact that he did not represent a company or group of persons maintaining or conducting a library or library service devoted to cooperation with the reading public and especially the school teachers or those engaged in education, and so-called "Cooperative Library Company" did not have any membership or existence except for use as a trade name by him in the sale of his said commodities;

With effect of misleading and deceiving purchasers and prospective purchasers of such books and extension services into the belief that he represented a company or group of persons maintaining or conducting a library or library service as hereinabove set forth, and with effect of inducing purchasers to buy said books and service from him on account of the erroneous beliefs thus engendered, and with tendency and capacity to mislead and deceive a substantial portion of such purchasing public into the erroneous belief that said various other representations were true, and with the result that a number of such public, as direct consequence of such mistaken and erroneous belief, purchased a substantial quantity of said merchandise and trade was diverted to him from others likewise engaged in the sale of reference books and in truthfully advertising and representing their said merchandise; to the substantial injury of competition in commerce:

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

Before *Mr. E. J. Hornibrook*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Hickey & Hall, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Melvin Hiner, an individual, trading as Cooperative Library Co., 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, Melvin Hiner, is an individual, trading as and in the name of Cooperative Library Co., with his principal office and place of business located at St. Paul, Minn. Respondent is and has been engaged, for more than 4 years last past, in the business of purchasing for resale, offering for sale, selling, and distributing to the

general public a certain set of reference books or encyclopedias entitled and known as "American Educator Encyclopedia in Ten Volumes" together with a "Ten Years Loose Leaf Service" therefor to be used in connection therewith.

PAR. 2. In the course and conduct of his said business, respondent purchases said reference books or encyclopedias known as "American Educator Encyclopedia in Ten Volumes" together with said extension service, from the United Educators, Inc. of Chicago, Ill. Respondent personally and through various agents, salesmen, solicitors, and employees, offers to sell, sells, and distributes said books to persons located at points in various States of the United States and in the District of Columbia. He causes said reference books or encyclopedias and extension services, when so sold, to be transported from the city of St. Paul, Minn. to the purchasers thereof at their respective locations in other States of the United States and in the District of Columbia. Respondent maintains, and during the times mentioned herein has maintained, a course of trade in said products so sold and distributed by him in commerce among and between the various States of the United States.

PAR. 3. Respondent, in the course and conduct of his business, is in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in offering for sale, selling, and distributing reference books and encyclopedias of the same or a similar kind and character to the general public in commerce among and between the various States of the United States and in the District of Columbia. Among the said competitors of the respondent there are corporations, partnerships, firms, and individuals who are engaged in the same or substantially similar business as respondent, as hereinabove described, who truthfully represent and designate themselves as being engaged in such business, and who do not make to the general public the false representations hereinafter alleged to have been made and used by the respondent in the conduct of his said business, and who do not use the allegedly deceptive and misleading sales methods hereinafter charged as having been used by respondent.

PAR. 4. In the course and conduct of his said business in selling and seeking to sell said reference books and encyclopedias and loose leaf extension services, respondent employs various agents, solicitors, salesmen, and representatives, who are authorized and directed to solicit orders for, and to sell said commodities to prospective purchasers in the several States, said salesmen and representatives ordinarily traveling from place to place and canvassing prospective purchasers at such places. Respondent furnishes such salesmen and representatives with prospecti, order blanks or contracts, and other literature and paraphernalia, which are exhibited, distributed, and used in connection

with the sale or solicitation for the sale of said books and extension services. Upon a sale being made by respondent personally or by such salesmen or representatives, the purchaser is asked to sign a printed order or contract which is then transmitted to the respondent. Respondent thereupon causes a shipment of said books to be made to such purchaser from St. Paul, Minn., and transmits to such purchaser from time to time loose-leaf extension services. At the time the order is signed, respondent or his salesman or representative usually collects a down payment from the purchaser, and the order or contract so signed ordinarily requires additional payments in monthly installments until the total purchase price is paid in full.

PAR. 5. During the time above mentioned, in the course and conduct of his said business, respondent personally and through verbal statements made by his agents, salesmen, representatives, and employees, and by means of his order blanks, prospecti, and other literature used and distributed and exhibited to prospective purchasers and to purchasers, has represented and does now represent to various individuals throughout the United States the matters and things hereinafter set forth; and by placing in the hands of such agents, salesmen, representatives, and employees the above mentioned order blanks, prospecti, and other literature with the authorization and instruction to exhibit, distribute, and use the same in selling and soliciting the sale of such books and extension services, respondent has and does aid, abet, assist, and encourage such salesmen and representatives to make to members of the general public the representations hereinafter set forth. Said representations so made by respondent either in person or through salesmen are and have been as follows:

That the selling price of the set of reference books known as "American Educator Encyclopedia In Ten Volumes" is \$9.50;

That as a special introductory offer or for advertising purposes a limited number of persons are being offered a set of the books free of charge or at a nominal price if they subscribe at the same time for loose-leaf extension service for a period of 10 years at a price of \$5 per year;

That the subscriber will be credited with \$5 for each set of reference books sold in the community wherein the subscriber resides;

That the reference books have been recommended by the local county school superintendent or by the American Library Association or by the immediate superior of the subscriber;

That the books will be sent out for approval;

That the subscriber will receive an additional book or copy each year for the succeeding 10 years to accommodate the loose-leaf exten-

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sion service so that at the end of that time the set will be increased to a total of 20 books;

That the books are modern and up to date;

That the books are prepared especially for high-school teachers; and

Other representations of similar import.

PAR. 6. In truth and in fact said statements and representations are false and misleading. The set of books are regularly sold by respondent for \$59.50, that is to say, \$9.50 as a down payment therefor, and \$5 per month for each of the succeeding 10 months. The price at which said books is sold is not a special price, nor are the said books given away free of charge or at a nominal price for advertising purposes or as a special introductory offer, or to a limited number of persons, but on the contrary said price is the regular and usual price of said books and is available to anyone of the public generally who can be induced to purchase same. The subscriber is not credited with \$5 for each set of books sold in the community. Neither the county school superintendent, nor the immediate superior of the subscriber, nor the American Library Association has recommended or otherwise evidenced approval of said reference books or encyclopedias. Said books are not sent out for approval, but the contract or order blank signed by the subscriber is unconditional and not subject to cancellation, and respondent invariably refuses to accept books returned by subscribers who are dissatisfied with them. Said books are not of such character as to be properly represented as "Modern" or "Up to Date," or as prepared especially for high-school teachers. Additional books are not sent out each year with the result that at the end of 10 years the set is increased to a total of 20 books.

All of the representations so made as set forth in paragraph 5 above are false, misleading, or so greatly exaggerated as to be substantially untrue.

PAR. 7. The adoption and use by respondent of the name "Cooperative Library Co." in the course and conduct of his said business has had and does have a tendency and capacity to mislead and deceive, and the same does mislead and deceive purchasers and prospective purchasers of such books and extension services into the belief that respondent represents a company or group of persons maintaining or conducting a library or library service devoted to cooperation with the reading public and especially with school teachers or those engaged in educational work.

In truth and in fact respondent does not represent any such company or library, nor does the said Cooperative Library Co. have any

membership or any existence except for use as a trade name by respondent in the sale of his said commodities. The use of said trade name, Cooperative Library Co., has induced and does induce purchasers to buy said books and services from respondent on account of the erroneous beliefs engendered as above stated.

PAR. 8. Each and all of the false, misleading and untrue representations so made by respondent and his agents, salesmen, representatives, and employees as above set forth in paragraph 5, and the adoption and use of said trade name, Cooperative Library Co., in offering for sale and in selling the said books and publication known as "American Educator Encyclopedia in Ten Volumes" and "Ten Years Loose Leaf Service," 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 said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of respondent, as aforesaid, a number of the purchasing public has purchased a substantial quantity of said merchandise, with the result that trade has been unfairly diverted from other individuals, corporations, firms, and partnerships likewise engaged in the sale of reference books who truthfully advertise and represent their merchandise. As a result thereof, substantial injury has been and is now being done by the respondent herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above alleged acts, representations, and practices of respondent have been and are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 4, 1938, issued, and on March 7, 1938, served, its complaint in this proceeding upon the respondent, Melvin Hiner, an individual, trading as Cooperative Library Co., 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

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for permission to withdraw said answer and to substitute therefor 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, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, 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 respondent, Melvin Hiner, is an individual trading as and in the name of Cooperative Library Co., with his principal office and place of business located at St. Paul, Minn. Respondent is now, and has been for more than 4 years last past, engaged in the business of purchasing for resale, offering for sale, selling, and distributing to the general public a certain set of reference books or encyclopedias entitled and known as "American Educator Encyclopedia in Ten Volumes," together with a "Ten Years Loose Leaf Service" therefor to be used in connection therewith.

PAR. 2. In the course and conduct of his said business, respondent purchases said reference books or encyclopedias known as "American Educator Encyclopedia in Ten Volumes," together with said extension service, from the United Educators, Inc., of Chicago, Ill. Respondent personally and through various agents, salesmen, solicitors, and employees, offers for sale and sells said books and extension service to the general public throughout the United States and in the District of Columbia. Respondent causes said reference books or encyclopedias and extension services, when sold, to be transported from his place of business in the city of St. Paul, Minn., to the purchasers thereof at their respective locations in States of the United States other than the State of Minnesota and in the District of Columbia. Respondent maintains, and has at all times mentioned herein maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of his business, is in substantial competition with other individuals and with corporations, firms, and partnerships who are likewise engaged in offering for sale, selling, and distributing reference books and encyclopedias

of the same or a similar kind and character to the general public in commerce among and between the various States of the United States and in the District of Columbia. Among the said competitors of the respondent there are corporations, partnerships, firms, and individuals who are engaged in the same or substantially similar business as respondent, as hereinabove described, who truthfully represent and designate themselves as being engaged in such business and who do not make false representations to the general public and who do not use deceptive and misleading sales methods in the conduct of their business.

PAR. 4. In the course and conduct of his said business in selling and seeking to sell said reference books and encyclopedias and loose-leaf extension services, respondent employs numerous agents, solicitors, salesmen, and representatives who are authorized and directed to solicit orders from, and to sell said commodities to, prospective purchasers in the several States. Said agents, solicitors, salesmen, and representatives travel from place to place and canvass prospective purchasers at such places. Respondent furnishes said agents, solicitors, salesmen, and representatives with prospectuses, order blanks or contracts, and other literature and paraphernalia, which are exhibited, distributed, and used in connection with the sale and solicitation for the sale of said books and extension services. Upon a sale being made by respondent or by respondent's agents, solicitors, salesmen, or representatives, the purchaser is required to sign a printed order or contract which is then transmitted to the respondent. Respondent thereupon causes a shipment of said books to be made to such purchaser from St. Paul, Minn., and transmits to such purchaser from time to time loose-leaf extension services. At the time the order is signed respondent or his salesman or representative usually collects a down payment from the purchaser, and the order or contract so signed usually requires additional payments in monthly installments until the total purchase price is paid in full.

PAR. 5. In the course and conduct of his said business, the respondent, personally and through verbal statements made by his agents, salesmen, representatives, and employees, and by means of his order blanks, prospectuses, and other literature used and distributed and exhibited to prospective purchasers and to purchasers, has represented and does now represent to various individuals throughout the United States the matters and things hereinafter set forth; and by placing in the hands of such agents, salesmen, representatives, and employees the above-mentioned order blanks, prospectuses, and other literature with the authorization and instruction to exhibit, distribute, and use the same in selling and soliciting the sale of such books and

extension services, respondent has and does aid, abet, assist, and encourage such salesmen and representatives to make to members of the general public the representations hereinafter set forth. Said representations so made by respondent either in person or through salesmen are and have been as follows:

That the selling price of the set of reference books known as "American Educator Encyclopedia in Ten Volumes" is \$9.50;

That as a special introductory offer or for advertising purposes a limited number of persons are being offered a set of the books free of charge or at a nominal price if they subscribe at the same time for loose-leaf extension service for a period of 10 years at a price of \$5 per year;

That the subscriber will be credited with \$5 for each set of reference books sold in the community wherein the subscriber resides;

That the reference books have been recommended by the local county school superintendent or by the American Library Association or by the immediate superior of the subscriber;

That the books will be sent out for approval;

That the subscriber will receive an additional book or copy each year for the succeeding 10 years to accommodate the loose leaf extension service so that at the end of that time the set will be increased to a total of 20 books;

That the books are modern and up to date;

That the books are prepared especially for high-school teachers; and

Other representations of similar import.

PAR. 6. In truth and in fact said statements and representations are false and misleading. The set of books are regularly sold by respondent for \$59.50, that is to say, \$9.50 as a down payment therefor, and \$5 per month for each of the succeeding 10 months. The price at which said books are sold is not a special price, nor are the said books given away free of charge or at a nominal price for advertising purposes or as a special introductory offer, or to a limited number of persons, but on the contrary said price is the regular and usual price of said books and is available to anyone of the public generally who can be induced to purchase same. The subscriber is not credited with \$5 for each set of books sold in the community. Neither the county school superintendent, nor the immediate superior of the subscriber, nor the American Library Association has recommended or otherwise evidenced approval of said reference books or encyclopedias. Said books are not sent out for approval, but the contract or order blank signed by the subscriber is unconditional and

not subject to cancellation, and respondent invariably refuses to accept books returned by subscribers who are dissatisfied with them. Said books are not of such character as to be properly represented as "Modern" or "Up to Date," or as prepared especially for high-school teachers. Additional books are not sent out each year with the result that at the end of 10 years the set is increased to a total of 20 books.

All of the representations so made, as set forth in paragraph 5 above, are false, misleading, or so greatly exaggerated as to be substantially untrue.

PAR. 7. The adoption and use by respondent of the name "Cooperative Library Company" in the course and conduct of his said business has had and does have a tendency and capacity to mislead and deceive, and the same does mislead and deceive purchasers and prospective purchasers of such books and extension services into the belief that respondent represents a company or group of persons maintaining or conducting a library or library service devoted to cooperation with the reading public and especially with school teachers or those engaged in educational work.

In truth and in fact respondent does not represent any such company or library, nor does the said Cooperative Library Co. have any membership or any existence except for use as a trade name by respondent in the sale of his said commodities. The use of said trade name, Cooperative Library Co., has induced and does induce purchasers to buy said books and services from respondent on account of the erroneous beliefs engendered as above stated.

PAR. 8. Each and all of the false, misleading, and untrue representations so made by respondent and his agents, salesmen, representatives, and employees as above set forth in paragraph 5, and the adoption and use of said trade name, Cooperative Library Co., in offering for sale and in selling the said books and publication known as "American Educator Encyclopedia in Ten Volumes" and "Ten Years Loose Leaf Service," 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 said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of respondent as aforesaid, a number of the purchasing public has purchased a substantial quantity of said merchandise with the result that trade has been diverted unfairly to respondent from other individuals, and from corporations, firms, and partnerships likewise engaged in the sale of reference books who truth-

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fully advertise and represent their merchandise. As a result thereof, substantial injury has been and is now being done by the respondent herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts, representations, and practices of the respondent, Melvin Hiner, an individual, trading as Cooperative Library Co., have been and 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 the 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 of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in the complaint, and that without further evidence or other intervening procedure the case may proceed to final hearing upon the record, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Melvin Hiner, an individual trading as Cooperative Library Co., or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of reference books now designated "American Educator Encyclopedia in Ten Volumes," or of the same or like books, whether sold under that name or any other name or title, in interstate commerce and in the District of Columbia, do forthwith cease and desist from representing, directly or otherwise:

1. That said reference books are given away free of charge, or that the selling price thereof is \$9.50 or any other sum less than the usual and customary price thereof provided the purchaser subscribes at the same time for a loose-leaf extension service for a period of years;

2. That the subscriber will be credited with \$5 or any other sum for each set of reference books sold in the community wherein the subscriber resides;

3. That said reference books have been recommended by the local county school superintendent or by the American Library Association or by the immediate superior of the subscriber, or by any other individual, when such is not the case;

4. That said books will be sent out for approval;

5. That the subscriber will receive an additional book or copy each year for a succeeding period of years to accommodate the loose-leaf extension service, when such is not the case.

6. That said books are modern and up to date;

7. That said books are prepared especially for high-school teachers.

8. Through use of the trade name "Cooperative Library Company," or through any other name of similar import and effect, or through any means or device, or in any manner, that the business conducted by him is a cooperative library enterprise or is anything other than a private business conducted for profit.

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
JOHN C. MERRITT, INDIVIDUALLY, AND TRADING AS
MERCO SALES COMPANY

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

Docket 3207. Complaint, Aug. 18, 1937—Decision, Aug. 12, 1938

Where an individual engaged in sale and distribution of various articles of merchandise, including bedspreads, tablecloths and napkins, silverware, lingerie, and others—

Supplied, in connection with the solicitation, sale, and distribution of his aforesaid merchandise, various devices and plans of merchandising which involved operation of gift enterprise or lottery schemes, and distribution of such merchandise to ultimate consumers thereof wholly by lot or chance, and consisted of push cards for use in sale and delivery to purchasing public of said various articles thus sold, under plan by which, substantially, amount, if any, paid by prospective purchaser for selection of a girl's name from the list thereof displayed on the card, depended upon particular number disclosed on card after selection and removal of name chosen, and under which receipt of particular articles of merchandise being sold, varying value of which was greater than cost of a single push from card, was dependent upon chance selection of name corresponding to one of the two concealed under the card's red and blue master seals, as set forth on card's explanatory legend, and thereby supplied to and placed in the hands of others, to whom he furnished said devices and who made use thereof in accordance with aforesaid sales plans, means of conducting lotteries in sale of his merchandise in accordance with such plan as above set forth, and in violation of the public policy long recognized by the common law and in criminal statutes, and contrary to established public policy of the United States Government, and in competition with many who are unwilling to adopt and use such a method of selling or distributing to purchasing public as above set forth, and involving a game of chance or sale of a chance to procure articles at a much lower figure than their normal retail price, or to use any method involving game of chance or sale of chance to win something by chance, or other method contrary to public policy, and refrain therefrom;

With result that many persons, attracted by his said methods and element of chance involved in sale or distribution of said articles of merchandise above set forth, were thereby induced to buy and sell same in preference to that offered and sold by aforesaid competitors who did not use same or equivalent method, and with effect of diverting trade and custom to him from his aforesaid competitors:

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

Mr. Henry C. Lank and Mr. P. C. Kolinski for the Commission.
Beasley & Beasley, of Birmingham, Ala., for respondent.